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‘Fail again, fail better’ – navigating the complicity of the neoliberal subject and critiquing resistance as a teaching-focused legal educator

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I, Gareth Bramley confirm that the Thesis is my own work. I am aware of the University's Guidance on Academic Integrity (https://www.sheffield.ac.uk/study-skills/assessment/academic-integrity/academic-integrity). This work has not previously been presented for an award at this, or any other, university.

This thesis is dedicated to Alice – for keeping me grounded, for reminding me what is important and for always showing compassion.

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Introductory section

Abstract

This thesis seeks to explore and challenge a series of personal feelings, presumptions and motivations of a teaching-focused academic operating in contemporary legal higher education.

Using a process of reflexivity, namely challenging assumptions and perspectives over the contemporary state of legal higher education, this thesis seeks to unpack neoliberalism, its contested influence on higher education practices both generally and within legal education, and the extent to which counter-neoliberal practices can, or should, be formed.

This thesis reflects on the depth of neoliberal discourse within higher education, and the complicity and passivity of apparently counter-neoliberal practices that can result from such normalisation. Through immersion in critical pedagogical and critical legal theory, the author develops a process of praxis; of reflection and action.

As part of this action, resistance and scholar activism are analysed to explore what possibilities, either practical or imagined, may emerge to expose the cracks in neoliberal rationality. Critical legal methodologies are also explored for their additional potential as counter-neoliberal.

This thesis also seeks to highlight the complicity of the university setting within neoliberal discourse, whereby those operating within its walls, whilst sharing feelings of resentment with being judged against the vision of a perfect neoliberal subject, must be empowered to commit to an ongoing reflexive approach of being in, but not of, neoliberal complicity.

The thesis explores both critical pedagogical possibilities, as well as wider activist practice, to conclude with a plan of action. This is formed as a manifesto, which seeks to harness the power of the collective over the neoliberal atomisation of the individual.

Introduction: aims and structure

Context and motivations

This thesis centres my personal lived experience, specifically the embodied, subjective and contingent nature of my operation in the world as a lawyer, educator and citizen; but also research into student experiences of higher education to embrace the lived experiences of students that I interact with.

As will be foregrounded in my positionality statement within this introduction, my motivation for the structure and methodological approach to this thesis sprung out of reflections on the notion of an idealised path to success. Falling short of this ideal has made me feel like a failure, without really being able to explain the reasons for this. Through a combination of this feeling of failure, an opportunity to study on the EdD, and the subsequent exploration of systemic issues operating within my world of teaching-focused higher education, the following aims emerged.

Style of writing for this thesis

This thesis intentionally eschews the more classic structure often presented. Instead of any preordained template, this thesis was created through an often chaotic and emotional process of moving between reflections on my position as a teaching focused academic in legal higher education, and the literature that sought to explain and critique my role. As a result, the thesis is intentionally framed into sections, rather than chapters throughout.

The reasons for my style and approach are twofold. Firstly, the absence of identifiable chapters, or a clear linear narrative to my style and structure, visually represents my 'thinking in writing' approach. Beyond the three core aims set out below, I had no linear plan of action or set of definitive guidelines that I sought to adhere to. It felt like failing in my methodology from the start, if I simply used perceptions of a 'successful' thesis structure as a stick to beat myself with.

Secondly, I strongly felt that to work towards a specific, pre-defined set of structural expectations for this thesis would seek to rationalise my writing in some way, and move away from challenging my pre-conceptions of the core areas that I seek to focus on (namely neoliberal hegemony, higher education and legal higher education). The entire thrust of my thesis is focused around opening up and challenging the presentation of the rational and the universal, and therefore the style of my writing works as a reminder to the reader and the writer of this. In this way, my thesis operates to resist dominant discourse on academic validity.

Aims

This thesis aims to navigate through the following guiding themes:

1. What is the meaning of neoliberalism, and how has it been variously experienced by staff and students operating within contemporary higher education spaces?

2. How has legal education developed within England, including its more contemporary framing within neoliberalisation, and what critical possibilities exist for alternative pedagogical approaches to dominant legal education discourse?

3. In what ways might neoliberal hegemony within higher education be resisted, and in what ways can counter-neoliberal approaches be imagined or actioned?

To explore these queries, my initial research strategy operates as an ongoing process of defining, and reflecting on, the often contested theoretical definitions and conclusions captured within each of these questions. From this, my thesis develops my own thoughts and feelings of such contested notions, with the hope of better navigating where I go next 'armed' with new understandings.

Structure

As a structure, my thesis is set out as follows:

Section 1 (1) - Unpacking Neoliberalism navigates the challenge of defining 'neoliberalism', with an initial examination of the possible origins of the term.

Specifically, this section highlights how the term 'neoliberalism' in its narrowest conception is defined, or contained, solely as a theory of economics. From this, an expansion of neoliberalism as a historical ideology is explored, with a reflection on the subjectivities, conflicts and contradictions emergent when comparing ideological underpinnings of neoliberalism as against a hegemony of 'neoliberalisation' i.e. the enactment of neoliberalising practices.

This section therefore centres on the unpacking of the idea of neoliberalism and frames a debate for this thesis over the relative importance of defining features that are, or are not, part of neoliberal hegemony. Included with this, is an appreciation of both the 'big' neoliberalism of wider government policy against the 'little' neoliberalism felt and perpetuated through neoliberal 'complicity'. This complicity can take hold as rational common sense thinking, and neoliberal discourse.

Most importantly, this first section raises two points of focus for the remainder of the thesis - that of the subjectivity and contingency of neoliberal hegemony; and that of the linked reductivity of the 'perfect neoliberal subject' i.e. the perception that reward and success are only possible through striving towards an idealised image of the self.

Through these foci, this section opens up a focus for exploring critique, specifically centered around how neoliberalisation perpetuates the othering of alternative, collectivist, transformative possibilities.

Further, through exploring neoliberalism as hegemony this section sets the scene for seeing neoliberalism as not totalising notwithstanding the complicity of individuals in cementing a discourse of pursuing neoliberal 'norms'.

Section 1 (2)- Neoliberalism and higher education, follows on from this analysis, to explore neoliberalism as a set of practices shaping contemporary higher education (HE). This section explores the multifaceted, specifically deleterious ways that neoliberalisation has affected HE development and discourse.

Crucially, in addition to evaluating the relative impact of government policy on universities, this section draws upon examples from pedagogical literature as to how neoliberalism is enabled and cemented through multiple, everyday practices of those operating within contemporary universities. Through exposure of both the neoliberalising project 'out there' and the neoliberalisation 'in here', this section evaluates how redress over governmental policy is not sufficient alone when imagining a 'post' neoliberalism space. Instead, imagining a space beyond neoliberalising practices requires critical reflection of individual complicity in the neoliberal project.

As part of the reflection on this section, and its supporting literature, it is recognised that neoliberalism and HE can be miscommunicated as a totalising force, contrary to framing neoliberalism norms as full of cracks and contradictions. In this way, it is very dispiriting and de-energising to reflect on the apparent burden of neoliberalising practices and policies on

contemporary HE. Resultantly, this reflection leads to a need to explore in what ways neoliberalism within HE can be exposed as not totalising.

Section 2 - a critical analysis of resistance grows out of reflections on the weight of the challenges to addressing the neoliberal discourse of the university setting. The central aim is a response, and critique, to the normalising of neoliberal discourse.

This section first explores what is meant by 'resistance', specifically as a response to neoliberalism. Most importantly, this section explores activist, collective examples of where others may have resisted in different ways both within, and outside, the formal HE space. Through this immersion in examples and practices of resistance, my aim is to explore what resistance might 'mean' to me; and from this to develop possible methods of resistance for my own ongoing practice. Specifically, this is framed within the material reality of resisting whilst ever remaining as a member of staff employed by a university. Therefore these insecurities around resistance as protest as compared to more micro, or covert, lead to an exploration of scholar activism and micro resistance. This centres around a critical question of 'what is enough?'.

This section forms a focus on the potentiality of working in antagonism to neoliberalism through a continued reflexive stance of both reflection and action. I seek to work through a strategy of the 'obligation' to actively resist a destructive complicity of neoliberalism, which involves moving beyond feelings of precarity, fear and paralysis towards potentially more joyful and local actions of 'constructive' complicity. In particular, this section begins to recognise the potentiality of covert, activist strategies of resistance that may not be snuffed out or undermined as a result.

Most crucially, such an activist stance harnesses the potential power and energy of the collective, and sets up a reflection on to what extent pedagogical methods may form part of such a resistant strategy.

Section 3 - a critical analysis of legal education in the UK moves from contemporary HE more generally, to set out a critical analysis of the historical context of legal education in the UK. This section therefore places my personal disciplinary context within the reflections set out in the previous sections.

Through personal reflection of the development of legal education at HE level in the UK, this section highlights how legal education has developed as a conflicted, hierarchical dualism between law as an 'academic discipline' and the 'lesser' notion of law as 'professional legal practice'.

This section then tracks the advent of the 'popular' law school, this being the rapid expansion of universities offering legal education to an increasingly large number of students. Within this context, I develop the concept of a contemporary 'conflict zone' within legal education. This conflict zone is explored as a space within which many arguments remain over what ought to be taught at law schools, who should universities teach to, what types of people should operate as teachers within law schools and how much should the 'aspirational' notion of a law degree as a route to the legal profession be harnessed by law schools.

Through this reflection on legal education, I aim to highlight that, through the contested history over legal education and its conflict zone, neoliberalism has found ample opportunity

to take hold. Therefore, in addition to the ways in which neoliberalism (both 'big' and 'little') has become hegemonic within HE more widely, the inability for law schools to commit to working constructively on some of the contested questions about the content and direction of legal education, creates an additional site for neoliberalism to become hegemonic.

Section 4 - what is the purpose of a legal education? follows on from section 3, as a personal attempt to grapple with a key critical reflection: 'what *is* the purpose or what *are* the purposes of legal education?'.

As a starting point, this section reflects on the ways in which canonical, privileged legal education has existed, and continues to exist, within university law schools - this being a reification of the notion of legal doctrine, legal positivism and the 'case law' method of teaching. This section then highlights the perpetuation of the 'status quo' attitude of law being variously rational, objective, neutral or 'correct' that results from such reification.

From this challenge, I highlight some of the antagonistic alternative theoretical approaches to legal education that have been considered predominantly within wider legal scholarly writing; and seek to reflect on how these alternative approaches *may* offer a more expansive, critical conception of law and legal systems. Most importantly, this section reflects on the disconnect between potentially transformative legal scholarship and theory developments, and the continued presence of the 'case law' pedagogical method in law schools.

This section then reflects on the way in which neoliberal pressures 'felt' by law schools, to deliver 'privileged' knowledge, now create increasingly significant challenges to alternative pedagogical approaches to legal education. Specifically, this section brings in previously explored concepts of metricised graduate attributes, hyper competition between providers for students and student fees, managerialism and the increasing squeeze on committed reflection on enabling neoliberal practices.

This section also touches on the changes that have appeared most recently within professional legal education in the form of the central Solicitors Qualifying Exam (SQE) and how this may continue to influence both the content of legal education, but also the ongoing development of the providers of legal education - thus noting the potential expansion of private universities or other private non-universities in the HE space.

Section 5 - future possibilities for critical legal education builds on Section 4 through a deeper reflection over future imagined purposes of legal education. So, the central aim of this section is to explore the potentiality of critical legal pedagogies.

Specifically, this section forms as a deep critical reflection of Critical Legal Studies (CLS), a body of scholarship that broadly grew out of the counterculture movement of the 1960s.

This section reflects on how CLS very much started out as a specified movement within US academics operating at a specific socio-cultural time. Through a historical account of the development of CLS and its associated legal and pedagogical theories, this section analyses to what extent CLS opened up new ways of thinking about both legal theory and legal pedagogy. From this analysis, I reflect on the way in which some of the underpinnings of CLS emerged into contemporary examples of 'critical legal approaches'. However, this section also notes that, despite development in modes of critical *thinking*, significant changes to the design, direction and pedagogical underpinning of law schools along such

'critical legal' lines may have been inconsistent or rare, and continue to be challenging to achieve.

Notwithstanding the contested development of critical legal approaches and CLS, I finish this section with some possible pedagogical proposals for incorporating critical legal approaches within my own teaching.

Section 6 - my personal manifesto seeks to bring together the project of this thesis around a personal manifesto for potential change. The central aim of framing a manifesto, is a commitment to action following ongoing reflection, and specifically to return to in moments of passivity or inaction.

The section is broken up into the practical changes that at this moment in time I feel I can start, or progress, immediately within my lived teaching practice; after this, this section widens to more *imagined* possibilities or hopeful narratives for change. Although these imagined possibilities may feel very far off from practical application, the aim is to use such imagination, as a source of ongoing inspiration and energy over barriers of complicity, apathy or paralysis.

Within this section I acknowledge some of the biggest barriers to this manifesto that I still do 'feel' every day in my current career setting. These barriers are set out to acknowledge the impracticality of some of what I suggest - a reminder that something more local, focused and minor may 'work' better, despite feelings of it not being *enough*. Further, this manifesto centres again around not working alone; of finding others to connect with to join together on a more constructive committed project of post-neoliberalising practice.

Methodological approach

At its core, my thesis has been shaped through personal reflection on my time working in HE and my own developing identity. In particular, I was motivated to work through better understanding why I had variously felt hurt, anger, frustration and challenge of working within HE. This naturally involved a reflection on my role as a legal educator, but also someone who had experience of both studying law and operating in the legal profession. From the start, I have sought to analyse what I had 'expected' from working within HE, particularly the perceived 'success' or 'value' I expected to both bring, and be recognised for, when entering teaching in HE from legal practice. This analysis is then to be contrasted with the confused reality of my subsequent experiences.

Given that reflection has formed a spark for my reading, thinking and writing from the start, the emerging methodology of my work has come to be inspired by the work of Stephen Brookfield. Brookfield, as an adult educator and advocate for demystifying the process of developing critical teaching practice, is a key methodological influence for my thesis approach.

As part of his work, Brookfield has written extensively on critical reflection, specifically in the field of adult education. For example, Brookfield emphasises the importance of critical reflection, and of it being the essence of a reflexive methodology: "critical reflection focuses not on how to work more effectively or productively within an existing system, but on calling the foundations and imperatives of the system itself into question, assessing their morality, and considering alternatives" (2009, p. 299). Further, Brookfield emphasises that "for reflection to be considered critical then, it must have as its explicit focus

uncovering, and challenging, the power dynamics that frame practice and uncovering and challenging hegemonic assumptions" (ibid, p.298). In terms of hegemony, for Brookfield, hegemonic assumptions are defined thus, "These are assumptions that we think are in our own best interests but that actually work against us in the long term" (2017, p. 20).

The use of Brookfield's definition (2009, 2017) of critical reflection has permitted me to more deeply explore my feelings around working within legal HE, in particular some of the specific instances where I may have relied on, and perpetuated hegemonic assumptions around the 'correct' way to teach the subject of law; which ultimately may prop up assumptions rather than work to critique or dismantle these. This thesis therefore forms a personal journey of challenging my own preconceived notions of legal HE and of legal theory, specifically calling into question the norms and ideas that I have not only experienced, but also explicitly and implicitly held up and perpetuated during my time studying, practising, teaching and researching law and legal systems.

In order to better achieve the 'uncovering' and 'challenging' of my assumptions and preconceptions, I have necessarily had to *immerse* myself in theory; following Brookfield's approach, this involves specifically both critical legal and pedagogical theory. Critical theory is therefore also central to my methodological approach. I can now acknowledge in this final piece how important theory, and a critical reflection on theory, shapes my future possibilities for transformation. But, as will be explained, this did not come easily at times through my writing process.

In order to feel more comfortable with an immersion in critical theory, I have sought to develop an immanent ongoing critique: so, developing with critical reflection the methodology of 'praxis'. Specifically here, I utilise Paolo Freire's notion of praxis as "reflection and action" (1970, p.99), but more specifically action that is "directed at the structures to be transformed" (ibid). Freire here, as a critical pedagogue like Brookfield (and inspiring Brookfield in this regard), recommends praxis as a means through which assumptions and contradictions can be worked through specifically to permit action to stop re-producing oppressive educational practices and instead to transform ongoing action. I recognise and employ this throughout my thesis: through the unpacking and recognition of neoliberalism as hegemonic within contemporary legal HE, to then considering counter-hegemonic processes for my ongoing action.

Freire summarises thus in terms of praxis, "Education as a practice of freedom…denies that man [sic] is abstract, isolated, independent, and unattached to the world; it also denies that the world exists as a reality apart from people" (ibid, p. 54). This quote encompasses a belief in the social construction, and subjectivities, of lived 'realities'. Through utilising Freire's methodology of praxis, I therefore better appreciate how lived experiences and affective reality of humans is bound up with the world, and therefore how theory and practice can interrelate to challenge the various assumptions that are made about how one should act.

I follow this ontological footing, specifically through an analysis of the intertwining of legal education with the subjective lived experiences of those who operate within law and legal systems. Methodologically I operate on two levels: the process of praxis with the aim of personal transformation, and the related embarking on a pedagogical approach of exploring this methodology of praxis with my students.

Challenges with theory

I have encountered a challenge with the theory I have drawn upon, and been directed towards, during my writing. Specifically, this is the 'neutral stance' on theory I have sometimes taken during my writing process; most notably within the analytical work on legal theory that exists in this thesis.

The challenge of unpacking theory, and finding personal connection with it, may have been in part formed by my former life as a practising solicitor. In legal practice, the messaging I experienced is that it literally does not pay to debate *critical* theoretical approaches as means of openly acknowledging systemic problems with legal practice. Such discussions, for me, were not prioritised given that the primary aim of legal practice is to advise your client, as expediently as possible, on the way in which the law applies 'as is'. This concept of working towards a narrower 'professional' attitude of legal practice therefore forms a central part of my critique within this thesis, particularly to what extent such an attitude is prioritised through legal education.

Given my time in practice, I also recognise in myself that this 'neutrality' and 'objectivity' of legal principles has slipped easily into my teaching practice, and indeed my initial writing for this thesis. As will be considered further in section 3, I have reflected how my prior thinking around the 'neutrality' in law was perpetuated through my reading, and delivery of, canonical legal knowledge.

As Davies (2023) points out, this is the 'norm' for legal education': "modern legal education is based on positivist foundations - this is how we have all been trained to think and so it is difficult to think differently" (p.114). I was keen to 'do a good job' when I entered higher education, and for me this meant sticking to the script. I wanted to get across legal principles as clearly as possible, albeit seeking engagement with students through adding the context of how principles played out in practice from my own experiences.

This attitude of doing a good job also intertwines with my critical reflection on the material operations of a neoliberal subject; that of an idealised version of myself, capable and autonomous in the world of university education, yet always failing from such ideals. This notion of the double bind of 'good 'performance' and neoliberal complicity forms a central reflection for my thesis writing.

As part of my preconceptions, I felt an *aversion* to theory. As well as my focus on the knowledge of the system (rather than more deep critique of it) I built up a perception that talking around theory not only moves focus away from the *doing*, but also can downgrade or 'other' those voices that are more focused on the practical day-to-day of teaching, or legal practice as the case may be. After all, theory can feel complex, inaccessible, time consuming to read, and therefore also framed as an 'unproductive' or unhelpful use of time.

As a way of addressing this, in addition to the works of Brookfield and Freire assisting me to recognise the value of theory in challenging such preconceptions, I have also found the writing of bell hooks to be inspiring, in particular her acknowledgement that, "Theory is not inherently healing, liberatory, or revolutionary. It fulfils this function only when we ask that it do so and direct our theorizing towards this end" (1991, p.4). In this quote, hooks recognises that theory can indeed be problematic, or not inherently transformative, without a more committed attitude towards specific liberatory goals when grappling with theory immersion. So, the reasons *why* theory is explored is key.

Further, hooks also recognises something crucial that I often felt when talking about theory, particularly with friends and contacts that do not operate within the formal HE academy:

> Afraid that if I took a stance that would insist on the importance of intellectual work, particularly theorizing, or if I just simply stated that I thought it was important to read widely, I would risk being seen as uppity, or as lording it over. Thus I have often remained silent (ibid, p.6).

I too have kept silent in discussions with my friends in legal practice, or those otherwise sitting outside 'academia', often nervous about being labelled as 'not in the real world' or perhaps even coming across as insulting or stuck in my academic ivory tower. Working with theory is complex, and therefore a critical examination of the way I have used theory has been a key feature of my methodology. This nervousness has not helped at times to read, and to write, with theory centered.

Despite my aversions, grappling with theoretical underpinnings to legal and pedagogical theory has come to change me in tangible ways. Inspired by hooks, I have sought to harness theory as potentially 'liberatory', specifically in the sense of shaping my ongoing thinking and praxis. Further, theory has been instrumental in allowing me to better reflect on my lived experience and to become more confident about critical self reflection as a method of challenging my pre-conceptions. Most importantly, theory teaches me to move away from dwelling in the guilt, blame and shame of my own actions and experiences. Such feelings bring passivity, which can be destructive to change.

Perhaps most significantly, theory has healed my chaotic mindset in some ways, in that I feel increasingly content with the notion that I cannot escape, or replace, any dominant discourse with a *specific* alternative. Instead, my role is to be working to suggest both practical and imagined possibilities for alternative approaches; with this work never being finalised in form and always subject to an ongoing critical reflection.

I have also found solace on my 'problems with theory' through Margaret Davies, particularly given her contemporary legal focus. Through Davies, I have been empowered to develop a more ontological reflection, based on the position that there exists no objective practical 'facts' to lived reality, and further that meaning and experience shape theory and vice versa. As Davies (2023) puts it, "facts are invested with a theoretical understanding of the world... Theory is produced from practical contexts - it is formed out of everyday life and over time it adapts to new practices and facts" (p.236). One is inseparable from the other.

I now find it obligatory that I not seek to push away, or resist the formation of opinions on theory, particularly it this again results in framing things from a more abstract standpoint; but importantly at the same time I resolve to remain open to new theories and ways of thinking about the world (including, of course, with my students).

On how to format this obligation for immersion with theory, Brookfield is again helpful in addressing my concerns. He asks, "If the world refuses to conform to models, concepts and research then what use is it to study theory?" (2009, p.294). Brookfield convincingly addresses this question through setting out the need for ongoing reflexivity in the writing and doing i.e. to continue to question assumptions, preconceptions and the systems within which I operate:

> The first [*aim - emphasis added*] is to understand how considerations of power

> undergird, frame and distort so many adult educational processes and interactions. The second is to question assumptions and practices that seem to make our lives easier but that actually end up working against our own best long-term interests in other words, those that are hegemonic (2009, p. 298)

Brookfield (2009) here empowers me to do the work of thinking more closely about my aims and methods of working through these. So, through *thinking in writing*, I have come to commit to better understand legal pedagogical attitudes and processes; but also the desire to better challenge my own preconceptions and to hope to encourage others to do the same. This commitment has come most strongly through the ongoing reading around the multifaceted nature of 'harm' of a neoliberal hegemony, and what could continue to dominate and control if counter hegemony is not done.

At times, an ongoing theoretical debate or critique can lead to negativity and inaction over specific practical proposals. And further, critique on some levels can be problematically tied up with an endpoint i.e. one day where a collective, harmonised version of a better reality is realised. I continue to work on this mindset, through reminding myself of the ongoing notion critique without any form of specific endpoint in mind.

As Simon Springer (2016) powerfully notes,

> If the production of critical narratives were directly connected with 'dismantling' neoliberalism, we would have got rid of neoliberalism a long time ago. The fact that this did not as yet happen points to a few things, one of which is that neoliberalism is also produced and reproduced through specific day-to-day practices and encounters, including those that seek to challenge it (p.387).

This challenge of the mundane complicity of neoliberalising practices is one that I continue to reflect on through this thesis; it is this everyday neoliberalising that often feels impossible to work directly against.

Challenges of critical reflection - A journey of rage and hope

During my research for this thesis, much of what I have read and written about has undoubtedly created a mix of seemingly negative emotions: fear, anger, mistrust, exhaustion, rage. As will be noted within the body of my work, these emotions can sometimes be paralysing; they can lead to a feeling of nihilistic frustration, of 'what's the point?'

On these feelings, I have found Ruth Barcan's writing most assistive, particularly this dissonance: "If you are optimistic or joyful about the world, it's because you're not bright enough to realize how corrupt it is, or not politically committed enough to jolt yourself out of your bourgeois comforts. If you seem too cheerful you are obviously not thinking hard enough" (2013, p.152). Barcan vividly captures here my own chaotic uncertainty around what I *should* feel or think about the concepts I am exploring in my writing. Further, of course, what comes from this is uncertainty around what I should do about the negativity that I expose.

It is here that I draw upon Barcan's particular notion of keeping hope: "...we could think of hope less as a force than as a potentiality – an embodied openness to possibility" (2013, p.147). So, I take on the quest of keeping 'possibility' close to me; maintaining an openness that there *may* exist alternatives; alternatives that embody a more collective and compassionate approach rather than the perpetuation of self-sufficient individualism.

Ontological and epistemological foundations

In this thesis I seek to commit ontologically to a socially constructed nature of reality, as a philosophy of deconstructing and dismantling my prior assumed positivist foundations of legal knowledge.

As will become clear throughout this thesis, my legal educational background did not encourage me to reflect or explore my definition of 'reality'. Instead, through my legal education and time in legal practice, I either neglected altogether, or made a series of presumptions about the possibilities for subjective lived experiences to shape and develop systems of power and knowledge.

To counter this and in order to aid my methodology of reflexivity, I commit to an epistemology of the subjectivity of knowledge. Specifically, this method of thinking about knowledge encourages me to critique any presumptions I may have made about law and legal education being universal, objective or neutral.

Further, my thesis will explore, as part of this process, a 'post' mindset, embracing a critique of modernist rationalised thinking and instead encouraging an increasingly chaotic worldview. As will be explored further in section 4 of this thesis, post-structuralism in particular permits me to critique any preconceptions held around the the notion that there is a specific object (an 'I') from which language can be objectively observed. Instead, all positions are subjective and relational. This mindset is crucial for reflexivity.

Through the setting of these theoretical foundations to my approach, my thesis can flow as a process of 'thinking in writing' (as explained above in my reflections on my challenges with theory) utilising theory to challenge hegemonic rationalities on the key concepts of neoliberalism, higher education, resistance and pedagogy; and then to consider counter practices and alternatives.

Positionality

Given that I follow Freire's notion of praxis (1970), of reflection and action being intertwined and immanently related to lived experience, I centre here my lived experience from which the ongoing analysis operates. I am not distant from the themes emerging in this thesis; I am affected by, and complicit within them, specifically and subjectively.

I am currently a University Teacher at the University of Sheffield, a role that is either described as teaching *focused* or teaching *only*. When 'only' is used, it feels that this forms a lesser position to that of the teaching and research position; I have often been considered 'different' to the traditional research 'academic.

I identify as a white, cis gender, able-bodied man that grew up in a middle-class, suburban environment containing, amongst other things: a mother and father in professional jobs (university academic and private school librarian respectively, both of whom had attended university before me), a personal part-time job on occasion but never out of financial necessity, financial support for university study, monetary support with buying my first home, a group of friends that largely look and sound like me, and so forth.

I feel this 'relative privilege' is important to recognise, particularly when finding motivation for a more critical reflection on law, legal systems and legal pedagogy. On occasion, it has become all too easy for this viewpoint to become overwhelming, and to create *paralysis* of

thought: the development of an irrational belief that I cannot possibly engage with, respect or deeply understand those critical theorists that write in particular from a position of personal lived otherness. As I have developed my thinking, I believe more that it may be reductive to assume that I cannot engage more deeply and chaotically with critical reflection and critical theory; my personal lived experience may of course be relevant, but I still have something to say, and much to learn. Possibly, even the 'obligation' to do so, which I will reflect on further as I write.

Further, defining my privilege in specific terms misses out personal experiences of precarity, including experiences of poor mental health, alcoholism, violence, and certainly the overbearing weight of expectation and success. And of course, identifying myself as part of a particular group and a particular defined set of experiences can be unhelpful; after all, these do not necessarily define the entirety of who I am, or where indeed my analysis can go.

My reflection is that I came to the EdD and this thesis initially with motivations of recognition, and of career progression. I have at various times during my academic career to date felt under-valued and underappreciated, particularly as a result of the perceptions from my time in legal practice, framed in opposition to a background in academic study and output, notably in the form of a PhD in Law.

At times, I have made myself 'useful' and 'productive' to the institution I have worked for (particularly The University of Sheffield) in the hope of doing a good job, but ultimately this did not lead to promotion, or indeed protecting my long term employment within the institution. Whether or not that really 'matters', it really did affect my mindset and general wellbeing; I was experiencing personal moments of professional failure.

For further context, for three years during my EdD studies I was a Senior tutor at a private for-profit university - the University of Law ('Ulaw'). I taught solely on the Legal Practice Course ('LPC'), Postgraduate Diploma in Law ('pGDL') and Solicitors Qualifying Exam ('SQE') preparatory courses (all courses will be given further context in this thesis). This time was relatively intense and often exhausting, particularly when compared to my prior employment at The University of Sheffield - a high teaching load, constant marking deadlines, including on subjects that I had never taught, a strong managerial direction and scrutiny, a hugely varied and complex cohort of students often exhibiting complex learning and support needs, and courses run year round without natural 'breaks' in semesters or teaching terms.

Interestingly, this experience felt much more similar to my time in commercial legal practice (in terms of its intensity, and its focus on completion of tasks in a time limited environment); yet also interestingly I felt unwilling and put off progression, promotion or affinity with Ulaw and its strategic directions. Although the feelings were often unclear, I think in particular I pushed back at the managerialism that encouraged an environment without question or critique, in particular the implementation of policies and teaching practices that not only missed out the human wellbeing of the students or staff but also were often brought in by a few centralised figures without clear consultation or justification. On a positive note about this experience, working for Ulaw certainly fuelled me to analyse more deeply some of the contemporary practical challenges exhibited within HE, particularly the expansion of for-profit universities.

I was employed at the University of Sheffield ('UoS') as a University Teacher (again on a teaching focused pathway) for approximately nine years before I spent time at the University

of Law (this was my first foray into academia, post legal practice in 2011). In addition to teaching professional courses, at UoS I also taught on the undergraduate law degree ('LLB') and 'academic' Masters in Law ('MA Law'). My move to Ulaw followed a TUPE (transfer of undertaking and protection of employees) transfer of employment, arranged by a sale by the School of Law at UoS of the postgraduate professional courses that I taught on (namely the LPC and GDL), to Ulaw. Strangely, I now find myself full circle, back at the University of Sheffield again after having left my position Ulaw and returning to a University Teacher post.

Before my time as a tutor in HE, following the completion of my own LLB law degree at UoS, and then a Legal Practice Course (LPC) at UoS, I then undertook a two year training contract provided by a high street law firm, to become qualified as a solicitor within England and Wales (and holding a practice certificate, then issued by the Law Society). Following this, I moved to a large commercial law firm and worked for approximately six years post qualification, before being made redundant as an indirect result of my legal employer entering into Administration.

Although challenging to say, no doubt for a combination of the experiences above I particularly wanted to focus my research on the perceptions of individualised success. As I have come to realise through my ongoing reflection on the notion of neoliberalism, I would say I have been sold the *promise* of the neoliberal dream - of individual economic success and prosperity, in return for employing a self-sufficient and hard working attitude to productive endeavours.

Like others, I have experienced cracks, and failure, in this idealised path to success. Fortunately for me, the financial support and relative privilege of my lived experience propped me up from the precarity of losing my home or my wider livelihood. Notwithstanding this, failure still affects me deeply and makes me feel 'unsuccessful'; and at times, has led me to somewhat desperately trying to get myself back again into work, into a 'settled life', and into a productive performative mindset. I see therefore how my personal pathway, shaped through economic and individualised success, combined with a subsequent opportunity to explore these concepts further (most notably my carving out of time and space within academia to read more widely on both the subject of law and of pedagogy), led me to the starting points for this thesis: neoliberalism.

SECTION 1 - Unpacking Neoliberalism

(1) What is neoliberalism?

My aim in this section is to explore the notion of neoliberalism. This section operates as an unpacking of the idea of neoliberalism and frames a debate for this thesis over the relative importance of defining features that are, or are not, part of neoliberal hegemony. Specifically, there is an exploration of the potential ideology of neoliberalism, together with an analysis of the enactment of neoliberalisation through both the 'big' neoliberalism of wider government policy against the 'little' neoliberalism felt and perpetuated through neoliberal 'complicity'. This complicity can take hold as rational common sense thinking, and neoliberal discourse over the perception of a perfect neoliberal subject. This section therefore underscores the complexity, subjectivity and contingent nature of neoliberalism, to foreground the critical analysis of the relative impact of neoliberalism within higher education (in section 1(2)) and avenues for resistance to neoliberalism (in section 2).

This section initially developed from the sprawling use of the term across much of the pedagogical literature that I was reading. As will be set out further below in this section, a number of writers focusing on a critical analysis of higher education in the UK use neoliberalism, and the market, as a root cause or starting point for much of what is *wrong* with contemporary HE. Some certainly employ this technique more vividly than others, for example Peter Fleming: "The modern university is (institutionally speaking) staring into an abyss: paralysed and unable to turn away from the unforgiving gaze of market realism" (2021, p.142).

As I have read and explored further, thinking more carefully about what neoliberalism 'is' has become a key reflection for the eventual flow of my thesis work, particularly within the context of HE. As Springer notes "...the expansion of neoliberalism into a field of academic inquiry has been meteoric" (2016, p.36). What has resulted therefore for my thesis writing, is a committed attempt to develop a 'meaning' of neoliberalism that I can carefully explore within the context of my role in HE and in legal education specifically.

As a starting point, I offer two quotes in an attempt to begin a debate over neoliberalism within my research:

> Neoliberalism is most commonly understood as enacting an ensemble of economic policies in accord with its root principle of affirming free markets….the conversion of every human need or desire into a profitable enterprise (Brown 2015, p.28)
>
> ...neoliberalism never existed as a singular, monolithic structure in the first place)...Neoliberalism, in its various guises, has always been about the capture and reuse of the state, in the interests of shaping a pro-corporate, freer trading 'market order' (Peck, Theodore and Brenner 2012, p.17, p.22)

These two quotes capture two important features of neoliberalism as a concept. The first quote from Wendy Brown (2015) notes a commonality of definitions of neoliberalism being focused on economic policies, placing the concept of the free market and economic profit over other value models as its priority. The second quote, from Peck et al (2012), builds on this to highlight the

importance of a critique of any *singular model* of neoliberalism; so, instead acknowledging how neoliberalism operates in various forms, and certainly not only from a narrow economic policy angle.

Importantly however, both quotes argue that neoliberalism at its core is wedded to perpetuating an ideal of the free market through state control. Further, both quotes talk about the way in which neoliberalism operates within contexts rather than a focus on it only as an abstract concept. These appear to be key features of neoliberal 'identity'.

In terms of where neoliberal discourse may have *started,* or at least been first named, Busch notes as follows:

> Neoliberalism has its roots in the crises of capitalism during the Great Depression. It can (arguably) be said to have begun at an invitational colloquium in 1938 in Paris (Busch 2017, p.13).

Busch here highlights the roots of neoliberal ideals having a possible formation or specific enactment point, and that being tracked back to a post Wall Street Crash colloquium organised by Walter Lippmann in Paris in 1938. So, for Busch, this is the focus on neoliberalism as an ideological project being created:

> ...neoliberalism can be considered an ideology, as evidenced by the abiding faith among many politicians, business leaders, and members of the general public in the primacy of markets and competition (ibid, p.12).

Neoliberalism as ideology/project

Indeed, it was at this Paris meeting in 1938 that Alexander Rüstow, a German sociologist and economist, is credited with first coining the term 'neoliberalism'; at the time in an attempt to break from classic liberal ideals to a form of 'new' liberalism. Interestingly, Rüstow saw new liberalism as a necessary way of attacking the more laissez-faire approach of classic liberalism (something they felt had directly contributed to the global crash of 1929) i.e. neoliberal ideals should focus on maintaining a free market, but one guided and regulated by a strong independent state presence focusing on a collectivist agenda (rather than an individualist focus of classic liberalism). As noted, "the neoliberalism that came out of the Colloque Walter Lippmann was much in line with Rüstow's political and economic theories. It was no longer a conception of unrestricted liberty, but a market economy under the guidance and the rules of the state" (Hartwich 2009, p.18). Rüstow, like others, was paranoid that a capitalism without this state planning would lead to further economic downturns.

However, tracking things forward in time to the work of the Mont Pelerin Society (an organisation of scholars from various backgrounds, famously including Milton Friedman and Friedrich Hayek amongst their number, established in 1947), neoliberal notions undertook a schism. At this stage, the aim extolled through those in the Mont Pelerin Society was an enforcement of free market ideals *without* the state implementing measures of collectivism, but instead utilising state influence to maintain individualism: "The neoliberal state…is an active and interventionist state, which assume that societal insecurity is the result of the incapacity of the subject. The neoliberal subject is therefore one which is problematized"

(Chandler and Reid 2016, p.11). It was here that Hayek in particular started to influence neoliberal ideals; including the claim that a more collectivist attitude would lead to totalitarianism. Hayek claimed that it was individual competition within the market that would instead lead to economic and social prosperity.

Interestingly, for a time at least, these ideas were largely confined to discussions rather than explicit government policy, with government policy in the UK and US focused more on the seemingly social economics of John Maynard Keynes during the 1950s and 1960s.

Notwithstanding this, the Mont Pelerin Society was being heavily funded and supported, and led to a number of free market think tanks being developed including the Institute of Economic Affairs, and eventually the Adam Smith Institute in the UK: “Hayek’s network was financed by some of the world’s richest people…the rich backers hired policy analysts, economic academics, legal experts and public relation specialists to create a series of think tanks that would refine and promote the doctrine” (Monbiot and Hutchison 2024, p.18). It is evident that the work on Hayek’s theory of neoliberalism was quietly being fuelled and granted power.

Moving forward, a significant defining moment of neoliberal ‘success’ is focused on the 1970’s and the US and UK alliance of Thatcher and Reagen economic and social policies. It is from here that contemporary pedagogical literature (focused on US and UK education) often tracks neoliberal ideals from; given that both Thatcher and Reagan embraced the notion of the free market in their political agenda, directly picked from the thinking of the Mont Pelerin members and its associated think tanks.

When Thatcher came into power in 1979 following the ‘winter of discontent’ economic crisis in the UK, it was prior development and expansion of neoliberal thinking that granted her the evidence base to implement ‘Thatcherism’: “the ideology that had been incubated for three decades in think tanks and academic departments-with the generous support of wealthy backers-had hatched” (Monbiot and Hutchinson 2024, p.23).

Thatcher-Reagan policies harnessed the Mont Pelerin philosophy of individualism i.e. the importance of self-sufficiency and progress for the individual: “As Margaret Thatcher declared, in perhaps the most famous articulation of neoliberal ideology, ‘There is no such thing as society’. The market-model of choice and efficiency is extended to the level of the individual” (Blalock 2015, p. 73). Thatcher’s statements were made powerful through this individualism bringing freedom from the perception of overt State ‘control’.

This key statement from Thatcher, along with the narrative of ‘TINA’ (there is no alternative) embrace a more contemporary illustration of an ideology of neoliberalism: that of society and collectivism (and therefore policies of trade unions, the welfare state and public utilities) being eliminated in the pursuit of individual success. Crucially, Thatcher implemented a series of state policies to deliver such a vision, focused on privatisation and the respect for corporate power. Through such policies, her government legitimised feelings that there was indeed no alternative to such an approach. Thatcherism thrived on this, rationalising its domination and perceived lack of contingency.

A historical approach to analysing neoliberalism therefore offers some useful insight, and goes some way to show how neoliberalism in a UK context, specifically through government policy, sought to break apart a social collectivist attitude. However, framing neoliberalism only as an ideological project does not go far enough to explain the varied and nuanced development of neoliberalism that plays out and 'exists', particularly in more contemporary settings.

Not tidy or monolithic

Jamie Peck's argument, building on Busch's analysis of the neoliberal 'project', is that the path of neoliberalism was not smooth or necessarily consistent: "the course of neoliberalization almost never describes a tidy arc from regulated to deregulated markets, or big government to smaller states, but is more likely to result in a plethora of gyrations across the terrains of social regulation" (Peck 2013, p.143). Peck's writing here is therefore important; although recognising a key feature being a commitment of neoliberalism to pulling apart collectivism, it highlights that this was never in a singular, monolithic or indeed 'tidy' fashion. It was not through government policy or think tanks alone.

Peck (2013) therefore develops a more carefully crafted way in which to analyse a more contemporary definition of neoliberalism and its impact; that although there was, at least initially, a belief system of neoliberal ideology extolled that has utter respect for the notion of the 'free market', and this ideology was indeed harnessed by government policy (most explicitly through Thatcherism in the 1970s) we cannot simply state that neoliberalism can be blamed or tracked from a specific individual, or a specific moment in time, or a singular policy. If we do look at neoliberalism too narrowly in this way, the danger is that the label of neoliberalism can be used in a pejorative, sweeping fashion to seek to lump all and any ills of society onto it. Resultantly, this misses the more nuanced analysis of specific and varied social economic and institutional instances where neoliberalism now operates.

In addition, and more crucially, simply labelling things as 'neoliberal' misses a more careful analysis of how neoliberal ideology has been subsequently legitimised through systemic human *behaviour* and discourse in varied and often inconsistent ways. It is this inconsistent and complex nature of neoliberalism that separates it from its abstract ideology, continues to give it energy and power, and ultimately permits exposure to a more careful critique and resistance.

Neoliberal-isation and hegemony

A more careful analysis of neoliberalism, is therefore perhaps through Peck's description: instead of only describing neoliberalism as theory and ideology (as a noun), it is crucial to talk about neoliberal-isation (as a verb) (2013). Through this linguistic analysis, one can highlight the way in which neoliberalism is enacted actively, and therefore what is done (or not done) to ensure neoliberalism is continued and committed to. It also permits more recognition of the complexity of how neoliberalisation is 'produced'.

Simon Springer (like Peck, a fellow Professor of Geography) argues that reframing neoliberalism in this way achieves the following:

> …by mounting deconstructive criticisms of neoliberalism's power/knowledge matrix and its uneven distribution across various geohistorical, political economic, and sociocultural fields, critical scholars have adopted a post neoliberal position from the very moment they began to identify neoliberalism as an ideological hegemonic project (2016, p. 16)

So, for Springer (2016), building on Peck's work (2013), being a contemporary critical scholar is about recognising the notion of neoliberalisation and of hegemony. Specifically, this is about analysing the way in which a belief system/ideology becomes *dominant*, including through discourse, to develop as a 'rational' norm. Importantly, this does not happen in a consistent or singular approach. Using the term 'neoliberalisation' permits a focus on the varied and multifaceted ways in which neoliberalism is implemented and *legitimised* to become hegemonic. As Springer explains (2016), the justification for taking this hegemonic analysis is that neoliberalism can then be better framed as something that can be overcome, moved away from and resisted; where apparent norms can be called out as contradictory, irrational, reductive and illegitimate.

Welsh supports this viewpoint: "Something lies beyond, and it can only find expression when the concept of Neoliberalism is weakened sufficiently to allow its light to shine through the contradictions immanent to the concept" (2020, p.75). Highlighting contradictions allows the calling out of the legitimacy of neoliberalism, and therefore foregrounding of possible alternatives being imagined; focusing on neoliberalism too narrowly or specifically in terms of its influence could well perpetuate the attitude of 'TINA' (there is no alternative).

Further, by highlighting contradictions and variances, Neoliberalism can be better argued as contingent rather than totalising. This permits other viewpoints to exist as powerful, and alternative ways in which to develop future practices in a post-neoliberalism mindset. By supporting viewpoints that antagonise in this way, the hope is that this destabilises the dominance of neoliberal discourse: "Neoliberalization, even when it is dominant, never secures a monopoly. As a frontal project, it always exists amongst its others, usually antagonistically" (Springer 2016, p. 139). I seek to harness this approach in my ongoing writing and reflection. Without highlighting the practices and thinkings that foreground a different mindset to that of neoliberalism, the energy and enthusiasm of antagonistic practices may be reduced.

Naming neoliberalism

A further debate as to how to define neoliberalism, is whether to give it a name. Despite its multi-faceted and varied nature, it arguably remains crucial to both name neoliberalism and to frame it as an attempt to *commit* to a set of practices. This is about recognising the fact that neoliberalisation requires constant energy, advocacy and, crucially, a lack of committed resistance or critique, in order to *remain* hegemonic:

> ...we are referring to a complex web of practices and institutions that have the effect of perpetuating and multiplying various forms of interlocking oppression. These allow ''populations'' to be divided and managed, and our daily lives to be more intensely immersed in capitalist exploitation and state-based, rational-bureaucratic control (Cote, Day and de Peuter 2007, p. 319)

Most interesting here is the persuasive concept of the populus being 'divided and managed'. This individualistic pursuit of inequality is crucial when considering the possibilities of resistance to such a project, in particular rebuilding collectivism to rally against such a project of division. Thornton notes further, on this point: "This rational individual will always be assessing the utility of his or her preferences from a purely egocentric perspective, with scant regard for social choice" (Thornton 2011, p.10). So, naming a 'project' of neoliberalism recognises there is the pursuit and rewarding of rational individualism to the direct detriment of social collectivism. This pursuit requires energy and commitment, and so the antagonism perhaps starts with committing to similar anti-neoliberalising energy and commitment.

Is Neoliberalism only done to us?

One key caveat to the notion of neoliberalisation and a project based analysis, is a framing of neoliberalism coming from something 'outside' to be done to us. If neoliberalism emerges from outside of the walls, are we then to fortify and do battle against the exterior forces of neoliberalism?

This singular view of neoliberalism is problematic, as it completely denies the idea of being complicit; being a part of neoliberalism rather than separate to it. Instead, by recognising that the course of neoliberal development has not been smooth, singular or a specific set of actions from the exterior (predominantly through the State), what follows is the observation that neoliberalism cannot continue to survive without it *also* becoming a rational discourse i.e. something which is accepted, taken up and perpetuated by those 'within the walls' as well as without.

Again Springer sums this up well: "neoliberalism is an idea that is made flesh through the very power that we assign it through our discursive participation in its routines and rituals, and importantly, through the performances we enact". (2016, p1). We all can perpetuate a system of neoliberal dominance through ongoing granting of energy and power to its discourse.

So, for Springer (2016), and for Peck (2013) in particular, one must avoid considering neoliberalism purely from a 'top down', or 'done to us', approach. Springer has also articulated in his writing (2012) how critique should be levelled at more orthodox Marxist thought on this subject, given that Marx focused on the material conditions by which individuals were kept passive through economic forces from *above*. Instead, by acknowledging the concept of hegemony and of discourse, which has been developed more through Gramscian and Foucauldian lenses, it is argued that neoliberalism is seen as a more complex set of practices than simply a set of specific economic policies or conditions of work:

> …poststructuralism might instead be understood as placing its theoretical attention on the social and political institutions that Marxists view as being determined by the economic, whereby the economic is not denied but instead its libidinal and liminal formations are suggested (Springer 2012, p.140)

In this way, although there can be acknowledgment of the neoliberal project that may well have been specifically implemented by a series of larger political projects, a fuller critical project must also analyse the way in which neoliberalism is perpetuated and 'taken up' by

individuals. Crucially, part of this, is an exploration that individuals may not even be aware of the level of mundane complicity that each separately takes on an everyday basis. Foucault, in his College de France lecture in 1979, referred to this notion as 'governmentality'- self-governance, whereby individuals take up, give power to and rationalise neoliberal discourse without the control of exterior government policy or control.

Interestingly, Springer (2012) tries to acknowledge the connections between Marxist and Foucauldian lenses, rather than just dismissing one or other viewpoints. His aim appears two-fold: enabling a fuller picture for critique of neoliberalism, but also avoiding an ontological battle ground between those exploring how neoliberalism takes hold, and what ought to be done about it. The danger of such conflict is that communities fail to come together to commit to alternatives.

The better aim, therefore, is to harness this more nuanced approach in order to encourage a greater layer of specificity and explore a larger array of practices from which to resist or critique. Specifically, if I too narrowly focus only on a set of specific, external government ideological policies, I may feel that the *absence* of such policies mean that neoliberalism may not exist any more. In addition, I may frame too narrowly the ways in which resistance can effectively operate i.e. as a specific response to an overt, or openly oppressive form. Most importantly, I may perpetuate discord, and limit the potential for more collective harmony over dismantling neoliberalism - to operate differently could fall within only focusing on an argument over how it may, or may not, specifically operate without also considering the active part of responding.

By acknowledging instead the notion of hegemony and counter-hegemony, my aim is to more widely critique the concept of neoliberalism becoming rational, embedded and a 'common sense' discourse or thinking: "..by constituting an external and supposedly omnipresent neoliberalism, we neglect internal constitution, local variability, and the role that 'the social' and individual agency play in (re)pro-ducing, facilitating, and circulating neoliberalism" (Springer 2012, p.135).

The dangers of disarticulation

A potential downside of exposing neoliberalism for its inconsistencies, its multifaceted nature, its lack of coherency or clear policy direction and its difficulty to tie down a definition, is to conclude that it does not really 'exist' at all. What follows, is the ease in which claims of a neoliberalising influence can be downplayed or ignored altogether: "...disarticulation undermines efforts to build and sustain shared aims of resistance beyond the micropolitics of the local" (Springer 2016, p. 41). After all, ideology and theory becomes easy to dismiss as some form of 'conspiracy' or similar, and not worthy of our attention.

It seems unreasonable to suggest that neoliberalism, or indeed neoliberalisation, does not exist. As will continue to be shown, the 'evidence' of its influence seems overwhelming. So, instead, as well as Peck (2013) and Springer's (2016) acknowledgment of hegemony and discourse, I also follow the work of Stephen Ball to *clarify* this neoliberal existence.

Ball (2015) usefully discusses the notion of 'big' neoliberalism (sometimes defined with a capital N), recognising the exterior neoliberal project that has clearly been, at least at one point in time,

created and committed to through a series of policies. However, Ball also considers the notion of 'little' neoliberalism, which recognises the development of the rationality of neoliberalism within discourse and of the perpetuation of neoliberalising practices at ground level:

> The former increasingly renders 'truth' into a commodity — within what we now call the knowledge economy and informational capitalism. The latter is realised in a set of local practices which articulates the mundane rhythms of our email traffic, our form filling, our peer reviewing, and re-modulates the ways in which we relate to one another as neo-liberal subjects (2015, p.258)

So, like Springer (2016), Ball (2015) acknowledges that both the 'within and without' of neoliberalism is crucial to capture when analysing ways in which antagonisms may be explored. Importantly, this includes the mundanity and seemingly benign ways in which we all may take up a neoliberalising discourse in daily activities.

Additionally, a focus on a neoliberal ideology alone can cement paranoia about some great plot from the 'bad guys', from which we stay atomised, panicked and passive. Calling out neoliberalism instead as systemic, everyday and perpetuated by discourse and mundane complicity allows for a less paranoid or extreme reaction.

The 'perfect' neoliberal subject

It is also important to foreground Wendy Brown's analysis (2015) of the individual neoliberal subject, to again permit a wider application of neoliberalism beyond external economic or social policy alone. Brown, like Springer, Peck and Ball, does acknowledge the 'big' Neoliberalism; however, in addition to economic growth being a fundamental part of the neoliberal mindset, the image of a neoliberal subject is also created and enabled by neoliberalism. Brown seeks to use a focus on the subject to try and explain how *deeply* neoliberalism affects lived experience, at an ontological level: "...the contemporary neoliberal subject; this subject is so profoundly integrated into and hence subordinated to the supervening goal of macro-economic growth that its own well-being is easily sacrificed to these larger purposes" (2015, p.83).

So, it is the reductive ideal of the 'perfect neoliberal subject' that neoliberalism creates and then rewards. Therefore it is against this standard that all are judged, and from which those that do not reach perfection, fail. And finally, this failing is that person's responsibility alone - neoliberalism does not permit a blame of the system, as the 'correctness' of the market system is claimed as beyond critique. Such a vision creates a bleak, atomised stance of personal criticism, and an obsession with self-*improvement* through consumption. Again, collective empowerment dies under such conditions.

So, building on Springer's attempt to incorporate a Foucauldian addendum to Marxist arguments over 'top down' practices (2012), Brown (2015) highlights the shaping of the human ideal through neoliberal thinking; Brown lends from Foucault's notion of the 'economic man', or homo economicus, to explain how deeply neoliberalism operates: "Neoliberalism…is best understood not simply as economic policy, but as a governing rationality that disseminates market values and metrics to every sphere of life and construes the human itself exclusively as homo economicus" (ibid, p.176). Thus, neoliberalism creates

and perpetuates a vision whereby human 'worth' is only framed in marketised, metricised terms; and this worth operates as an individual responsibility. Those aspects of human worth that fall outside of such terms are irrational and denied value.

Neoliberalism 'from below'

In a similar vein to Peck, Springer and Brown, Veronica Gago (2017) reiterates the importance of recognising the way in which neoliberalism *requires* complicit neoliberal subjects to survive. Gago specifically analyses neoliberal policy and movement in Latin America, providing a useful analysis of the reach and 'reality' of neoliberalism beyond only the 'Global North'.

Gago focuses first on the history of neoliberal policy within Latin America, propelled from 'above' (akin to the analysis above by Busch): "Since the 1970s, after the defeat of the revolutionary movements, Latin America has served as a site of experimentation for neoliberal reforms propelled 'from above', by international financial institutions, corporations, and governments" (2017, p.2).

Here Gago in particular refers to Pinochet's coup in Chile and the physically violent manner that a neoliberal agenda initially took hold there; often referred to as one of the first practical examples of specific policy reforms along neoliberal lines. Unlike some aspects of the Thatcher-Reagan economic project, Pinochet implemented a physically coercive and rapid project of neoliberalism.

Gago concurs that neoliberalism is hard to define or pin down, and crucially that it cannot mean one thing in all places and all experiences: "neoliberalism's complexity makes it impossible to define it in a homogeneous way, since it depends on its landings and connections with concrete situations" (ibid, p. 161).

Furthermore, and most importantly for my own focus, Gago (2017) like Brown (2015) develops the definition of neoliberalism as an ontology and immanent reality, and in particular highlights that it no longer requires external stimuli to operate:

> Neoliberalism functions immanently: it unfolds on the territorial level, modulates subjectivities, and is provoked, without needing a transcendent and exterior structure" (ibid, p.2).....contemporary neoliberalism requires focusing on its capacity for mutation, its dynamic of permanent variation (ibid, p. 5)

Neoliberalism from below - as Gago refers to it, is "a set of conditions that are materialized beyond the will of a government…but that turn into the conditions under which a network of practices and skills operates" (ibid, p.6). Gago highlights how a vicious cycle formed within the specific example of Latin America, whereby resistance to exploitation was attempted, but then operated within the space of 'calculation' to actually intensify such exploitation.

Therefore, this analysis strengthens the argument that neoliberalism does not require explicit policy or direction from above in order to continue to thrive. Gago (2017) explains powerfully again that, if neoliberalism is framed too much on reforming or resisting specific government top-down policy, potential sites for resistance are missed.

Furthermore, Gago (2017) highlights an important challenge of resisting neoliberalism, given its clear complexity and inconsistency. Where energy of counter-neoliberalising practices requires careful thought, ongoing critique and specificity, there always exists the danger that resistance can be reframed as manageable and calculable by neoliberal systems and thus nullified. Critiquing neoliberalism therefore has to be more careful, subtle and potentially more covert than this.

Neoliberalism as 'affect'

One final point of analysis that comes through from a more subjective and discursive analysis of neoliberalism, is recognition of the lived reality i.e. the way in which neoliberalism is felt as 'affect'. Without an embracing of subjective realities and case studies, the danger is that the focus is drawn on neoliberalism existing only in a more homogenous way; or indeed that neoliberalism is generalised or summed up too narrowly and simplistically.

Therefore, through a continuing focus on the way neoliberalism is felt as an affective 'reality', we are reminded of the way in which we subjectively, and differently, continue to give energy to the rationality of the perfect neoliberal subject, but ultimately be detrimentally impacted by this.

This, similar to Brown's argument (2015), acknowledges the desirability, and infectious attitude, of neoliberal common sense. It is extremely challenging to resist the value of the 'economic actor' in terms of success and failure, particularly where neoliberalism so deeply embeds this as something aspirational, powerful and positive. This is very powerfully summed up by this quote:

> ...power now exhibits a positive or affirmative guise: it rules by seeming to multiply the opportunities or choices that individual actors routinely enjoy…. The result transforms civil society, in that citizens are constituted as individuals whose identities must be defined in and through the marketplace, whose influence comes to pervade all social domains… governmental power does not merely produce subjects; in addition, it produces self-producing subjects—individuals who take responsibility for working on themselves, for enhancing their value, fitness, and desirability (Vallas and Cummins 2015, p.298)

For me, the most upsetting consequence of the valorisation of economic individuals operating in the marketplace, is that we 'self-other' i.e. we personally construct a neoliberal idealised self as a vision of success, and we constantly rate ourselves as to what extent we fail from this ideal. We are therefore constantly reminded of the need to achieve this idealised self, but at the same time experience the continued failure and dissonance of not achieving: "Self-othering refers to the affective orchestration of dialogical self-constructions in reference to an ideal subject. It consists of voices-of-the-self associated with idealised notions of what it means to be a 'good subject' devaluing voices-of-the-self that deviate from this ideal" (Chowdhury 2022, p.206).

Neoliberalism therefore encourages us to devalue ourselves and our attempts to reflect critically on what really amounts to 'ideal' or 'perfection'. As part of this, it also encourages us

to devalue others along similar lines. Thinking and feeling this way does nothing to dismantle neoliberal dominance.

Where humans feel neoliberalism in subjective and varied ways, often in the everyday mundanity, this has the ongoing ability for us to consider ourselves as precarious, insecure, failing, and additionally as atomised individuals each competing with each other to attain a perceived neoliberal ideal: “When the neoliberal ethos becomes inscribed in all spheres of life, precarity expands as a condition and a process of insecurity generated systematically through a celebration of individual performance, creativity and entrepreneurship” (Valero, Jorgensen and Brunila 2019, p.136) .

Therefore, as I explore further, a central part of any counter-neoliberalising practices must not come from me alone. Instead, it should involve collective support and rejection of individual precarity and failure. Personal blame results in personal apathy and hopelessness, and is therefore de-energising; breaking down neoliberal hegemony requires more collective work than this.

At the same time, I also seek to explore how counter-hegemony involves a careful recognition of the ‘difference’ within affect - in order to commit to neoliberalism being subjective and contradictory, it is equally important to recognise how neoliberalism lands differently for different stakeholders, particularly those from marginalised positionalities. There is no singular mode of resistance to countering neoliberalism, which would quickly become hierarchical.

My own developing ‘definition’

Following this reflection, I tie together my own developing appreciation of neoliberalism based on the above discussions;

> *Neoliberalism is more than simply an economic theory or model - although many definitions mention ‘faith in the market’ as a central tenet of neoliberalism, it is reductive to only perceive neoliberalism as a series of policies and actions focused on enabling free market economics (notwithstanding that the etymology of the word itself may have grown from this initial focus).*
>
> *Instead, Neoliberalism is shape-shifting, difficult to tie down, and evolving. Importantly, Neoliberalism also does not exist simply as a ‘big’ set of policies and actions; rather it also exists as a discursive level, and is ‘felt’ in a variety of subjectivities. In this way, it exists as a ‘common sense’ rationality to the notion of value through narrow marketised terms and economic acting.*
>
> *For it to be resisted, it is crucial to consider that Neoliberalism is not totalising and needs faith and energy to remain dominating; and therefore more hopefully there may well exist possibilities for resisting and taking away the fuel that keeps neoliberalism burning.*
>
> *Finally, I remind myself of the notion of the perfect neoliberal subject within a neoliberal ontology - this is the pursuit of individualised success, and that individual*

being framed reductively as self-sufficient, autonomous, and rational. And further, how disempowering, hopeless and atomising such a mindset can be.

(2) Neoliberalism and higher education

There are a plethora of examples from pedagogical literature whereby authors seek to blame neoliberalism for a contemporary 'crisis' of HE. I note some of these here -

> It *(Neoliberalism)* privileges personal responsibility over larger social forces, reinforces the gap between rich and poor by redistributing wealth to the most powerful and wealthy individuals and groups, and it fosters a mode of public pedagogy that privileges the entrepreneurial subject whilst encouraging a value system that promotes self interest (Giroux 2019, p.1)

> The overriding criterion by which we measure the value of HE is its contribution to the economy. This is what we refer to as the neo-liberal university (Molesworth et al 2009, p. 280)

> The economization and maximization of productivity and a productive workforce to enhance university revenue making, formerly the purpose of industry, became the "new" mandate of the neoliberal university (Troiani et al, 2021, p.7).

> British higher education – or at least the core functions of student education and academic research – has increasingly been provided on market or 'quasi-market' lines (Brown with Carasso 2013, p.2)

> ...markets and market-like competitions have replaced direct government intervention in promoting higher education and research (Busch 2017, p.15)

I could have picked many more quotes and examples from my immersion in pedagogical literature. As a group, the quotes all frame neoliberalism as the root of what is going 'wrong' in HE. As I noted in the previous section, Simon Springer is not wrong when he reflects that the extent of writing on the topic of neoliberalism has been 'meteoric' within pedagogical research outputs (2016, p.23).

To what extent is this framing of neoliberalism as a contemporary crisis legitimate? Whilst exploring the themes and supporting literature in this section, it has often felt that there is indeed a crisis of contemporary HE practices, and that the blame lays squarely at the door of neoliberalism. Further, the literature often presents a bleak picture in terms of the legitimacy of any alternatives, or contingencies to neoliberalism within HE.

Notwithstanding this, I remind myself that the previous section of this thesis highlights how, if neoliberalism is framed as the only, or primary cause, of all that is wrong with higher education, one can be de-energised from any personal project of working in antagonism to neoliberalism. In addition, and more crucially, presenting examples of neoliberalisation of HE can de-legitimise the works and actions of those that seek to highlight the contingent nature of neoliberalism: other views, practices and actions do exist, framed in antagonism to neoliberal discourse; and therefore also de-legitimise the position that neoliberalism within

HE cannot be totalising. Although this section clearly acknowledges numerous examples of where neoliberalism has taken hold within HE, section 2 of this thesis on 'resistance' seeks to better embrace the work of those exposing the cracks in neoliberal logic; those seeking to dismantle feelings and discourse that may expressly, or inadvertently, give energy and power to neoliberalism as a totalising force. I return to the words of Jamie Peck:

> Neoliberalism may be present in this or that regional formation. It may even be almost omnipresent. But it can only be present in conjuncturally hybrid forms...others have observed that a neoliberal-centric position can inadvertently reproduce a narrowed analytical and political gaze (2013, p.140).

As will be shown below, an assessment of the interrelationship between HE and neoliberalism, can easily be framed as somewhat monolithic in nature (and therefore directly at odds with Peck's 2013 analysis). In addition, some of the themes explored below can present themselves as 'new' threats, which perhaps did not exist in the same way prior to neoliberalism taking hold. A reductive follow on from this can be the suggestion that HE somehow had a golden or utopian past and that can be returned to. As will be explored further in the next section, to more fully embrace counter-neoliberal practices, this attitude must be dismantled.

Markets and marketisation

One common denominator to the quotes I have picked out at the start of this section is that of markets and economic value being a deleterious influencer of HE practices. These varied reflections therefore seem to speak to the concept of a neoliberal *ideology* explored in my previous section - that of a belief system in 'the market' and of 'marketisation'.

Marketisation is a capitalist and now capitalist-neoliberal ideology; the *faith* in the idea of market exchanges. In this way, the market is effectively the arena for exchanges of economic value between parties; within which everything, including humans, has a 'capital value' to be extracted. Relatedly, the 'free' market is then framed ideologically as a market existing with an absence of restrictions on the successful operation of this market exchange.

The attraction of this 'market' ideology is that it imbues a sense of order and logic to the functioning of systems. This 'logic' forms as a defence to contingent critical knowledge by arguing for its inherent objective value: that of the value of price and therefore of success: "Neoliberals argue that, unlike other knowledge, prices in a free market are not based on the knowledge of individual human beings but on logical and mathematical knowledge that is true by definition" (Busch 2017, p.14). This quote also presents individuals as existing as 'neoliberals', adding to the somewhat reductive viewpoint that neoliberalism may be someone's total personality.

As I have already discussed, an abstract ideology or totalising logic should be more carefully analysed in its neoliberalisation i.e. the enactments. This is crucial in order to expose the myths and contradictions of such a belief system when played out in practice (and to begin the action of breaking down the ideology). As a starting point, far from being logical, free or 'fair', domination is actually endemic within marketised systems, "in place of the freedom promised through free markets, we find a world dominated by a few massive corporations,

financial institutions, states and international organisations" (Blakeley 2024, p.33). Capitalism is founded on the idea of capital value being held, managed and dominated by the owners of capital.

Further, rather than the market being 'free' of State control, there is clear state policy intervention to ensure the system keeps on running, particularly following the crashes or downturns that capitalism suffers "...the power of all capitalist institutions- from corporations, to financial institutions, to states, to international organisations - is based on a certain amount of centralised planning" (ibid, p. 292). The rationality of this market ideology is therefore flawed from its inception, in the sense that it is reductively defined as free from control or dominant thinking.

Within the specific context of HE, under a marketised neoliberal ideology, education also has a idealised market value: "New liberal thinking in education has succeeded in doing what classical liberalism did not do: it subordinates and trivializes education that has no market value" (Lynch 2010, p. 62). Therefore, education can become measurable against economic progress, and framed as 'valuable' (or not) in these market value terms.

In terms of *implementation* of this market value ideology, Brown and Carasso (2013) argue that marketisation has, at least to some extent, been encouraged in HE in the UK through specific government policy. Brown and Carasso's analysis here is based on focused 'neoliberalisation' through top down government policy. Returning to the work of Stephen Ball, this may be described as the 'big' Neoliberalism 'out there' (2015), specifically: "low market entry barriers….significant competition for students…institutions receive all or some of the revenue for teaching in the form of a tuition fee…quality assurance is focussed on consumer information" (Brown and Carasso 2013, p.2); like others, this quote chooses to track this policy development in UK HE forward from the Thatcher Government of 1979 onwards.

Before re-considering the need for a careful consideration of the limitations of only focusing on top down policy from a specific moment onwards, these policies are at least worth exploring.

How are universities funded? - the view from above

Brown and Carasso (2013) point to the way in which university finance policy has operated to create a university marketplace, as a clear example of neoliberalism and crisis. Specifically, they reference the development whereby the large majority of university funding now comes through student tuition fees.

In this vein, two points of specific government policy are consistently referred to when talking about the impact of marketised ideals on HE. Whatever their specific motivations, these policies together have resulted in one of the most significant shifts for HE in terms of funding.

Most recently, in terms of funding decisions within UK HE, there was the Browne Review (an independent review of HE funding) of 2010 which "believed that the student/graduate contribution should be increased so that, for all but a small group of 'priority subjects', the tuition fee should be met wholly from private sources" (ibid, p.90). Prior to this, it was the

earlier Dearing Report in 1997 that started this thinking: “the most significant recommendation was for a new way of financing the HE sector: that individuals should begin to bear the costs of tuition, originally suggested through a graduate contribution” (Sanders and Hardy 2015, p.750).

The Dearing report 1997 was published just as Tony Blair’s ‘New Labour’ government came to power (having been commissioned by the prior Conservative government). Labour decided to follow the essence of this report, framed within their agenda of increasing enrolment in higher education: the agenda that increasingly claimed their aims of participation of over 50% of all 18-30 year olds in higher education (an agenda now realised).

For further context, Labour’s policy development was operating against a backdrop of: “funding per student had fallen 36% between 1989 and 1997, during which time the student population had more than doubled” (Lunt 2008, p.742). As a result, Lunt argues that “The New Labour agenda of enhanced global competitive-ness appears to have had a more significant impact on universities than its ideological commitment to social inclusion and equity while leaving fundamental challenges inherent in developing and financing a mass higher education system” (ibid, p.750).

Here Lunt queries the aims behind New Labour’s motivations for increasing student numbers, suggesting that there was at least in part an acknowledgment of social inclusion by focusing on increasing the number of students that attend university. This is certainly a contested debate, but, notwithstanding this, the increasing influx of students into universities clearly put the funding of universities directly in the spotlight, and specifically the ‘Political’ inability for any government to justify centrally resourcing such student demand through higher taxes or prioritising public spending for HE over other areas.

Labour therefore decided, within this narrative of funding per student dropping, to jump on the Dearing Report proposals: specifically that individual students should have to start to contribute to the cost of their tuition. And so, as a result, Labour also enabled a first recognition in government policy of the notion of university as a private ‘good’ rather than purely a public service. As Monbiot and Hutchison comment, “...Labour Party leaders who followed in…Thatcher’s wake did not possess a meaningful alternative to the neoliberal narrative” (2024, p.25). So, even if social inclusion may have been ideologically envisaged, the reality painted was that university students were an ‘expensive’ burden for the government and politically unsound to ignore in these terms.

In terms of the Browne Review of 2010, the Lib-Con coalition Government that entered power in 2010 (following a hung parliament general election) used the essence of the Browne Review to implement (with effect from 2012) a new fee cap of £9000 for undergraduate programmes per annum to be paid by students personally (and shortly after to £9,250; now sitting at £9,535).

So, through a combination of the Dearing and Browne reviews and subsequent government policy, this introduction and subsequent significant increase in student fees for education embedded the market ideology of human capital and economic value in HE i.e. paying personally for a ‘service’ (rather than it being funded publicly), with the faith then placed in the ‘logic’ that this service fee would reap its reward for the individual in the subsequent

labour market. This was at odds with any notion of a welfare based, public funded university model that was once much lauded, albeit to a significantly smaller number of university applicants.

In addition to this absorption and acceptance of a university education being a private good to be paid for, the shift from public investment to private responsibility, additionally created a lack of central financial support from government funding. On financial metrics alone, HE does appear to have a current funding 'crisis'. For example, HESA data released from 2021/22 shows that for 267 higher education Institutions (HEIs), apart from the 21 institutions that did not respond, the total expenditure was £50.9 billion and the total income was only £46.9 billion (HESA, 2023)

Further, the Russell Group released a briefing paper in August 2023, on behalf of its members (24 universities) alleging that "in 2022/23 English universities on average supplemented the cost of educating each UK undergraduate student by £2,500 per year" (The Russell Group 31 August 2023). This Russell Group paper argues that, as a result, those universities of the Russell Group are financially unable to develop their institutions. Importantly, within this context, it is noted in this report that the fees paid by students have only increased once since 2012, from £9000 to £9250 per student as a cap (and now twice, following this report, to £9,535 from August 2025). This is notwithstanding the more recent large inflationary rises, particularly seen post-2021. At the time of this report, it is suggested that fees needed to be at least £12,500 per annum to keep track with inflation.

This funding 'crisis' has encouraged a current debate over whether some universities will soon 'fail' and cease to exist, or at least that universities will see increasing cuts to resources and support, including the reduction in staff numbers. For Shitij Kapur, Vice Chancellor of King's College London (part of the Russell Group), universities: "have been caught in a 'Triangle of Sadness' between aspiring but anxious students burdened with debt; a stretched government ambivalent about the public good of universities; and beleaguered university staff who feel caught in the middle" (2023, p.5). Kapur notes, worryingly: "Whatever solution we reach, there won't be enough new money to meet all expectations. This is where universities will have to find structural efficiencies and new ways of operating – through creative use of digital, online and artificial intelligence tools" (ibid, p.13). In this way, Kapur focuses on there being a finite pot, and one that cannot stretch to cover the funding of all perceived expectations for HE.

One reflection on this, of course, is that King's College may be far better placed than some universities to respond to such perceived challenges particularly given the level of its alumni donations, and other forms of funding. Furthermore, expectations can be framed differently according to the perception of the institution and those that run it. However, if so many universities are practically struggling for funding, this clearly can be used to justify the de-resourcing of universities in whatever way an institution sees fit. A complete university closure has yet to be witnessed, but the steady creep of closure of some departments, staff numbers, and university projects of construction or research have certainly already been witnessed without any form of government intervention to stop this.

Outside of the debate as to whether any university will be realistically left to completely 'fail', students studying after 1997 have clearly become increasingly indebted for the 'pleasure' of

their studies; specifically, students now variously rely on significant student loans and the prospect of a repayment with interest over a prolonged period after graduation.

Of course, how many students actually pay back these fees in full remains a topic of contention. It can be argued that the student fees amount, in a significant way, to a remaining tax for the public to bear rather than the individual, given that a substantial number of students may not actually personally pay off their student debt in full. But, will governments want to continue to accept this, particularly where contemporary political promises are made to better manage public debt? For my ongoing reflection, it is the notion of a student committing privately to a service payment for their education (whatever the actual final figure repaid for such) that needs to be highlighted; the notion of human capital and individual private success or failure.

Further, for Stefan Collini,

> In the Browne Review and in all subsequent government rhetoric, the tacit assumption is that giving financial force to consumer demand through the fee system will force universities to change… (2017, p.83)

Collini (2017) argues that it is the use of government rhetoric and a disingenuous focus on universities 'failing' the needs of contemporary society that continues to justify a perceived requirement for such a fundamental change in approach to the funding of universities. As noted, this failure through a neoliberal lens is squarely placed at the doors of the university.

Crucially, a change of funding has not been reversed since 2012 - in fact, one questions whether such a change could indeed be reversed completely without a serious recalibration of government funding. This certainly does not seem the current priority in government; it may indeed be reductive to expect such a public-minded response from any government, where the narrative of the private debt is so deep seated now.

So, like the history of neoliberalism as ideology in the UK (traced to Thatcher politics in particular), a neoliberalising influence on HE clearly has, in some ways, been committed to from 'above' in the form of government policy through the Dearing Report and Browne Reviews. However, much like Thatcher's ascent to political power, the deeper origins and journey of neoliberalisation of HE clearly had started to see traction earlier than 1997.

For example, Bill Readings' posthumous book 'The University in Ruins', published in 1997, reflected critically on the ways in which, for some time, 'excellence' within universities was becoming increasingly framed around narrow economic and corporate values. As far back as the Robbins Report of 1963 (to be explored in section 3 of this thesis), there were questions left unanswered about how an increase in universities and university students could, or should, be funded; albeit at the time this report was perhaps framed through a more social cohesion lens rather than the way in which later government policy started to frame public funding for universities.

Clearly, the specific changes of Dearing and Browne did not come out of nowhere - but certainly, they embedded the policy of private individual funding of the expense of university education.

Immanent and continuing - a nuanced critique of the 'little' neoliberalism and complicity

For my ongoing analysis, I return to the important critique that neoliberalism does not only exist in the form of the 'big' Neoliberalism out there i.e. a specific set of policies or practices.

Instead, a reflexive focus is required on the way in which neoliberalism as a form of rational discourse has taken hold within universities *without* repeated clear or consistent government policy 'out there'. Returning to Brown (2015), "neoliberalism thus does not merely privatize — turn over to the market for individual production and consumption — what was formerly publicly supported and valued. Rather, it formulates everything, everywhere, in terms of capital investment and appreciation, including and especially humans themselves" (p. 176). This is a reminder of the need to analyse the depth and complexity of neoliberal discourse; the ideal of the perfect neoliberal subject that valorises certain behaviours over others.

When analysing the extent of any neoliberal crisis within contemporary HE, it is therefore reductive to only blame the neoliberalising influence of tuition fee *policy*. An analysis that only focuses on such specific government policy falls into the trap of suggesting that neoliberalism is a clear, consistent set of policies and aims that happens to universities from the outside. I continue to reflect on the pitfalls of this approach, namely.

- that this can both view neoliberalism as all consuming and outside of non-governmental control, but also,

- that it can suggest that, where 'big' neoliberalism does not specifically operate in a clear fashion, it is not impacting.

Neither analysis leads to a sustained commitment to counter-neoliberal practice. In sum, I seek to heed this warning: "...one finds a way of talking and writing about Neoliberalism that over-privileges its theoretical clarity, its purposive and programmatic coherence, and its integrity in practice, as though it were a 'thing' that can be 'deployed' upon a given social context" (Welsh 2020, p.60).

So, whilst policy over HE funding clearly influences, it is crucial to examine the other varied ways in which logic of neoliberalism may take hold. Therefore, the following sub-headings explore some of the ways in which universities and those operating within them have variously taken up, rationalised, perpetuated and not pushed back against neoliberal hegemony. Some of these, at least in part, may well have been influenced by the normalisation of private fee paying for universities (beyond the policy); one such example is that of student consumers.

The student as a consumer

If university study is chargeable to the individual, HE is enabled to be a place of 'the service model' and therefore of consumerist demands: a place of wanting to have things, and crucially, this demand being achieved in return for personal payment.

A consumerist attitude to HE therefore promotes 'having' a degree classification, 'having' a set of skills, and 'having' a CV that is full of metricised qualifications; so emboldening the

concepts of possession and of property, specifically in relation to what 'the market' can offer to consumers accessing it:

> The emerging role of some parts of HE is now to fix in students an unquestioning acceptance of the primacy of consumer desires met by market offerings .... Incorporating marketing mechanics into HE thus inevitably transforms pedagogic practice from being to having, from a learning experience of challenge, risk and potential transformation to one where we mistake such experiences as skills to acquire, 'things' to possess ((Molesworth et al 2009, p.279, p.285)

Far beyond the private payment for university education, the HE academy and students alike are being systematically motivated by the neoliberal logic of consumption; and this is having a deleterious impact on potential for transformation for those studying at HE institutions in the UK. Specifically, in place of a more nuanced analysis of what 'value' could mean in terms of the experience of HE, the name of the game is securing an education product that lives up to idealised economic expectations: "consumption is a mediation and an incentive that, along with the debt mechanism, promotes new forms of value creation" (Gago 2017, p.169). This notion of value, or rather the concept of extracting the value from an educational service, is directly aligned to the neoliberal ideology of marketised value.

So what continues to fuel, and *provide the energy* for this mindset? Beyond fees, the rationality of a consumerist mindset is consistently energised through the actions of those within universities. For example, the tacit acceptance of the *perception* of a consumerist mindset shapes what universities choose to spend their finances on: "Much of this expenditure is of course in response to what students, as consumers, need or say they need" (Brown and Carasso 2013, p.155). So, universities decide to spend money on what they believe student consumers need e.g. new buildings, new equipment, new tech etc.

Placing and naming the student as a consumer pulls HE to feel the pressure to respond to perceived student consumerist needs. Rather than a debate around a primary purpose of studying in HE being something 'more' than ensuring future adequate employability, including the aim of developing critical and adaptable minds, consumerist attitudes create a very different priority for universities: one of prioritising the confirmation of a student's place within employment and as a citizen of the market.

As will be explored further in this thesis, this prioritisation of guaranteeing employment may be particularly stark within legal education:

> …education in today's version of liberal society is a commodity: students buy an education and they expect to get what they pay for – guaranteed entry into the next stage of their law careers, legal practice (Sokhi-Bulley 2016, p.130)

A consumerist narrative being taken up by HE providers therefore enables HE as this service provision. As well as narrowing the notion of value, this is also particularly problematic in the way this also frames the value of university education within the present; for Collini, the present is impossible to define for students in terms of 'adequacy' given the difficulty of specifying tangible benefits presenting themselves to students during their time of study:

> The fatal conceptual error involved in the new university funding system introduced in Britain in 2012 is that it treats the fee as a payment by an individual customer to a single institutional provider for a specific service in the present. By contrast, the proper basis for funding education is a form of social contract whereby each generation contributes to the education of future generations. It cannot be for a specific service because the 'customer', in the form of the student, is not in a position to know in advance exactly what benefit they may obtain from a university education (2017, p.148)

Notwithstanding that Collini's writing (2017) here of a 'proper' basis for funding education is rather traditionalist, he makes an important reflection that, where there is the tacit acceptance of a student acting as a service-using consumer, the risk is that such a service is then assessed by a short-term mindset and of rating university education as a product. Clearly, any rating of the adequacy of this paid-for project is very likely to fail where 'results' are not seen immediately. Instead of seeing values as being intangible, subjective and complex processes, a consumerist narrative rates an education much more narrowly as a product with immediate tangible returns.

As a contemporary practical example of this playing out, Sheffield Hallam University (SHU) reviewed its staffing budget, through voluntary severance and potential compulsory redundancies, as well as a recruitment freeze and possible limits on promotion (Parnell 2024, BBC website). SHU argued this action was to address high inflation, the current cost of living crisis and the freeze on student fees (Sheffield Hallam website, 2025). However, as part of this, a dispute ensued around the decision for SHU to spend a large amount of money on a London Campus, as well as substantial new building development in Sheffield City Centre. Both of these projects seek to valorise the expectation of a student consumer. But what about the real 'cost' of such decisions framed outside of the notion of economic value? For SHU, or any university, can then not simply hold their hands up and suggest it had no practical choice*?*; that it is merely seeking to adapt to extrinsic funding pressure and the 'needs' of the student consumer.

Management focus and competition between providers

Related to the notion of the service model of fee paying education, are the concepts of 'quality assurance' and a focus on specific management roles within the HE academy. Quality assurance supports the notion of education as a service, as it permits a mechanism by which to judge and rate education as either adequate or not for those 'consuming' it.

Quality assurance for contemporary universities is increasingly about establishing a 'good' reputation for its consumers, and the priority is then how best to ensure this reputation is achieved. As well as construction projects (such as the example at SHU), there is the appointment of 'managers' to the academy: "...more recently, universities and research institutes have begun to hire administrators who have managerial rather than academic backgrounds" (Busch 2017, p.39).

Through an increased focus on the background of those hired to organise and manage HE practices, universities rationalise that those with managerial, and corporate business

experience will have a better sense of direction for how universities should operate towards economic prosperity. The justification here is that ‘a good head for business’ allows universities to better address the perceived needs of the *business* of HE institutions and its customers/consumer: most importantly, effective market competition through reputation.

It is therefore the perception of a need to *compete* for the ideals of a student consumer that encourages a discourse of ‘managerialism’, which as well as hiring and promoting administrators and managers, often without prior university experience, also grants value to the logic of strategy, business efficacy and control. One consequent challenge of such prioritisation is then the potential impact on the freedom of non-manager ‘academics’ to influence or even critically debate the direction of key internal institutional policies.

Competition

As managerialism takes hold, so does competition. Like with the concept of the consumer, competition is a concept heavily influenced by the notion of the neoliberal market and of corporate culture. Competition is seen as ‘healthy’ in a neoliberal market, based on the ideology that competition is a race to the top and will increase standards across the board. Further, the argument is that there is space for all service providers within such a competitive marketplace.

Once again, this marketplace ideology falls down, given that in wider corporate markets monopolistic power by larger, wealthier individuals and corporations has actually taken hold in practice: “It valorizes and fetishizes competitive enterprise, while in reality rewarding and empowering the established wealth that controls crucial assets…” (Monbiot and Hutchison 2024, p.40)

The ideal of free competition similarly falls down within HE: “Competition between universities has been influenced by a highly complex and comprehensive system of academic quality regulation, audit and monitoring” (Lunt 2008, p.743). When this form of competition is prioritised, once again the ‘value’ of education needs to be measurable. HE institutions thus develop a *need* to compete with one another and to be measured by a variety of metrics. This roots in the attitude that there is a never ending pressure to ‘succeed and survive’ amongst your competitors, or to not fall behind. Therefore, universities increase spending on marketing, advertising and open days to try and beat their competitors in the race for ratings.

It is clear that competition is fuelled by the perceived need to race for student fees. Linking back to the changes to university funding, many institutions have developed a fear of falling behind in terms of student recruitment, and of this directly impacting on the funding available to the institution as a result: “Replacing that income with fees means that recruitment now becomes much more of an issue” (McGettigan 2013, p.30). The narrative is that, if universities fall behind on student fees and see a deficit on their bottom line, this leads to business failure. This is despite the fact that over-recruitment may well lead to related pressure on university structures and systems.

As a contemporary example of this playing out, many universities within the last year or so, have reported a significant fall in their income as a result of reduction in international student

recruitment. Certainly in part, this has been as a result of increased tightness over visa requirements for international students studying in the UK, as noted by the Home Office Report of 17 March 2025. This has led to a critical reflection of the prior motivations for seeking international students over 'home' students by universities in recent times, particularly the fact that international students do not have to be capped at the home student fee - in theory, their fees are limitless (House of Commons Library report 2024).

Most critically for my own ongoing reflections, it is through this focus on 'not falling behind' that alternative viewpoints or priorities for higher education can be lost. In particular, the notion of economic 'risk' is to be avoided: "The neoliberal state and the corporate university seek to guard against risk by demanding transparency and accountability through auditing" (Thornton 2014, p.28). So, as I will explore further in subsequent sections of this thesis, even though there is clear evidence that embracing risk, creativity and pluralistic viewpoints is key to a more expansive, critical university education, this could involve *economically risky* practices that can be ill afforded in a squeeze on fees e.g. additional staff hires, creation of time to develop and discuss critical thinking amongst both staff and students, de-prioritisation of time spent on certain metrics etc.

Where institutions adopt the notion that risk is to be managed, freedom for those working within universities to implement change without managerial or institutional buy-in becomes ever more challenging. Further, as I continue to reflect on, a deeper critique of the contemporary institution setting (including its decision making over funding and external drivers) certainly could be off the table for staff and students altogether, given that such critique may hold up the whole notion of university strategy as problematic. Such a meta-critique really does not 'sell' well.

Metricisation

In order to 'evidence' a good reputation, measurement needs to be possible; and so, metricisation is key. Once again, this idea of quantifying value is a perfect fit for a neoliberal marketised ideology. Metrics are vital in order for marketisation, quality assurance and competition to survive and thrive; through measurement against definable metrics, success can be then managed and controlled. For universities, the advantage of working towards metrics is that this includes being able to measure against rival institutions. Through precise auditing of whether a particular institution is keeping pace with others, this permits competition to be fuelled and continues the attitude of avoiding 'falling behind'.

On the 'big' neoliberalism front, in terms of metricisation, one could argue that the establishment by the State of regulating bodies such as the Office for Students ('Ofs') has externally impacted. These organisations can, and do, communicate an approach of 'quality assurance' or minimum competencies and benchmarks for HE institutions to attain.

The Office for Students and the Competition and Markets Authority (CMA), as external regulatory bodies for HE, arguably perpetuate backlash through actively describing students as legal consumers. Both organisations are committed to setting a power dynamic in HE that recognises and represents the 'consumer rights' of paying students: "the more students pay for their course of study, the more demanding they are likely to become. In any market-driven environment, the 'users' invariably acquire purchasing power and associated

legal ‘rights’” (Stolker 2014, p.70). The problem therefore, is that rather than encouraging collaborative attitudes between staff and students together, value for money encourages a battleground.

The Ofs rates the university environment against ‘key performance metrics’ including an expectation of ‘completion’ of university education and ‘progression’ to employment, further study or other ‘good’ outcomes. This focus creates a sense of *order* for management and clear direction that academics are asked, or compelled, to follow: “The ‘self-critical community of scholars’, which is meant to safeguard degree standards, has been eroded to a large extent by an expansionist executive and managerial class, who will now have a new range of performance metrics with which to discipline more and more pliable academics” (McGettigan 2013, p.186).

A critique of such external measurement clearly includes a debate over why specific measurements are chosen, why specific bodies are given the authority to choose, and what other notions of measuring value or success could be possible without this auditing. Unfortunately, rather than encouraging this critique, universities can uncritically motivate themselves to ‘meet’ the metrics that are set down at all costs. For example, in terms of the Ofs, the perceived threat is that a loss of university status may be the result if working towards such metrics is not evidenced. As managerial attitudes take hold, such failure is to be avoided at all costs within the university marketplace.

Metrics of grading and student feedback

Linked to quality assurance through these external bodies, universities grade students according to well established notions of successful completion of their studies. Again here, HE institutions embrace the perception of the student pressurising this commitment to grading, and the reasons for this grading: “students are putting greater pressure on staff about marks but also demanding to see staff whenever it suits them” (Brown and Carasso 2013, p.148).

So, through metricising value, universities *need* to grade and to be able to show students where they are succeeding according to these metrics. However, more insidiously, where a service model of HE is rationalised by universities, a key marker of success for universities is to ensure that student consumers receive a good grading service. In this context, good means students receiving sufficiently ‘good’ grades in exchange for the high fee being paid. The vicious spiral then felt is a pressure on staff in relation to more and more detail over the marking process, specifically in terms of the justification for marks through feedback practices - which are increasingly expanded to practice assessments, formal assessments and even in taught sessions.

In addition to grades, Neoliberal metricisation promotes a quantitative approach to student experience- numbers make ‘sense’ in the marketplace and other more intangible notions do not. Once again, value as a concept is narrowed: “Blunt quantitative measures take precedence over any qualitative experiences, feelings and interactions, where personalized, meaningful, rich and transformational journeys cannot be easily captured. Statistics are important as ‘proof’ of the fact that something is worthwhile” (Maisuria and Cole 2017, p.605). Notwithstanding that, in reality, the feelings and affect of university study is

complex, rich and almost impossible to capture within either quantitative likert scale scores or indeed short qualitative comments on module feedback forms, the push to complete surveys ‘matter’ for universities. In this way, even qualitative comments become quantified and measured as success or failure, rather than exploring them more deeply for complexity of feeling.

Statistics are the name of the game, with ‘blunt’ measures including the inescapable National Student Survey (NSS) available to all final year undergraduate students. Universities race to achieve sufficient completion rates for the NSS from students, with the aim being to then publicise and promote ‘good’ results (UoS received the top rank in the NSS within the Russell Group in 2024 and 2025, as emblazoned across university marketing). Similar work and strategic planning is put into other metrics like QS world university rankings, the Times ‘top 100’ university awards, HESA graduate outcome surveys, the Teaching Excellent framework (TEF) and the Research excellent framework for research output (REF).

Through a combination of the introduction of an external survey, and university complicity in continuing to advertise, fill in and market the NSS, any deeper reflection on the complex journey for students through HE is missed: “With new instruments of consumer research, such as the National Student Survey, persistent module/ lecturer evaluations, and slogans such as ‘You said. We did’, universities enslave themselves to the vicissitudes of the nation’s 18-year-olds” (Morrish and Sauntson 2019, p.35). Neoliberalism is once again rationalised through such practices, and the NSS is neither boycotted nor held up for sustained critique. Instead, comply or die is the threat hanging over universities regarding such metrics. Staff feel pressured to advertise the completion of the survey by the students at every opportunity, and often are pushed to ask students to fill out the survey within teaching sessions.

Care-lessness from metricisation

Where universities embrace some, or all, of the perceived metrics and priorities noted above, a theme of carelessness can become imbued in those experiencing the ‘pressure to perform’. Kathleen Lynch powerfully argues as follows: “Metricization grossly simplifies the perception of human capabilities to what can be measured in the short term. By simplifying and quantifying people, metricization violates human worth, reducing people to numbers and enhancing the myth of meritocracy” (2022, p.212). So, what follows, is a deprioritisation of caring for others and finding solidarity in human connection. Neoliberalism makes you want to believe you can individually‘ succeed’ in such a lens if you hit metrics; but at what cost and what comes next? Under the hegemony of neoliberalism if you fail, you do not *deserve* success; to succeed is not collective, instead it is a competitive endeavour against your peers. It is your judgment, and your responsibility to perform.

For Lynch (2010), this concept of carelessness of education is actually not new, and “has its origins in the classical Cartesian view of scholarly work, namely that it is separate from emotional thought and feeling and that the focus of education is on educating an autonomous, rational person” (2010, p. 56). Notwithstanding this, Lynch argues that carelessness has now become legitimised and systematised through neoliberalism: “What is new about new managerialism in higher education is the moral status it accords to carelessness. The pursuit of unbridled self-interest (rationalized in terms of a ‘career’) has

not only been normalized, it has status and legitimacy" (ibid, p. 57). So, whilst issues of not seeing the subjective lived experience of students may have been ever-present, they can now be systematically supported and harder to dial back on; and of course, they affect a great many more students than used to attend the older universities.

Once again, the self-interested attitude of neoliberal hegemony entrenches and normalises individual success as the goal, and therefore a collective and caring approach can be deprioritised. If feelings and affective realities are deprioritised in favour of measurable output, for staff that could mean various combinations of increased teaching loads, marking loads, research loads and so forth. For students, this again deprioritises the personal, emotional experiences involved in 'being a student'; a lack of recognition again of the intangible immeasurable aspects to education. Neoliberalism considers productivity to be 'worthwhile', no matter this emotional burden.

Performativity, academic anxiety and fear of failure

Leading on from atomisation in this way, Stephen Ball powerfully references the power of performativity: "We are burdened with the responsibility to perform, and if we do not we are in danger of being seen as irresponsible" (Ball 2012, p.138). Neoliberal hegemony legitimises and promotes the notion of individual performance; the unavoidable pull of performing according to the priorities and metrics of the institution within which we operate, and to fail to perform being somehow irresponsible or irrational. And of course, when we are performing, we can forget the value of recognising the irrational and complex joy, fear, insecurity and enrichment that could be felt to be within university education.

Interestingly, neither Ball (2012) nor Lynch (2010, 2022) here are suggesting that staff and students always simply 'fall in line', and may indeed seek ways of coping, or indeed resisting, within a discourse of self-interest or economic success; something as noted to explore further in the next section of this thesis. However, for those who do refuse to fall in line, it can feel extremely tiring and painful, which can of course lead to stagnation and passivity over action. Wilson vividly sums up this feeling here:

> To combat the feelings that arise from the tokenistic use of our bodies we try and create spaces where we do fit, collective networks that act as support systems, that help people with similar experiences vent and encourage each other to keep going. These networks are filled with so much pain arising from deep-seated structural exclusion that, whilst supportive at times, they can also be exhausting and disempowering. The overall pressures of the academy (e.g. teaching loads, casualisation and excellence frameworks) lead to a sense of fatigue which can undermine solidarity between its members (Wilson et al 2021, p.37).

So, feelings of 'fatigue' and 'disempowerment' challenge the energy of countering pressure. Most strongly, the pressure to perform can often feel simply overwhelming with no space for anything further. Lynch powerfully argues something more is actively needed in this space: "People need to be given the conceptual and analytical tools to think about and with the world differently, and to be enabled and resourced to organize around this thinking and knowing" (2022, p. 213).

Unfortunately however, where such an aim is levelled at students, it again may involve staff, already bent out of shape by feelings of pressure, fatigue and the need to perform, to find the energy and commitment to deliver something different. This is clearly acknowledged by Lynch here - again it is the lack of specific resourcing for care and support, that impinges directly on the space and energy to sustain deep critical thinking.

As Symth further notes, in terms of academic anxiety, “the even more insidious way anxiety is produced is through what I term the ‘ever receding horizon’—the work is simply never able to be finished; the goalposts are continually moved by management” (2017, p.9). So, the chasing of perceived goals and metrics within HE can lead to a feeling of never quite managing; as a result, it can be incredibly tiring and dispiriting to always be chasing, especially where one begins to critically reflect on the problematic nature of the metrics being chased. Despite this, universities continue to set out their strategies, aims, wins and losses against metrics.

Rationality in HE

As part of this picture of goal chasing, there is the perceived rationality within universities of doing a good job, or at the very least getting by and surviving over thriving: “..in order to ‘get by’ in these precarious times, we must become, to some extent, self-responsible subjects” (Watts 2022, p. 466). Despite striving to achieve a marketised, metricised aim being both tiring and deeply unfulfilling, there is also ‘responsibility’ tied up in acting in this way; to act differently appears disruptive, or is perceived as underperforming. Fighting complicity in this space therefore feels precarious.

Further, to amplify the challenge, a focus on ‘care’ becomes increasingly unsustainable where an ever increasing number of students are being recruited to universities, in an ever more competitive environment of universities fighting for fees and income (which can then be spent on ever more pressurised methods for attracting students to their institutions):

> … we feel overworked and pressurised by growing student-facing roles. Importantly, we want to (and do) take care of our students, but increasingly we are being over-burdened by the sheer number of students and pastoral cases, not to mention the complexity of these cases (Wilson et al 2021, p.32).

Rewarding of complicity by managers

This rationalising of ‘doing a good job’ framed within a notion of productivity, has arguably become the mainstay of those appointed and promoted to positions of management within universities. As Peter Fleming articulates, “managerialism has created a massive difference between value-adding staff and authority” (2021, p.23). For Fleming, it is this ‘authority’ that drives complicity with neoliberal metrics of success and performance. And of course, ironically, universities tend to ensure managerial positions have fewer teaching-related responsibilities, thus further undermining the complexity and nuance of valuable pedagogy; instead framing it within arbitrary teaching ‘scores’, as something that can more simply be rolled out across increasing student numbers with relative ease or lack of pushback.

Most pertinently, authority amplifies the fear of failure already touched upon. Where managers focus on this narrative, the emotional affect of those being managed can be deprioritised in favour of a drive for working harder and harder towards productive outputs. Managerial outputs, aligned to metrics and strategic priorities can be rife with bureaucratic aims, which Fleming refers to vividly as "sludge work" (ibid, p.60); and it is these outputs that are rewarded as the basis of 'good performance review' over a 'bad' one.

In addition to authority including the 'stick', Fleming interestingly reflects how universities also have managed to mix "rational self interest with our vocational love for reading and writing" (ibid, p.31) to try and instill *willing* categories of university workers. So, as noted to above, in addition to neoliberalism creating a hegemonic complicity of individual self-promotion, academics' more intrinsic motivations of reading, writing, critiquing, teaching, debating can be played upon to help justify and motivate an attitude of relentless work towards extrinsic metrics or competitive urges.

It therefore becomes all too easy to believe the 'hype' within such narratives - particularly where promotion and progression is aligned to working towards 'strategic' priorities, as well as projects like institutional 'teaching awards'. In this way, 'unproductive' behaviour such as not always working towards targets, or towards perceptions of what students want, or not always prioritising teaching and marking without related critical reflection, all feels like one is less capable of being recognised by the institution. Within this authoritarian regime, the opportunity to stop, think, reflect and reconsider priorities of working all seem antithetical to a successful career.

Neoliberalisation of academic work

To further illustrate the deeply entrenched nature of neoliberal rationality and complicity, various authors have written about the neoliberalisation of theirs, and others', academic work and working self.

This neoliberalisation of the academic working day, and working life, can happen in various, entangled ways. As one example, Morley illustrates that, in a promotion application, they were encouraged to only focus on managerial and 'strategic' priorities on their CV, and the technical, reductive way in which they had implemented policy or process. As part of this, they were encouraged to focus only on the individual, denying and devaluing both the many 'real' collective aspects of their work, but also the intangible, emotional, unmeasurable aspects of their working life. Specifically, this involved a very common piece of advice for such documents, through a narrative of the 'I' rather than the 'we':

> I was simultaneously instructed to remove all references to 'we', and only refer to 'I'. So, my collaborators were useful subjects to mention only insofar as to how I managed them to produce outputs, yet irrelevant in terms of their contributions to what we actually achieved (2024, p.579)

Related to this, is the phrase 'good academic work'. Specifically, this being defined through the narrow, neoliberalising lens of productivity, output and strategic excellence: " …to be a 'good' academic there is a responsibility to be a productive worker who publishes high-quality scholarship, obtains research grants and achieves teaching 'excellence'" (MacFarlane 2019, p.460).

Through a neoliberalising framing of ‘good’ or ‘success’, academics therefore feel an entrenchment of neoliberal complicity in their working roles. In addition to the overt managerial instructions and ‘rewards’ that have already been discussed in this section, the neoliberalisation of academic work is further achieved through behaviour and everyday practices of academic work becoming measurable, rateable and universal.

As a further practical example, on the research side of academic work there is ample evidence of research being rated as valuable or ‘good’ quality only through metricised evidence of prestige e.g. through the formal recognition of research work via the obtaining of grants, award and highly ‘rated’ research outputs (as controlled by the Research excellence framework/REF). Research that cannot be classified or categorised in that way, is therefore devalued and deprioritised within neoliberal hegemony: “Carrying out such work is no longer seen as high status but as somehow inconsequential, trivial or self-indulgent since it is not generating research income” (McFarlane 2019 p.462)

Following on from this neoliberalising measurement, research work that operates outside of these parameters, such as the scholarship of learning and teaching, creates a chaotic double bind - on the one hand it may regularly appear and be set as an expectation on workloads (within workload allocation models) and in appraisals, but on the other hand it is consistently undervalued and considered trivial by those conducting it.

Workload models themselves also serve as a key neoliberalising function of academic work, through their allocation of hours towards various tasks that are identified as ‘key’ parts of an academic working life. With a workload ‘model’ set by academic places of work, all work is ranked and judged according to strategic aspects of academic work, and one is judged and judges themselves in one of three categories: falling below, meeting or indeed exceeding against such arbitrary measures of value, “Each academic must fit their effort within the allocated hours while still coming up with a performance that will be rated against others’ performances and judged against criteria through which it will be deemed to be ‘satisfactory’, ‘excellent’ or ‘outstanding’ (Davies and Bansel 2005, p.49).

Through this defining and judging of performance, neoliberalisation operates to set ‘time spent’ as the most important metric of academic output. Within this narrative, ‘wasted’ time is the enemy and efficiency is once again the goal. If those working in HE feel overworked, stressed, and burnt out, a neoliberal narrative tells them that it is their own responsibility and own inefficiency that is the root cause, rather than wide neoliberal hegemonic forces: “Time is construed as the enemy here, rather than the neoliberal system that generates the impossible workload and expectations” (Davies and Bansel 2005, p.49). If we feel we never have enough time in the working day or week, this is both our cross to bear and our problem to try and solve.

As part of this process, stress or feelings of guilt are also our personal responsibility; they are individual shortcomings, and for us on our own to put right. Being responsible for yourself rather than focusing on the conditions that may create these feelings or outcomes, is the language of neoliberalisation of academic work. This is vividly expressed in the following quote:

> These ‘technologies of self’ call forth an enterprising, self-managed and

> ‘responsibilised’ subject who can ‘manage time’, ‘manage change’, ‘manage stress’, demonstrate resilience, practice mindfulness, etc. – whilst leaving the power relations and structural contradictions of the neoliberal university untouched and unchallenged (Gill and Donaghue 2016, p. 92)

Personal anxiety builds around the question of: ‘am I good enough?’. Attempts to answer this question can worryingly fuel increased complicity with the wider managerial and metricised priorities, rather than refusing or resisting, in the vain hope of somehow being better. In addition to those who are on casualised or precarious contracts, who may feel the need for complicity through a fear of the consequences, those on more secure contracts may also feel the guilt of privilege and the self-responsibilisation of this: “When grievances are shared by those with secure employment, they are prefaced with acknowledgements of privilege (and often guilt), and the solutions offered involve work to change the self, in one form or another” (Gill and Donaghue 2016, p.95)

This method of self-responsibility, and a focus on ‘improving the self’ or individual self-care, once again entrenches the individualistic discourse of neoliberal common sense. Rather than collective sharing of the impact, guilt and shame about judging yourself against neoliberalising metrics of success, academic work conditions encourage you to look inwards and judge yourself.

Given the depth of neoliberal hegemony, even where ‘collegiality’ is mentioned or flagged up, there is the danger that this also can be measured, rationalised and seen as an additional aspect of being individually responsible: “The very idea of collegiality could perhaps be reduced to just another aspect of one’s academic performance, subject to appraisal as teaching quality and research outputs are, but any metric for collegiality would only be able to capture and measure a ‘hollow’ collegiality” (Skea 2021, p 408)

Therefore, a neoliberisation of academic work is a hollowing out of academic work, from the intangible, collective and imaginary, into the measurable, strategic and self-responsibility.

‘Stepping away’

All this can leave a sense of exasperation and tiredness. Even for scholars like bell hooks, the feeling of ‘burnout’ led to her temporarily leaving the role of being a teacher in HE: “Away from the corporate university classroom, from teaching in a degree-centred context, I was able to focus more on the practice of teaching and learning. I especially began to contemplate those forms of teaching and learning that take place outside the structured” (hooks 2003, p. 21). hooks recognised the value of temporarily stepping away from the intensity of the university ‘classroom’ (however formed) in terms of self-reflection and reimagining a more transformative personal attitude to operating in HE. No matter whether the system requires you to keep getting back on the horse, hitting ‘pause’ is legitimate.

For now, my own plans do not revolve around physically stepping away completely from the university classroom and the university institution; my own neoliberal insecurities feel that the risk of unemployment is a step too far (hooks recognised in her own writing that she was lucky to be able to do so). In addition, I must acknowledge that I retain a passion for learning and teaching.

Therefore, I wonder instead about utilising this thesis writing and reflection as a form of

‘stepping away’ as hooks describes. hooks recognises that, “It takes courage for any teacher who teaches with gladness to accept and respond to periods of burnout, to embrace the heartache of loss and separation” (hooks 2003, p. 19). So, whilst I write, read and reflect here, I can try to find some joy over the *responses* to some of the challenges set out in this section.

To Section 2

I certainly feel exasperated over much of what I have reflected on in this section about the systemic power of neoliberal hegemony. I also feel the weight of neoliberalism’s impact on contemporary HE through the sources I have explored.

However, again I remind myself of the reflections I made in section 1 of this thesis when unpacking neoliberalism. If neoliberalism is hegemonic; that neoliberalism is never totalising despite its apparent rationality and power. As a result, it requires continued complicity to continue to function in its current state.

Therefore, energy can perhaps form in my ongoing writing to reflect further on potential antagonistic approaches to the norms of neoliberalisation. Through this, I may yet find ways to move away from and beyond the feeling of powerlessness that neoliberalism creates. The key challenge of course, is the capacity for maintaining such antagonistic energy; and within this, of feeling the courage to accept and respond to burnout as hooks describes. And further, to continue to critique whether such antagonistic approaches can truly be harnessed through my role within the university.

Section 2: a critical analysis of ‘resistance’

This section of the thesis started from a reflection I developed, after reading over the various, deep rooted and dominant challenges summarised in Section 1.

As a teaching focused academic, I want to believe in the power of pedagogy. However, the power of my own pedagogical practice, as well as feeling limited in that it only focuses on *my* teaching, also feels subject to the ongoing risk of being unduly diluted and controlled through neoliberalism. Writing the previous section of this thesis, at times, only fuelled these fears.

This section therefore seeks to recognise what ‘resistance’ could offer, specifically in relation to countering neoliberalism. As well as recognising my fears over preconceptions of the meaning of resistance, I seek to reflect on how resistance could actually be more nuanced, more covert, and more collaborative in form than at first thought; and therefore may achieve more than my current pedagogical practice alone, fully aimed at the ongoing danger of returning to the mundanity and complicity of everyday neoliberal practices.

In particular, I want to explore possibilities beyond my *individual* teaching practice to a stronger set of collective possibilities, which arguably can hold more sustained energy against the hegemony of neoliberalism. These may indeed take place outside of the university classroom setting. However, whilst I explore, I also return to the question of, to what extent, pedagogical practices within my university setting can also amount to resistance.

Finally, I want to think more carefully about what resistance might be for. As already explored, any project that seeks to act with too narrow a vision in mind can risk perpetuating the harms within a university setting. Resistance focused as antagonistic to the complexity of neoliberalism is a key concern for this section.

What does resistance mean?

Much like my reflections on neoliberalism, the notion of resistance also appears highly contested. In their introduction to the 'Sage Handbook on Resistance', Courpasson and Vallas note a couple of important points when considering any 'definition' of resistance:

> As academics, we must be cautious in our assumptions regarding the validity of our claims, if only because today there are so many ways through which resistance can be expressed" (2016, p.5).
>
> ...dissenting efforts will be more likely to assume forms that are spontaneous, anonymous and episodic but no less real (ibid, p.7)

This Handbook therefore recognises, particularly in more contemporary settings, that resistance is multidimensional, dynamic and may or may not occur intentionally, 'successfully' or with specific alternative orders in mind. Crucially, it is argued that resistance is no longer necessarily considered as purely a resistance *from* specific overt oppression of a particular kind.

This is an important first reflection; on reading the word 'resistance', my own preconceptions conjured up visions of physical protest against specific overt acts from top-down systems. Initially, the notion of resistance filled me with a sense of fear and passivity.

Resistance and Neoliberalism

The Sage Handbook (2016) therefore reflects on a more contemporary idea of both resistance and of neoliberalism. Given, as I have analysed in Section 1 of this thesis, neoliberalism is multi-faceted and complex, and is not limited to overt 'top down' policy alone, counter-neoliberal resistance necessarily has the requirement to be the same. In this way, the Handbook and its contributions usefully expand both the way in which power operates, and therefore also the way in which resistance can stand in relation to such power. Crucially, resistance is framed as opposition to the workings of neoliberal normalisation; of avoiding the creation of a monolith.

The Handbook explains how one way of seeking to define resistance is to look at it on a set of three scales as follows: "different forms of resistance can be placed on a continuum from overt to covert; pitched at a micro or macro level; and relatively passive or active in outlook" (ibid, p.5). I must admit this felt initially quite helpful for me when looking to be inspired by, or relate to, modes of resistance. From exploring different 'categories' of resistance that may be ordered along such a scale, I felt potential to better decide what I feel capable of becoming in my current role.

Unfortunately, what flows from this way of viewing resistance, is an increased nervousness as to whether certain scales or examples of resistance are *better* than others - so, if I feel I

cannot begin to enact some examples of resistance (particularly those at the overt, macro and active end of the scale), am I doing anything worthy at all? This highlights a downside of defining resistance with such a scaled approach in mind - that of self-limiting of the potentiality of resistance.

To address these fears, I instead look to consider contemporary resistance as a more collective, fluid and complex endeavour, as acknowledged within the Handbook: “Resistance requires…a sense of community through which people care more and think more about what they can do together to feel better or simply to survive” (ibid, p. 11). As I have already reflected on in this thesis, my own desire is to work in opposition to the individualistic narrative of neoliberal hegemony (that of the perfect neoliberal subject). Therefore, it is the *collective* potential for resistance, together with the notion of resistance being framed positively (as well as negatively), that I am most buoyed by here. Additionally, the notion of ‘surviving’ together grants value to a more expansive version of resistance than simply overt, macro protest.

Further, I reflect how this Handbook acknowledges that it is too reductive to argue that resistance *will* always be ‘better’ than the alternatives, or indeed will lead to any specific set of consequences or aims. However, crucially, it recognises a sense that the obligation to resist never dims.

In addition to this Sage Handbook, I have been buoyed by the two volumes of ‘Resisting Neoliberalism in higher education (2018), edited by Dorothy Bottrell and Catherine Manathunga. Through these two volumes, the editors collate a series of vivid illustrations of both the overwhelm of neoliberal discourse, but also the importance of struggling and resisting this overwhelm particularly through collective practices. Like the Sage Handbook, these examples have provided my energy for writing this section against the weight of the challenge illustrated in the previous section. In particular, as will come later in my thesis manifesto, these writings have developed my thinking of what everyday practices I may be able to implement right now.

Most importantly, these two volumes acknowledge the potential power of ‘micro’ resistance, providing numerous examples from within universities and including examples within the classroom. When reflecting on the power of resistance from within a University setting, the ethos of Critical University Studies (CUS) and abolitionist critique have provided additional reflection for the way in which I should frame any personal resistance *within* HE.

CUS

It was Jeffrey J Williams, an American scholar, who first coined the term CUS. For Williams, he draws parallels between critical legal studies (which will be explored later in this thesis) and critical university studies: “Critical legal studies grew out of a critique of complacent midcentury liberalism, whereas critical university studies is a critique of neoliberalism and the conservative ascendency” (2012). So, in terms of relevance for this thesis, CUS writing directly centres neoliberalism as its focus for critique. Liz Morrish, co-publishing with Helen Sauntson, agrees with this framing of CUS: “This field of study enjoys kinship with critical management studies and critical legal studies which similarly contest power, control and inequality at work” (2019, p.30).

Although it is reductive to pin ‘CUS’ to a set of definite parameters, the writing places the

University setting as an essential part of the overall critique of the legitimisation of neoliberalism. Rather than writing that may either expressly or inadvertently paint the academy/university environment as a place of neutrality within which critique can then be taught and developed, instead CUS writing calls out the complicity of universities within the production of neoliberal discourse. Some of the writers referenced already in this thesis may either self-identify, or be later categorised as writing from the perspective of CUS e.g. Stefan Collini, Peter Fleming, Andrew McGettigan, Bill Readings, Henri Giroux, Liz Morrish. Certainly, as a potential community of writing, CUS has now become a significant 'study', including a Palgrave and John Hopkins set of writings on the topic. Through the naming of such writing as CUS, the ongoing hope was at least originally to commit to some form of critical project.

In terms of where I see possible value in the banner and writing community of 'CUS', is the recognition of the centring of constructive complicity with both students, and with other staff. Rather than seeing the contemporary university setting as a walled garden, protected from and battling against an 'external' influence of dominant neoliberal ideology, CUS commits to a critical attitude of discussing, and acknowledging, the way in which universities (and law schools operating within them) are wrapped up in neoliberal discourse and therefore complicit in its ongoing 'holding up'. These discussions should not be 'off limits' or deprioritised in favour of strategies, audits or pathways for my university setting that reify the university as a neutral organisation to set such processes in place.

Therefore, any resistance from within the institution and from role holders like me, should be fully cognisant of the dangers of resistant action fuelling the neoliberal discourse of the university whilst considering enacting resistance.

Abolitionist critique

However, as well as not defining CUS writing too narrowly, it is clearly also crucial to not attempt to pin down or define a *specific* set of intentions and actions from framing the university setting for critique. Neoliberalism is not something done to universities; rather universities are mechanisms for the production of neoliberalism.

Abigail Boggs, writing from a feminist abolitionist perspective, importantly calls out any attempt within CUS writing to look to 'rebuild' the university setting or revert the university setting to a time prior to the external ravaging of neoliberalisation: "... the university appears as the object of privatization and not as a mechanism of it; it is wrecked by neoliberalism, not a destructive force of it" (Boggs and Mitchell 2019, p.443). Instead of rebuilding to a former place, abolitionist thinking is one of dismantling completely, and starting again in terms of what 'counts' as spaces for knowledge and critique to flourish.

An abolitionist standpoint on universities therefore looks to call out any suggestion that universities have been, or perhaps ever can be, a 'public' institution that is freed from the shackles of neoliberal discourse. To be caught up in longing for the crisis of neoliberalism to be over, and to return to some form of idyllic public critical consensus, is to be caught within potential maladaptive nostalgia; it does little to work on what is actually possible for the contemporary university setting. As noted at the start of section 1 (2) of this thesis, pedagogical literature that only frames a crisis of HE as contemporary in nature, misses this recognition.

The whole history of universities is deeply aligned with that of capitalism, and thus neoliberalism: "...there is no history of the university that is not also a history of capital accumulation and capital expropriation" (Boggs and Mitchell 2019, p.452). Therefore, students and staff cannot somehow escape this complicity, nor bring universities back to a golden age where they did not feel under attack. Such a narrative misses the critical structures of universities within the system, not apart from it.

Therefore, as noted above, resistance is not about seeking to uncritically focus on a golden age of a public university commons being the end goal; for abolitionist thinking, this is an impossibility. What feels somewhat chaotic from this, is a questioning of the capacity of the formal university setting as the site for resisting neoliberalism.

Relevant framing for resistance

CUS, with this abolitionist critique, is therefore very instructive when analysing 'resistance', In particular, through abolitionist writing, the theory of the 'undercommons' is a key feature of abolitionist resistance. As originally articulated by Fred Moton and Stefano Harvey in their essays on the subject (2013), the notion of the Undercommons seeks to present the university setting as one that is built upon hierarchy, privilege and colonialism.

What follows from this concept, is addressing head on the notion that a university setting is always ever a limited and 'othering' space for harnessing critical knowledge; indeed, a follow on provocation that arises is, "How is it possible for the university to undertake an abolitionist mission given its complicity in the imperialist and colonial project?" (Zembylas 2021, p.127). Will resistance always ever be limited and controlled within a university setting alone?

Resistance as affect

In a similar vein to neoliberalism and its discourse of individual perfection leading to feelings of failure and reduced self-worth, resistance can also be framed in terms of its 'affect'. Clearly, from the literature and accounts that I have examined in relation to those working within higher education, feelings are shared in terms of the deleterious impact of neoliberal discourse. As noted, many writers feel that there is something 'wrong' with contemporary higher education; albeit as noted, sometimes blaming neoliberalism too narrowly or as something that is only 'done to' us.

As noted in the previous section by Lynch (2010, 2022), Ball (2012) and Wilson (2021) in particular, those operating within neoliberal discourse do not necessarily become 'neoliberals', in terms of some sort of abstract concept of defining their existence. Instead, people clearly 'feel' the exasperation, frustration, anger and rage of neoliberal discourse. Resultantly, those working in universities may not simply fall in line and fully comply with processes that create such feelings. What differs, is in what ways people then operate resistance; it may be simply an internalised sense of frustration and anger, rather than leading to something more collectivist or active in nature.

Zembylas (2019) importantly highlights this. He explains that "resistance is an affective movement of becoming rather than an individual act" (p.8) and therefore those operating in education use emotions to engage in "affective resistance" (ibid). This can include, as Zembylas notes, "false compliance" (p.9) in the form of appearing to fall in line, but in reality

criticising practices amongst colleagues, or sharing feelings of exasperation and related self-preservation.

However, in addition, particularly in relation to resistance operating within the institution, Zembylas gives this crucial warning, which I continue to reflect on and return to "At the same time, we should be vigilant how counter-conduct resistances may also be co-opted, giving the illusion of resistance when in fact contributing to the reinvigoration and continuation of neoliberal policies and practices" (ibid, p.15). This is something to be further reflected on in this section; the notion that countering neoliberalism requires self-vigilance.

Activism

As a source of critique, particularly from a more collective and activist approach to resistance, there is Remi Joseph-Salisbury and Laura Connelly's 2021 book *Anti-Racist-Scholar Activism*:

> To struggle where you are in academia, therefore, is to break with the hegemony that sees the university as beyond reproach... if we take a pay packet and relative job security from our university employment, we have an obligation to also struggle where we are (2021, p.146-147)

This quote acknowledges three very important starting points for my own thinking on resistance:

1. Resistance, for Joseph-Salisbury and Connelly (2021), means breaking from the reductive notion that HE, and the university, is a neutral space. Without acknowledging that, we cannot begin a discussion on whether or not the university setting is a site for resistance. As noted above, the authors here seem to be embracing a methodology of critiquing the university here.

2. If the argument holds merit that those in university employment *must* resist, then this opens up further reflections: -

(i) what is 'the university'? Is a university only the sum of, and the product created, by the individuals that directly reside within it (perhaps then, its staff and students) or also something apart from this?

(ii) what is a university for? This is an extremely important follow up question, and a central underpinning to any aims for resistance

(iii) And of course, as noted, is the university the only appropriate site for resistance?

3. For Joseph-Salisbury and Connelly (2021), we must show 'activism' within academia i.e. if we are formally employed in a position of relative job security, there is a specific *obligation* of struggling within our positions against harmful dominant narratives.

The point raised in (3) initially presents a somewhat anxiety inducing notion - as an academic (if I am to label myself as such) working in HE, I appear to have *an obligation* to

resist and specifically, to struggle. Therefore, my role should involve an active (rather than passive) duty to engage in forms of resistance. Despite this nervousness over the responsibility involved, the idea of 'struggling where you are' may again permit a wider range of resistant strategies for consideration, much like the concept of micro or covert resistance.

I do reflect that this quote recognises that I do have certain specific advantages over those 'outside' of academia, in particular at this moment the ability to actually spend time studying examples of resistance and exploring these more deeply. And, as a result, I also see how, from reading and learning, I *should* resist. The critical question remains in what forms this resistance should take place. In particular, how can I see resistance more as a "a constant process, as something we must continually strive towards rather than a fixed and reachable entity" (Joseph-Salisbury and Connelly 2021, p.560).

However, I must be conscious not to overstate these advantages; as Zembylas (2019) above notes, this may fuel the energy to enact practices from within the institution alone, and thus continue to be at risk of providing energy for neoliberal practices.

Backlash

What also presents some precarity and nervousness on enacting resistance, is 'backlash'. Joseph-Salisbury and Connelly note that, to critique, disrupt, and actively rally against dominant narratives creates a backlash: "We might conceive of backlash, therefore, as negative reactions or responses to social change…the more counter-hegemonic that change…the more backlash" (2021, p.20).

Therefore, given the weight of neoliberal hegemony, actively resisting this hegemony may cause a potentially significant backlash as a result. What I worry about in terms of this anticipated backlash, is it being painful and devaluing, and fundamentally making me continue to question my reasons, or abilities, to resist. As Henri Giroux acknowledges:

> ...higher education can be a most depressing space because its daily assaults are about more than policy, they are also experienced existentially every day as emotional body blows which wear away one's sense of agency, hope, and willingness to struggle against forms of domination, especially as they emerge within the university. My resistive strategy has been to have one foot in and one foot out of the university (Giroux 2020, p.248).

As Giroux notes, working in a contemporary university is not all a bed of roses, or of privilege without limits; academia can be wearing, specifically when experiencing forms of neoliberal domination. Domination framed in this way, is not a new concept of course, and Giroux like others draws much on Paulo Freire's seminal work on the subject (Pedagogy of the Oppressed, 1970). Giroux however, remains a strong believer in the power of those working within HE to deliver *change* to such dominant narratives notwithstanding the challenge.

However, even for Freire (1970) and for Giroux (2020), this is not limitless within a university setting: it is admitted by both that effective forms of resistance cannot always occur in the *formal* university setting alone, specifically because of a university's limitations. As Giroux notes, one foot must always be outside of the formal university setting to effectively resist.

Collectivism

To counter the sometimes wearing nature of academia, a powerful argument is that challenges are overcome through the notion of *collective* resistance: "...if we struggle where we are, others will struggle where they are too and a collective struggle will grow…" (Joseph-Salisbury and Connelly 2021, p.145). Other writers have latched onto this notion of the collective in similar ways, for example:

> To build community requires vigilant awareness of the work we must continually do to undermine all the socialization that leads us to behave in ways that perpetuate domination (Hooks 2003, p.35)

> This work can be loud, but also quiet and everyday, but this solidarist thinking and practice is at the heart of the notion of an organic intellectual, and the centre of our own practices as we move forward (Wilson et al 2021, p.41)

Within these quotes is demonstrated the disconnection, powerlessness, and apathy that neoliberal hegemony engenders; where self-interest is prioritised through neoliberalism, isolation, self-actualisation and carelessness all appear. Neoliberal discourse encourages us to be atomised, rather than working collectively.

Therefore, these quotes acknowledge the potential power of collectivism together with the energy and vigilance that may be required to commit to such collective practices. Most importantly, acknowledging a collective mode of resistance means we are not being burnt out alone, and perhaps also that the resistant work may eventually be worth it.

Notwithstanding the positivity that collectivism can bring, it is crucial to recognise the weight of the challenge of resistance, and to identify, as Joseph-Salisbury and Connelly set out, the feeling of "paralysis" (2021, p.181) that can dominate when considering resistance. I certainly feel this, at times quite strongly - as I have reflected on, paralysis comes from a fear in me that only certain forms of resistance are 'worthy', that resistant forms are not something I can practically implement, that any form of resistance will see me as disruptive in some way, and that power of neoliberal backlash is too strong. Out of all of these, partly fuelled by my background in law and legal practice, it is probably the fear of reprisals that leads to the most significant feeling of paralysis.

Indeed, paralysis and inaction can result *even* where one commits to reflexivity: "reflexivity can…become a proxy for the 'real work'" (ibid). A methodology of critical self-reflection alone can act as evidence for the self that resistance is *done*. Reflexivity may therefore not be a form of true *active* resistance - after all, reflection *without* action does not empower or 'do' very much at all in terms of others. The work has to be implemented.

As a counter to feelings of paralysis, Joseph-Salisbury and Connelly recommend that "constructive complicity" (ibid, p.182) is instead implemented. So, this recognises that it is crucial to recognise the contradiction of academics like me working within the formal HE academy and therefore inevitably holding up its hierarchy and hegemony, but at the same

time recognising that this holding up through working within academia does not have to be totalising. Instead, one can potentially work forward with a constructive attitude and in an empowered fashion, embracing the mantra that one can be “in but not of” (ibid, p.185) the HE academy. This can rally against the more destructive force of feeling alone and always failing against neoliberal expectation.

Constructive complicity is an important reminder for my own attitude to resistance; having reflected on the power of neoliberal hegemony creating ongoing ‘small’ neoliberalising practices without external active ‘big’ neoliberal intervention, calling out and working against such practices could provide a form of personal resolution. Subject of course, to what the work specifically looks like for me.

Scholar-activism and collectivism as an ‘academic’

In a similar way to resistance, the word activism creates a preconception of something strong-willed and overt. It also presents to me as something ‘political’, which is something acknowledged by Weiner and Weiner: “We define ourselves as activists, derived from the German ‘Aktivismus’, a concept that emerged at around the time of the First World War and has since come into general use to signify active, political engagement” (2019, p.272).

It initially feels jarring to me to imagine being an activist in a university setting. As Rose notes, it is challenging to consider oneself as an ‘academic activist’; operating within a university setting can feel that you are not doing enough, and feel that activism is somewhat other worldly: “A common theme in their words is the difficult process of defining and balancing the worlds of academia and activism, as if each world is on a different side of a chasm that can’t be breached” (2017, p.68). This is perhaps exacerbated by my role as a lawyer educator; I have long seen myself as a ‘professional’ who tows the line and underpins the ethics of professional lawyering.

For scholar activists, it is recognised that resistance as ‘protest’ may indeed be increasingly limited for those operating within the university structure: “By cutting opportunities for protest-type activism and shrinking social and political spaces of deference, it might initially appear that agency of academics to protest or carry out activism is limited or has diminished” (Spolander et al 2022, p.65). One downside with a decrease in opportunities for overt protest, is that the alienation of neoliberalism (with its focus on self interest and competition), can then reduce the visibility or ‘noise’ of other forms of scholar-activism, and its encouragement: “Consequently, this alienation contributes to the invisibility of scholar-activism” (ibid, p.70).

In addition, working towards a notion of academic or scholar-activism, is open to the critique of the university setting being hierarchical, elitist and self-indulgent: “Academics contribute to theoretical and conceptual frameworks, which may help raise awareness of serious challenges at local and international levels, although this may alienate grass-root activists who may undertake their roles without the privileges and resources of the academy” (ibid, p.71). Therefore, if scholar-activists hold limited agency and embody a hierarchical ‘ivory tower’ attitude to ‘true’ activism, is scholar activism undermined from the start? Can one get carried away with the power of operating in an activist way within HE?

As a counter to this critique, it can be argued that overt, macro, protest style resistance is not the only form of activism available. As noted here by Rose, “Activism change is often associated with overt acts of resistance; however, this conception of change limits recognition of what activism can look like in the neoliberal university” (2017, p.101). This is quite an exciting thought; it opens up the possible nuances of resistance, and the more covert, small-scale, ‘everyday’ activist strategies that could be considered as no less empowering.

Indeed, within these everyday practices, is the potential harnessing of a move away from a perception of neutrality within my role. As I have noted from CUS, in resisting neoliberal hegemony it is imperative to highlight the illegitimacy in framing a university setting as neutral, or separate, from neoliberalism. Rather than framing my role as abstract or the embodiment of objective trust, scholar activism requires a commitment to change:

> Academic activism challenges the notion that academics should adopt a detached and supposedly ‘neutral’ and ‘objective’ stance towards social realities….It posits, instead, that academics bear an advantage – if not a responsibility – to employ their knowledge and expertise in non-academic projects that aim to improve life and society (Rahbari et al 2024, p.75)

In this way, instead of being pulled by the performativity of objectivity or academic ‘excellence’, employing energy to a project of every day and covert scholar activism of this nature may well form a counter-neoliberal strategy. Given my insecurities and nervousness over more overt activism, particularly the somewhat irrational thought process of how it may make me appear to staff and students, everyday activism appeals to me. This is notwithstanding that I recognise feelings over my appearance to others is fuelled by neoliberal discourse.

Exercising privilege and obligation

An ‘obligation’ or responsibility to actively resist, particularly given my relative privilege as someone operating within the university setting, has previously been boldly asserted:

> For a privileged minority, Western democracy provides the leisure, the facilities, and the training to seek the truth lying hidden behind the veil of distortion and misrepresentation, ideology and class interest, through which the events of current history are presented to us (Chomsky 1967, p.1)

Clearly, Chomsky’s 1967 ‘intellectuals’ (although debatable who this may include or exclude) have expanded since this essay. Therefore perhaps this responsibility, rather than diminishing, has only become more powerful: “Whilst it may not always be obvious who counts as an intellectual for these purposes, what is clear is that the number of intellectuals has increased dramatically over the last 50 years, as exemplified in the UK by the huge expansion of university education over that time” (Smith and Smith 2019, p.8).

Notwithstanding this, much has changed since Chomsky’s 1967 statement. Smith and Smith acknowledge that this somewhat dissident stance from Chomsky, now holds a: “...fear of the consequences….the scope of academic freedom has declined significantly….universities are

now expected to function as corporations…the attendant insecurity is a powerful disincentive to say or do anything that might rock the boat" (ibid, p.9). Fear of precarity looms much larger today, particularly where 1960's counterculture's confidence has significantly diminished. In its place, fear of reprisal in the form of dismissal from employment holds much more self-limiting properties. So, if the obligation to actively resist remains, how should this now be formed?

Further, in Chomsky's framing, 'intellectuals' feels problematic; seeking to separate and 'other' those falling outside of university academic posts and creating further division. Notwithstanding this, I do see my relative position within the university as potential fuel for acting rather than not acting.

Refusal

Returning to Stephen Ball's work on neoliberalism, he talks about a 'refusal' of neoliberalism as a mode of resistance. Specifically, Ball gives the following example of how to recognise the deep-rooted hegemony of neoliberalism within universities:

> ….. we also need to hold firmly onto a sense that we are none of the things we now do, think or desire. This is a necessary precursor to the possibility of free and critical thought in the neoliberal university. The other task is to convince others that this kind of thinking is worthwhile (2012, p. 26)

So, for Ball (2012), refusal comes in the form of both critical self-reflection, and then *action* through 'convincing' others of this similar way of thinking. Therefore, what is needed, in Ball's opinion, is a collectivist refusal; working away from atomised, isolated and performance-focused individuals towards a collective rejection of neoliberal 'value' as something we ought to desire or be guided by.

Further, Ball, like Connelly and Joseph-Salisbury (2021) reiterates the importance of avoiding critical reflection without action. The work actually has to be committed to in action. Ball's refusal to assimilate or assign value to neoliberal hegemony therefore opens up the potential power of conversations with others on this theme. If this can at least be the start of an attitude of countering neoliberalism, this feels much more possible than my initial preconceived notions of resistance or activism. Yet, is this a lesser form of appropriate action? By at least recognising how energy can be formed through communities of resistance, can I ensure, as a minimum, that I, with others, am "making things better rather than making things worse" (Josephy-Salisbury and Connelly 2021, p. 189)?

What is the alternative after all? If I 'gave up' by leaving HE altogether, is there really a viable alternative area of labour that is also not impacted by contemporary dominant narratives of neoliberalism - if I am to work and collect a wage (almost an inevitability if I am to live until retirement age), is it not the case that "all wage labour as compromised, making us complicit" (ibid, p.195)?

Instead, should I build further on my relative privilege of working within the HE academy, specifically using that as inspiration for the building of antagonisms and alternatives to neoliberalism. However limited, my own privilege centres on the ability, right now, to be

reading and writing about such topics (even where, at times, the other aspects of my current role hamper the committed time for this) whereas such a specific opportunity would be far reduced in other roles, most notably my former role as a practising lawyer.

It is this thinking that helps to provide a sense of agency, and to move beyond passivity to continue to call out and push back against the normalisation of neoliberal discourse: “Where there is a sense of agency and the surface of the neo-liberal agenda is scratched, an unexpected level of fury spills out. It is this display of anger that, for me, makes the opportunities for resistance in the future possible” (Weiner and Weiner 2019, p.281).

Practical examples of resistance - within the academy

In an attempt to harness this energy, I seek here to consider what ongoing practice might exist for me within the breadth of writing on the topic of ‘resistance’.

As I sat and watched the Summer 2024 encampment taking place at the University of Sheffield, which formed a staff and student collective protest in response to the Israel-Palestine conflict and claims over UoS’s complicity in perpetuating this conflict, I thought further about examples of student revolt: “The ultimate aim is for the practice to spread beyond the campus through a dual process of provocative rupture—the idea that insurrectionary moments can unleash the collective imagination and stimulate an outpouring of creativity…” (Webb 2018, p.106).

To compare and contrast this recent encampment, back in the 1960’s students operating with HE developed active resistance through revolt. Specifically through a site of *student* revolt across various institutions (focusing initially on Paris in May 1968), dreams of countering hegemony were considered both possible and legitimate. And perhaps indeed, at least for a time, this influenced university scholarship, and teaching; the era of Chomsky’s counter-culture.

A more contemporary example of student resistance was the student action of 2010 in the UK. This was in direct response to the Coalition government decision to increase student fees: “Hundreds of thousands of students were involved in marches and college occupations in the last months of 2010...in response to the ConDem government’s plans to increase tuition fees and scrap the Education Maintenance Allowance” (Rees 2011, p.119).

Unfortunately, a downside of repeated student resistance of this nature is that universities can learn how to fight back against such revolt, and further how to avoid similar experimentation from occurring again: “...the neoliberal counter-revolution of the last generation has involved sustained attempts to block off this kind of educational experimentation and to reimpose top-down control…. (Faulkner 2011, p.34). I certainly see this reflection ringing true with the recent UoS encampment - a possession order was obtained, no conversations between camp and institution were had, and the camp left without force being exerted but clearly under pressure of arrest. Large boulders now replace tents, limiting the site for future similar protests.

Despite this, witnessing both the encampment, and the specific institutional response to this, has certainly provided additional energy to examining the university as a space beyond

critique. The boulders remain a regular visceral reminder of this, including a vivid reminder that resistance of such nature may not lead to any specific, direct change. Given that overt protest of this nature could be limited in its potential, can students still remain a key part of a wider strategy of resistance within the HE academy?

Neary and Hagyard (2011) argue that resistance, in a contemporary university space, may more crucially involve students participating in producing an *education* that counters hegemony; an education of 'excess': "A pedagogy of excess would seek to promote and develop these activities as a counter to the economistic and market-driven restrictive practices that increasingly dominate the activity of scientific enquiry" (p. 218). Through co-creation of learning and a university journey between students and staff together, a collective and stronger response to the influence of marketisation is developed.

Notwithstanding this, Maringe notes an important caveat to any such policy of co-creation:

> Placing the student at the centre of decision making in HE is a strong argument for the democratisation of HE…however, this should not be done blindly…the satisfaction one derives from a HE experience is often delayed and comes from the pain of a sometimes tortuous journey which takes the student through a vast array of experiences (Maringe 2011, p.148).

Working with students in this way therefore involves careful thought. For example, planning changes only in response to student feedback could potentially mean kneejerk changes to pedagogical practice; as Maringe explains, students may indeed remark how much they dislike aspects of their education at the time it occurs, but this may well be influenced by their consumerist conflict with higher education, and the related perception of a grudging act of a university education. This is a view shared by Collini, as already noted in this thesis: "The really vital aspects of the experience of studying something (a condition very different from 'the student experience') are bafflement and effort. Hacking your way through the jungle of unintelligibility to a few small clearings of partial intelligibility is a demanding and not always enjoyable process" (2017, p.69).

The 'you said, we did' consumer culture of universities increases the challenge of how we work with students. Co-production does not simply involve quickly, without further critique or discussion, changing university practice and processes according to student perceptions expressed in flawed module feedback forms. If collective resistance is to be co-produced with students, it requires time, and a building of critical self-reflection amongst the student body. Perhaps Neary and Hagyard (2011) achieved something that reflected this in their practice; I perhaps do not share the time in my workload, or the research privilege, for the more careful work involved here.

The futility of staff-student partnerships?

What also worries me in relation to collective resistant strategies with students, whilst at university, is again the power of discourse. Do students feel a connection or sense of empowerment to work within universities for transformative change to HE?

It feels very risky for academics and students to collectively critique, or resist, notions of an education that only speaks to being 'fit' for the perceived job market. For my own discipline, can law schools really openly advertise to student collaborators that their education should involve a critical university approach and/or a model of collective resistance?

Resistance outside university 'walls'

Perhaps therefore, committed resistance holds more value outside of the university setting? Specifically, given the privilege and hierarchy of the university system', Webb advocates responsibility for working with a number of key stakeholders, including students, outside of universities:

> The utopian pedagogue has a responsibility to exploit their own privilege and to work with students, communities and movements outside and divorced from the university (Webb 2018, p.109)

This recognises part of the abolitionist stance on the university, and is also acknowledged by Joseph-Salisbury and Connelly:"...the university is not the centre of the struggle", (2021, p. 191); the university may offer little more than a temporary site of finding one's breath, rather than a place for forming resistance:

> The utopian classroom creates a breathing space in the suffocating environment of the formal education system, a safe space in which one can hide from the dangerous spread of market forces and the unpleasant stench of neoliberalism (Webb 2018, p. 102)

For Webb, like Joseph-Salisbury and Connelly (2021) and Giroux (2020), resistance and scholar activism cannot be defined solely, or primarily, through work within the university institution. Instead, the community existing beyond and away from the university must be engaged with. If the academy has both been embedded within a neoliberal discourse, and dominated by reproducing hierarchy and privilege, working with only those immersed in the formal academy seems doomed to add energy to these reductive norms.

In my own context, I am conscious that, as part of my role, we support a free legal advice clinic, run through students interacting with the wider community. As will be expanded upon in the final section of this thesis, this community link perhaps offers one way to engage with non-university stakeholders; what remains challenging, is the clinic remaining embedded as part of the university structure and subject to its shaping and control.

Beyond this however, do other opportunities exist for engaging beyond the University for me? One anxiety I have in this regard, is how I actually go about forging these connections, or indeed whether such work may become an unsustainable addendum to my ever increasing workload in the 'day job'. And on the flipside, if I do not 'do the work' here, am I really doing anything at all worthwhile?

Undercommons and EduFactory

As potential exemplars for a mode of resistance and activism away from the formal university setting, two practical examples from the US are that of 'the Undercommons' and the 'EduFactory Collective'.

The EduFactory Collective presented itself, through a published collection of essays and opinions in 2009, as "...a space where struggles connect, a space of resistance and organizational experiments" (the Edu-factory Collective 2009, p.2)..... "Edu-factory was in fact a laboratory for the elaboration of a common lexis that is starting to take shape in various struggles and theoretical practices on a transnational level" (ibid, p.7). Interestingly, it is now very challenging to find out exactly what the Edu-Factory Collective was, or indeed remains. Its website no longer exists, and any further writing or activity beyond this collection of writing is seemingly absent. However, it appears to have been an effort through academics, students and related parties to connect with one another and share ideas, writings, events and general support - all through the lens of the 'commons' beyond the university space.

The Undercommons, like the EduFactory Collective, is a US focused collection of writings, events, discussions and collective thought (through its still active website: https://undercommoning.org/). This specific project appears to have been inspired by the writings on Moten and Harney on this concept. This website specifically references the EduFactory Collective as a linked organisation and mission. Again, interestingly, any specific activity on this website and publication of events seems to have stopped in 2017 (and on Twitter/X in 2020). The website notes, amongst other things as follows: "Undercommoning is the process of discovering and practising our value within, against and beyond the university's measures. We refuse to suffer silently the depression and anxieties the university-as-such and its constant crises instill, trigger and exploit".

With both these examples, the ethos is to form collective communities of solidarity, where thoughts, fears, and ideas can be shared *beyond* the university setting, rather than such operations being individualised, isolated or co-opted if operated within formal university networks where interested parties work. Such practice has therefore been championed as a way to 'grow' resistant attitudes, without the dilution or backlash of the university model.

From these undercommoning projects, I recognise the potential for connecting with a wider array of actors on the notion of resistance. What remains challenging is how to go about discovering projects or links for connection. As a minimum, working with charities or organisations such as 'SHARE' (Sheffield Anti Racist Education), may offer opportunities for wider connections. However, even through only connecting with others working *within* universities, I note the value of sharing undercommoning, or covert, narratives of the varying degrees of rage, exhaustion and hope experienced through the engagement of resistant strategies:

> … At times, resistances may simply be focused on self-protection, yet when this self-management is held within an ecology of collegiality, the safe expression of anger, frustration and exhaustion may give way to renewed capacity to push back enabled by the collective (Bottrell and Manathunga 2019, p.17).

Importantly, rather than resistance always being about committing to specific action, self-protection may well be enough at times. Further, through the sharing of the more exhausting or frustrating aspects of working in HE, energy may begin towards a collective pushing back against the discourse.

Forging communities in this way could act against the silo created by my current situated place - it is relatively easy, as a law teacher within a School of Law and Criminology, to forget or ignore potential wider connections. This is in part because of both the physical, and systemic barriers that exist to critical conversations (particularly outside of my formal studies on the EdD). Where any work on connections exists, it remains largely procedural and framed reductively as an 'opportunity', rather than incentivising and supporting time and spaces for such work. For example, the Faculty of Arts and Humanities at UoS has a scholarship circle, and that seems an important thing to join and debate further. Unfortunately, this circle is often neglected or delayed because of attention being turned to other 'strategic priorities'.

The undercommons motto

As one way forward, I wonder whether 'undercommoning' as a personal 'motto' can hold some power for me. I recognise that Connelly and Joseph-Salisbury acknowledge how much of their inspiration for activism comes from 'the Undercommons' as envisaged by Harney and Moton (2013); fuelled by the stance of acting covertly and subversively in relation to the university as an institution: "Stealing 'work time' to work on activist projects….moves against the neoliberal forces of academic productivity….the ultimate theft may be the theft of ourselves: our leaving HE to take up radical community alternative" (2021, p.214).

As one form of a more undercommoning attitude to my place in HE, Jack Halberstam offers some inspiration, "And what does the undercommons of the university want to be? It wants to constitute an unprofessional force of fugitive knowers, with a set of intellectual practices not bound by examination systems and test scores" (2011, p.8). So, undercommoning here, framed by Halberstam, is specifically about developing a personal *attitude* of becoming 'unprofessional': developing a position of not simply adhering to the strategy or aims of my employer without critique and reflection. Although this is only one framing, the notion of resisting the pull of a professional attitude, particularly as a legal scholar, certainly speaks to me. As will be expanded on in later sections of this thesis, the pull of the 'professional' and of the perfect lawyer is quite stark within legal education.

Further, and relatedly in Halberstam's work, I am buoyed by the notion of the 'art' of failure in my role: "under certain circumstances failing, losing, forgetting, unmaking, undoing, unbecoming, not knowing may in fact offer more creative, cooperative, more surprising ways of being in the world" (ibid, p.2). So, rather than ignoring failure or indeed pitting it negatively against the success of individual neoliberal professionalism and perfection, undercommoning resistance could form as *actively* failing from the gaze of a marketised, neoliberal ideology: "The concept of practising failure perhaps prompts us to discover our inner dweeb, to be underachievers, to fall short, to get distracted, to take a detour, to find a limit, to lose our way, to forget, to avoid mastery…"(ibid, p.121).

Such active failure therefore could problematise market productivity, individual success measured against metrics, the consumerist mindset, and the notion of a self-sufficient homogenous individual: “Today in the university we spend far less time thinking about counter-hegemony than about hegemony” (ibid, p.17).

Resisting the bullshit

Related to this attitude of an undercommoning approach, I reflect on a commitment to ‘resist the bullshit’. I use the notion of ‘bullshit’ here from David Graeber’s ‘On the phenomenon of bullshit jobs: A work rant’ (Graeber, 2013)’. In this article, Graeber critiques the notion of jobs that merely fill vast amounts of working time with administrative tasks that perpetuate and hold up corporate power i.e. work roles that simply involve tasks that provide no real value to other people’s lives. For Graeber, such roles are endemic in neoliberal discourse, as they fuel the relentless productive mindset of capitalist economic value.

Graeber (2013) identifies a teacher as a role that does not involve a ‘bullshit job’. Ironically, this thesis in parts forms a deep critical reflection of quite how much ‘bullshit’ there may indeed be as a teacher in HE. My current role is filled with tasks that perpetuate harmful neoliberal discourse and fuel the service model of contemporary HE. As a result, I have less and less time to fit in the hard yards and the critical reflection on my pedagogical and/or activist practice (outside of the time that I have had the privilege of carving out for this thesis). Further, when I have spent time on critically raising my conscience in this way, I have often felt the pull of the norm of the day job, most vividly the demand for delivering and managing teaching practice ‘consistently’ and rapidly.

Acutely aware of the fact that I cannot probably financially afford to leave the job that I have for community alternatives, could I look to cut out, de-prioritise, or commit to a perfunctory approach, in relation to any tasks that do not seek to critique and move against a neoliberal ideology? This would necessarily need to be covert, and carefully thought through. However, by taking this micro, every day form of avoiding, refusing, or limiting the time I spend on the strategic neoliberal tasks that I am assigned, perhaps this at least starts the journey of resistance or activism. Examples of roles and tasks that I hold, and my responses to them, are explored further in my final section manifesto.

Will my actions be enough?

As noted above, a scholar activist, as framed within critical and abolitionist pedagogy, necessarily involves a subversive attitude to complicity. I am conscious that industrial action and union activism is highlighted as an important part of the picture. As I have noted, although it is recognised that macro protest may increasingly hold less transformative power, and may give increased ability for universities to ignore, shut down or discourage union activism, union activism seems to form as a collective opportunity to stand in opposition to university neoliberal processes.

This is uncomfortable to me, as I have never before taken industrial action. There was never an active union representing solicitors, and I grew up in a family environment where union membership or activism was not discussed. I am now a member of a union, and I have sought to show solidarity with previous industrial action through acts such as contributing to

strike funds, sharing information about the action with students and friends outside of the university, and seeking to read the reasons and aims behind each set of industrial actions.

However, two things currently stop me from taking industrial action - I feel a sense of obligation to my often 'hungry' law students, and I increasingly fail to see the power of industrial action as counter hegemonic practice. I do not fail to see the irony in being stopped by these thoughts, given that they are tied to the pull of neoliberal complicity. Also, I do not fail to see the contradictions in exploring scholar activism yet choosing not to engage in industrial action.

Yet for now, industrial action does not seem viable to me - the work will still be there when I return, I lose significant income by engaging, and the industrial action seemingly does little to stem the tide of deleterious change. Is my time instead not better spent within the classroom, cognisant of my complicity and seeking to explore this contradiction with my students? In addition, I see some union action as hierarchical in nature - professional services and staff 'lower graded' by the university have no option to take such action (often part of other, less active unions), yet are regularly targeted as the initial staff for redundancy rather than senior staff.

The power of pedagogy as resistance or scholar activism?

I started this section with my desire to remain a believer in the potential power of pedagogy. Could combining a critical approach to legal education together with the energy of a collective community of both staff and students, create something meaningful for my future role at a contemporary university?

Even within abolitionist thinking, it is acknowledged that a critical approach to education *may* be able to be address the hegemony of neoliberal discourse: "a political and pedagogical project that does not obscure the role of universities in slavery and colonization but rather explores how to create alternatives spaces, conceptual frameworks, and pedagogical practices that enact an abolitionist approach (Zembylas 2021, p.126). On this Zembylas recommends that " it is crucial to outline how students through specific acts can refuse to allow systems of racist and/or colonial violence to continue harming other people and themselves without realizing it" (ibid, p.132).

One key aspect of attacking the hegemony of neoliberalism therefore appears to be a calling out of its contradictions and inconsistencies with my students i.e. where its ideals and values fall apart in the affective reality. There seems therefore, at least the potential for, this to take place within the pedagogical environment of a university; after all, students do collectively gather together there and in ever increasing numbers:

> One such area worthy of consideration is whether intellectuals shaping the co-production and dissemination of knowledge can choose to shape their teaching from being overly descriptive and so supporting existing power relations, or whether their teaching can be enhanced to promote critical thought and debate? (Spolander et al 2017, p.73).

To counter my feelings of 'is this enough?', I at least commit to rallying against the abstract,

neutral or descriptive. So, how can I talk more openly in the classroom with students about my own reflections of the university setting? My fear remains that students may not want to talk about this stuff, or that they may find it chaotic or upsetting to reflect on their own preconceptions about what a university is. But, the desire to try is not dampened.

To Section 3

In order to help navigate the potential power of pedagogy further, I appreciate the need to first reflect further on my own discipline of legal education. Section 3 seeks to open up this reflection, to aid this increased specificity. Once more, the next section follows a methodology of reflexivity - challenging my pre-conceptions on the context and operations of legal higher education, in order to navigate the complex picture of experiencing HE as a teaching-focused ex-legal practitioner. From here, the aim remains to explore the potentiality of counter-hegemonic action.

Section 3 - a critical analysis of legal education in the UK

In this section, my aim is to reflect on the context of legal higher education in England and Wales. This framing will hopefully assist me in developing a critical reflection of the specific setting within which I now operate, recognising the context-specific analysis required for assessing 'neoliberalisation' and also acknowledging the more specific activist resistant responses.

As will be analysed and explored below, this section aims to highlight the specific *contested* history of a legal education context set against the development of the wider HE context. This is to highlight the specific challenges and ongoing possibilities of something different emerging within legal education, along the lines of some of the inspirations for resistance or activism noted in the previous section. In particular, I seek to highlight below how a conflict zone over the 'purpose' of legal education has led to a lack of commitment to constructive dialogue over the purpose of law schools. This section also highlights how law schools 'fit' within neoliberal values for universities, framed as cash cows that can easily market themselves to incoming students and therefore 'answer' the perceived pressures on fee income.

Therefore, this section of writing is aimed at highlighting how neoliberalisation has crept into legal education, but also to highlight how law schools can fail as sites for supporting pedagogical policies, and may do little to add support to counter-hegemonic practice.

A brief history of legal higher education in England and Wales

In England and Wales, legal HE has had a contested and challenging history, and certainly it remains a conflicted place today.

A useful way into this debate is through Margaret Thornton. Thornton has written extensively on the topic of neoliberalism and legal higher education, including analysing some of the arguments about the purpose and nature of legal education. Thornton's background straddles the professional and academic, being qualified as a Barrister in Australia, but also working as a very well established legal researcher in HE. Therefore, her work interests me in particular because of our shared backgrounds of practice and academia.

Thornton posits: “When the creation of law schools within universities was first mooted in the 19th century, there was fear that the university enterprise would be tainted if law schools turned out to be mere “trade schools” (2014, p.22). This quote raises two initial points of reflection:

(i) Law as a distinct ‘academic’ subject recognisable today, *within* universities, appears as a relatively recent notion for a significant number of universities within the long history of higher education.

There did of course exist a series of fragmented and very established examples of universities offering legal education in some format (specifically at Oxford and Cambridge), but much legal education within England and Wales took place *outside* of the university setting, within Inns of Court, law firm apprenticeships or similar: “Although there is evidence of Roman and Canon Law being taught in the ancient universities from the early medieval period, Common law legal education was, on the whole, a late starter and slow developer...English legal education and training emerged largely as a creature of the legal profession and particularly the institutions of the Inns of Court” (Boon and Webb 2008, p.85, p 82). The Inns of Court were, and are, all based in the City of London, and were initially established solely as a site of legal education and training. In more recent history, the Inns have formed into the professional associations for Barristers (rather than Solicitors).

The ‘ancient’ universities of the medieval period took their academic inspirations from the famous law school of Bologna, which focused on Roman law (principles developed from the Roman empire, which developed into ‘civil’ law principles) but also from Canon law (principles initially developed from the Catholic Church). The Inns of Courts and law firms of England and Wales instead focused their approach on the development of the ‘common law’; this is law specifically developed by the Court system in the UK through judicial case precedent.

It must be recognised of course that, before the 19th century, only a very small number of ‘ancient’ universities actually *existed* (with only Oxford and Cambridge in England and Wales). However, even after the initial expansion of universities in the early 19th century, these ‘newer’ universities were still not teaching the ‘common law’ of England and Wales within law schools

> ... law schools did not rank as fully fledged law faculties, forbidden as they were to teach Roman law. In Oxford, civil law (Roman law) and canon law were taught from the twelfth century…After the Reformation, only civil law was taught, and, although the first chair of English law was created in the mid-eighteenth century, there was no degree in English law until the late nineteenth century (Stolker 2014, p.36).

(ii) More crucially for my own study, Thornton (2014) is highlighting the conflicted space of the purpose of legal education and an apparent dualism existing between the purpose of legal education as a form of scholarly education taught through universities (which is often labelled an ‘academic’ study of law) or the purpose of legal education as a skills-based, legal profession or ‘trade’ model taught by the trade schools: “Ever since medieval universities began teaching law there has been a contest of ideas about whether a scholarly or skills-based methodology was appropriate” (Carrigan 2013, p.315)

My own context of law schools

Turning briefly to my personal experience of law schools, The University of Law ('Ulaw') (my former employer) is a private limited company registered in England and Wales. It is owned by a parent company, Global University Systems ('GUS') which is a private limited company based in the Netherlands (having been sold by Montagu Capital, a Private Equity firm, in 2015).

By way of comparator, the University of Sheffield ('UoS') is a public university holding status as an 'exempt charity' granted by Royal Charter in 1905; the most common current HE model: "UK HEIs are not state institutions, their academics are not civil servants (as they are in Italy or Spain, for example). 'Public' universities are most commonly legally independent corporate institutions with charitable status (the majority are 'exempt charities')" (McGettigan 2013, p. 126).

Ulaw was formerly 'the College of Law', formed in 1965 (resulting from a merger of previous legal education providers, namely the Law Society's own School of Law and Gibson and Weldon, a 'tutorial firm') and gained charity status by Royal Charter in 1975. The College of Law was a central figure in the 'trade schools'; the site of *professional* legal education. It was not until 2012 that the College of law became a private limited company, was granted 'university status (permitting the awarding of degrees without a royal charter) and was renamed the University of Law. So, clearly Ulaw, prior to 2012 and its change of corporate status, has a history aligned to the central training of the legal profession - it was a preeminent 'trade school'.

For further context, a central examination for solicitors was, from 1862, to be taken by students in order to become a practising solicitor, and was established by the Law Society of England and Wales (the Law Society was formed in 1825, with its School of Law formed in 1903). The Law Society is the former regulatory and representative body for solicitors. From 2007 onwards, the regulatory arm for solicitors became overseen by the Solicitors Regulation Authority (SRA) rather than the Law Society, with the Law Society now acting purely as a representative body. Both the Law Society and SRA are now overseen by the Legal Services Board.

A solicitor is a person qualified to act under the Solicitors Act 1974. Often, in the UK, a solicitor is differentiated from a Barrister (regulated by the Bar Standards Board), both because of the type of legal work that they undertake, but also based on their relative history and development within the UK. My own personal context of the legal profession is practising as, and then teaching, future solicitors in England and Wales.

Law for professional practice - the creation of a conflict zone

Teaching of law, as a 'popular' discipline within universities has had a relatively short time to develop on a large scale and, therefore perhaps a relatively short time to be critiqued. Large scale formal legal education took place outside of universities, and this education focused on law as training for entry into the legal profession.

Seemingly the most important part about this mode of legal education was delivering the necessary knowledge and skills to deliver the law as it *stands*. This 'professional' legal education in itself only began to be more formalised following the introduction of professional

examinations for both Solicitors and Barristers (in 1862 and 1872 respectively) linked with subsequent training in practice through ‘articles’: “Exams were introduced as an addition to existing apprenticeship requirements, and so study had to be undertaken around the training period” (Boon and Webb 2008, p.84).

Resultantly, much of the history of legal education up until at least the 1950s, was still focused on the professionalism of law as a subject. Stolker notes as such here:

> Insofar as legal scholarship existed, much of it looked outwards for its legitimacy to the courts and the profession, and, although the liberal agenda was sometimes used to advance the cause of university legal education, law remained something of a Cinderella subject until well into the twentieth century (2014 p. 86)

In this context, Stolker (2014) uses ‘cinderella subject’ to denote something looked down upon i.e. advancing a vocational, professional thrust to legal education. Importantly, it is this *downgrading* of professional legal education that is crucial for my ongoing writing and reflection; I describe this hierarchy and dualism as the ‘conflict zone’ of legal education - a lack of resolution over the purposes of law schools within universities, and these competing influences seeking to win out as priority rather than working more in harmony.

Moving through the doors of universities - significant change through Robbins and Ormrod

The Law Society, and its regulated solicitors (the heart of the legal profession), for a long time, did not support legal education being taught at university as some form of preparation for legal practice, instead continuing to prioritise professional legal education being delivered through the ‘trade schools’ described above: “it was not until after the report of the Ormrod Committee in 1971 that the solicitors' profession became a graduate-entry profession and abandoned five year articles of clerkship as an alternative path to qualification” (Boon and Webb 2008, p.87). Boon and Webb’s article here is very well researched on these developments, and thus is an often cited source when examining this legal education history.

This Ormrod Committee Report of 1971 followed previous work by the Robbins Report of 1963, with its notion “that (economic) progress depended on the development of a sufficiently highly skilled workforce and saw the universities as central to such a policy” (ibid, p.88). Interestingly, this Robbins Report clearly acknowledged a framing of the purpose of university education as the furnace for economic growth and prosperity; and also that university education should be available to the masses. When combined with the Ormrod Report, these reports created a central focus of government policy around what the more contemporary law school could be ‘useful’ for.

So, the notion of developing students *en masse* at law schools within universities for a future of professional practice and successful employment, was given a huge push forward by these two reports. At the same time, the narrative of ‘graduate outcomes’ also began in earnest, particularly for those students with one eye on entering the legal profession post university.

The Ormrod Committee report of 1971 is therefore a critical point of historical development for law and legal education as it allowed for law degrees to become ‘qualifying’ for the legal profession. For my own analysis, the report also fuelled the ‘conflict zone’ of the debates over the purpose of legal education:

> Ormrod has had two other related consequences. First, while stressing the need for a continuum, it succeeded in establishing an often tense dynamic around academic legal education. Second, it marginalized academic legal education in professional formation (ibid, p.91).

So, whereas prior to this point, universities could perhaps ignore the conflict over the purpose of legal education, specifically through leaving the job of professional education to the 'trade schools', Ormrod brought the battle over the purposes of legal education to the doors of the university. Most significantly, the Ormrod Committee report introduced 'academic, vocational and continuing' stages of legal education. As noted, this formalised the concept in England of Wales of the mandatory prerequisite for a university law degree to enter professional practice (or 'equivalent' - an important caveat, recognising the possibility for conversion courses from non-law degrees usually in the form of a postgraduate diploma or Masters in law). The training included time spent in legal practice prior to qualification as before, but this time in practice was renamed the continuing stage.

So, this moment of history should not be understated. Prior to this point, universities could continue to claim that any law degree in a university could be focused on things other than the legal profession if it wished to; the mandatory nature of a law degree as a precursor to entering legal practice as a solicitor significantly altered that optionality.

The Qualifying Law Degree and the creep of neoliberalism

Unsurprisingly, given the historical separation of universities from professional bodies' training, law degrees at universities were not considered 'acceptable' to the professional bodies as qualifying for legal practice without the inclusion of 'core' subjects studied within them. There seemingly was mistrust on both sides, in that universities and the legal professional bodies had misgivings about the way in which law should (or should not) expand within university law schools and away from trade schools.

So, after Ormrod in 1971, the relevant professional bodies for the legal professions started to set core subjects incrementally through a Joint Statement on Qualifying Law Degrees ('QLD'). Interestingly, the nature of this 'core' changed very little from 1971 to 2020, requiring the inclusion of seven QLD core subjects for a qualifying law degree.

So, through the QLD, the legal profession sought to try and control the direction of graduate outcomes and competencies for those undertaking this 'new' form of university education. Now, a university law school offering an undergraduate law degree after 1971 clearly could choose not to include QLD subjects and could ignore the legal profession altogether if they wished, i.e. actively not provide a gateway to legal practice. This could be achieved variously by offering a BA Law degree (incorporating the potential for philosophy, sociology, history, and beyond, to potentially be intertwined with a degree programme) or more commonly degrees in Criminology or Sociology delivered within law schools.

If a law school chose to do this though, this impacted on its ability to offer students attending universities the option, or perhaps the dream, of entering the legal profession i.e. the notion of professionality and graduate outcomes. So, even if universities felt 'above' the QLD and the legal profession, the problem in this attitude became the increasingly competitive environment created between universities as the number of students and the number of

universities started to rise. So, in this way, the aspiration of professionality contained within a law degree was recognised as a powerful tool for recruitment, and ignoring a QLD could clearly make a law school feel less competitive.

It is here, therefore, that we really start to see the creep of a neoliberal marketised discourse impacting on legal education; that of selling the product of a university law degree to the student consumer. In particular, any decision by a university with less 'prestige' e.g. those polytechnic institutions, that were recognised as universities after 1992 (through the Further and higher education Act 1992), to offer a law degree without some form of future vocational focus, was competitive suicide. It was only really those 'prestigious' institutions, like Oxford, Cambridge and a small handful of other older institutions, that could continue to plough their own furrow without being impacted by a drop off in students wanting to study at their institution. However, even at those places, the situation could not last forever.

Postgraduate vocational legal education

For further context, the 'vocational' stage that Ormrod created in 1971, is where the Legal Practice Course ('LPC') was eventually formed in 1993. It was here that the final focused stage of future solicitor training was redirected.

Given that education for professional practice had been previously focused on preparing for, and passing, centrally set examinations, the history of this 'new' vocational LPC training was underdeveloped from a pedagogical perspective: "Teaching in the professional courses remained, at least until the end of the 1980s, largely didactic and often unimaginative" (ibid, p.92). Therefore, the LPC had work to do, following its inception, to focus more expansively on practice based subjects and wider skills, in an attempt to develop teaching beyond passing assessments alone. Importantly, the LPC was consistently reviewed, including the decentralisation of exams in favour of local institutional examination.

Within LPCs, although the Law Society offered some overseeing of the format of the programme and external examiner oversight, there remained a debate around how much an LPC should specialise any student on specific subjects, skills or otherwise. This in part reflected the changing nature of the solicitors profession itself, with differentiation and diversification of solicitors firms ever increasing. So, a lack of common understanding of vocational training developed: "this has arguably rendered a large common platform of legal knowledge redundant" (ibid, p.110). As a result, although the teaching on the LPC developed into less didactic exam-preparation modes, there still existed a challenging debate about the approach of the LPC.

Unfortunately a central issue with combining the LPC with the word 'vocational' perpetuated the hierarchy and conflict zone of legal education - universities, particularly those who felt more esteemed, could continue to downgrade 'law for professional practice' as a vocational skill to develop on a postgraduate LPC rather than something to be embraced fully within the more esteemed undergraduate law degree. As a result, this helped potentially alleviate substantive pedagogical changes to the law degree itself through the workings of the QLD; but also continued to fuel the marginalisation of law for professional practice.

Return to the undergraduate and law as an academic discipline - the hierarchy

Law for professional practice being historically outside the walls of universities stratified attitudes and practices towards the purposes of a legal education. Given the length of time that these separations were in place, together with the rapid change of focus forced on both universities and the legal profession post-1971, a messy and contested atmosphere in law schools developed over such critical questions as: what type of law should be taught at university, how it should be taught, and indeed who it should be taught by.

Have law schools, en masse, actually committed themselves critically to reflect on the question of 'what is the purpose of legal education within universities?'. After all, law schools have historically been uncomfortable about resolving the conflict zone of the focus for their legal education:

> In 1883, Albert Venn Dicey, a notable successor to Blackstone's Chair, could, perhaps, be excused for asking the question in his inaugural lecture, "Can English law be taught at the universities?" That variations on that question were still being asked in inaugural lectures and presidential addresses into the 1950s is a mark of the historically low (collective) ambition of English legal academics (ibid, p.87).

Boon and Webb (2008) use the term 'low ambition' of law schools, to explain that, particularly in provincial universities, law in the 1960's was still being taught by ex-practitioners and largely by way of lecture format. This materialised because of the rapid and large scale changes following Robbins and the later Ormrod; universities felt they had to react quickly, and ironically it was those who had previously taught in the 'trade schools' that were called upon initially by universities to meet this demand because they were experienced in this method.

Unfortunately, 'low ambition' also reads to me as a swipe by Boon and Webb at both the notion of law for professional practice being taught at university, but also it being delivered by ex-practitioners rather than 'academics'. So, the relative expertise or ability of an ex-practitioner as against a career academic (who usually has studied beyond degree or Masters level in the discipline of law) is a key part of the stratification hierarchy of what should be taught, and by whom.

There is no alternative to neoliberalisation

As a result of all of this history, it seems unsurprising that the aims and purpose of legal education remain a contested space in contemporary law schools, in particular between law as an academic discipline and law for professional practice. The debate has the potential to be argumentative and unresolved, where practitioners, academics, the profession, and universities perpetuate a resistance to intertwining law as an academic discipline and law as professional practice, or at least recognising the potential value of both.

Where the picture is messy and conflicted, de-prioritising a critical pedagogical reflection over 'what is the purpose of legal education?' is tempting - after all, can such a debate happen productively and positively where there is such conflict or division? Atomisation of law for professional practice and law as an academic discipline into separate silos, creates an atmosphere of distance rather than constructive collaboration.

As I have reflected on in Section 1, this is exactly the type of conditions that a neoliberal ideology can be energised by - the perceived lack of a viable alternative. Neoliberalism therefore appears to have been pushing against an open door in this respect, within law schools; the *complicity* rather than committed critique emboldens neoliberal hegemony. In addition to this lack of commitment to an alternative, law offers a very seductive 'service model' within the marketised academy.

The orthodoxy - the tradition of law at university and its labelling

Law is a part of the orthodoxy of educational subjects; it has a perception of being esteemed, aspirational and deeply connected with a class of professionals: "Law, together with medicine, represents the archetypal model of the established profession. It presents the formal traits traditionally associated with professionalism" (Bolton and Muzio 2008, p. 284).

Now, in some ways this 'professionality' of law is ironic, given the historical downgrading of the training of the legal profession as a trade or vocation to be taught by alternative providers. Rather, notions of being professional during university education have been moulded by the more esteemed universities as a badge of academic honour, in that the study of law maintains a sense of power, hierarchy, privilege and esteem.

In a neoliberal marketplace, legal education's aspirational, privileged status needs to be *labelled* as such in order to respond (rather than contest) neoliberal discourse; framing legal education as esteemed, aspirational and professional maintains a sense that a law degree is marketable and of value in the eyes of a university institution and its students. Therefore, any constructive commitment to the value of professional legal practice shaping law school pedagogy can be downgraded for the way in which legal education appears to applicants: "Whilst it is the case that the majority of UK undergraduate university law students do not go on to practice law and are not all able to obtain positions as practising lawyers, the institutional aspiration that they will do so remains a powerful influence on the inclusion of an increasingly commercialised curriculum" (Collier 2005, p.489).

Universities wish to make it appear to future students, and to its institutional competitors, that legal education is professional in the sense of its crucial place in the market. If the label is the aim, it is not necessary to assess the granular content of legal education as a result of this. It can remain a messy and contested space, rather than shaping legal education around critical pedagogical aims for example.

As the race for student fees ramps up, law schools only increase this sales tactic - the label of something that gets students into universities.

Individualist and competitive - the contemporary law student

As a result of the aspirational and 'esteemed' value of a law degree being encouraged and granted energy by neoliberal value, the study of law and the students that engage in it can subsequently become detrimentally affected through a very individualist and competitive attitudes to their studies

Entry into a law degree is often labelled as selective, and often requires high grades at A-level or equivalent. Combined with a notion of a law degree being an 'esteemed' calling,

individual success, and therefore individual failure, can be created: “Law schools, especially those that regard themselves as elite, are highly selective about whom they admit to this system. Many select candidates with the very highest academic credentials, knowing that practices described as “quality assurance” require that some of these students will fail” (Cartwright 2025, p.463). A lack of attention to those that fail, and a lack of recognition that this failure is rarely the individual responsibility of the student involved, perpetuates neoliberal framings of value.

Should we go back to the past for inspiration?

Reflection on the changing nature of legal education within the university setting does not seek to go back to some sort of perfect, or golden view of legal education: “The argument is not that there ever existed a ‘golden age’ of universities and their law schools. Rather, significant shifts are occurring, set within the context of neoliberal political and economic imperatives and cultural change that is redrawing ideas of legal professionalism in far reaching ways” (Boon and Webb 2008, p.33). Any critique on legal education is not about returning to the past but rather to highlight its historical development, and specifically to connect it to the increasing influence of neoliberal ideology. We are not looking to go back in time; as has been explained earlier in this thesis, it is important not to frame any HE as in a *contemporary* crisis.

Notwithstanding this, Thornton argues that there *was* a time, in the Post World War II period, whereby the nature of those teaching at universities in the UK started to change for the ‘better’, following an increase in the number of universities offering law degrees and an increase in the number of students studying law. Thornton posits that it was ‘career academics’, rather than legal practitioners, who eventually started to flood into law schools (seemingly pushing out the initial ‘trade school’ teaching stop gaps), allowing for students to “think creatively about the beneficent possibilities of law as a force for social change. New ways of thinking about law informed public debate on a raft of novel issues, including domestic violence, land rights for Indigenous peoples, consumer and environmental protection” (2011, p.62). What remains contested of course, is how widespread such a ‘critical’ approach was embedded particularly within the core.

In any case, Thornton goes on to bemoan that any notions of a different, or ‘creative’ legal education have since been largely snuffed out: “My concern is that after a short flirtation with a liberal legal education, the neoliberal turn has induced a reversion to the crammer culture” (ibid, p.107).

Although Thornton (2011) recognises that neoliberalism has caused the return of cramming in legal principles rather than unpacking them for wider critique, her writing does also cut a little deeply as a previous legal practitioner. Is my ability as a teacher stifled by my time in practice rather than engaging in further study in academia through a PhD in law or similar? As I have reflected on, I came into teaching within HE because of, not despite, my time in practice. I fully expected to have that prior practical knowledge respected by others and for it to be relevant and important for students.

I was originally taken on to only teach on the postgraduate LPC on the grounds that this is a programme purely focused on law for professional practice. However, I did subsequently find myself teaching undergraduate law, because there was a need for more teachers to teach a

large cohort of students (and to support my teaching and research colleagues to create space for their research). Ironically, it was at this point that senior academics started to suggest to me that I might like to undertake further study of law at Masters or Phd level; perhaps I was not 'qualified' enough when the senior managers wished so.

It is only through this writing, that I now better appreciate the context of HE that I was entering back in 2011; I never challenged my preconceived notions of how I would 'fit' in a university setting at the time, and therefore the backlash of my practical experience was extremely jarring. Only now can I appreciate the comments of 'so do you want to consider further study in law?' better i.e. framed within the contested historical setting of legal higher education, and the hierarchical placing of academics in particular.

I came into teaching with a passion to teach and share my insight and reflections with students; and therefore being singled out as an ex-practitioner who was perhaps not of the same academic value as some of my new colleagues really hurt. The marketisation of legal education, and the related inability to resolve any conflict over its purposes, seems to have made my role ever more focused on teaching as many students as possible the same set of doctrinal principles without more careful critique and reflection.

The 'popular law school' and 'sameness' of content

Instead of seeking to address the debate head on about the conflict zone of legal education, university law schools increasingly enable an attitude of 'selling' legal education as the service model. In this way, law schools become complicit within neoliberal discourse, through driving applicants to law schools and making law a popular subject for potential applicants into HE.

As noted, the Robbins and Ormrod Reports permitted law to become a subject of higher and higher enrolments from school leavers. As with other areas of higher education, law formed a lynchpin of the massification of HE at this time.

As Thornton reflects: "The corporatization of the university has resulted in a proliferation of new law schools and an exponential increase in the number of law students. As government funding for public universities contracted, law was viewed as an attractive offering by new universities as well as older institutions that did not have law schools" (2014, p.25). This increase of law students currently sees no sign of abating.

Law Schools became perfect for the places to finance the rest of the faculty and indeed the university as a whole. Whereas outside of the university setting the 'trade schools' faded away in respect of undergraduate study (albeit trade schools, including the College of Law, remained crucial as a provider of postgraduate vocational education such as the LPC), the number of universities offering a law degree rapidly expanded and the number of students enrolling on these degrees expanded with it.

This ability for law students to attract students therefore wedded itself neatly to the way in which university finance was developing along marketised neoliberal lines: "University managers generally believed that law required minimal resources and could be taught cheaply through the large lecture method" (ibid, p.25). Law could steal a march on other university subjects; it can be taught in the form of lectures and seminars, without the need for expensive equipment, buildings or high contact time with students on campuses.

Law became the ‘cash cow’ of a university setting. Law schools are beacons, or targets, for the messaging of a ‘fear of falling behind’ i.e. losing students to other universities. In this way, Law Schools increasingly present themselves as slightly ‘odd’ within the wider workings of a university, yet also increasingly crucial for a university to operate financially:

> a law school is often seen as the ‘odd man out’ in the university: its education is considered dangerously close to the practice of law, its degrees mainly as a technical qualification, its funding a money-spinner for the university, its research annotative and nationally oriented, its methodology ambiguous, and its publishing curious (Stolker 2014, p.88).

Therefore, law schools are increasingly a lynchpin of the financial standing of the faculty and university; pressured to market themselves to future students, without the time nor prioritisation of what law schools can actually offer by way of critical legal education. In addition, with this pressure to recruit, support for students within law schools only becomes more challenging in terms of staff-student ratio.

Most relevant for my own thinking, within this competitive, service model of a law degree, *sameness* of legal content also becomes a persuasive draw. When combined with the shaping of the law degree through the QLD (in its requirement that any law degree must include seven core subjects) and the priority for law to include graduate attributes for the job market, a law degree shapes itself along a standard model to uphold. As will be expanded upon in the next section, to establish a law degree that offers something non-standard, or *different*, from other competing law degrees, may well be considered competitive suicide - not only for the law school, but for the university more widely. As has been explained, this now involves a label of professional legal practice, however that may actually in reality be delivered. The orthodoxy must be maintained, again with a fear of losing neoliberal competitive advantage.

To Section 4

So, this disciplinary reflection presents an increasingly ‘popular’ law school, developed with a conflicted array of career academics and ex-practitioners, fuelled by historical conflicts over law as an academic discipline and law for professional practice, and populated by aspirational notions of graduate attributes.

This has created a messy, chaotic arena for consideration over wider issues of what a law school should, or *could* be, and what legal education is for. Whilst this conflict remains, and a critical collective project is not encouraged, neoliberal logic is perfectly placed to remain rational and hegemonic. When it ‘pays’ to sell contemporary legal education as an aspirational subject wedded to graduate outcomes and employability, a deeper reflection over what is actually going on within the content and delivery of legal education in law schools can be de-prioritised.

To move beyond and against this rather challenging picture, in particular for my own ongoing thinking on the potentiality for counter-neoliberal practice, it is crucial to reflect further on an analysis over what the purpose and content of legal education *could* be for a contemporary university law school. However, before doing so, Section 4 seeks to more deeply reflect on what dominant bases of legal pedagogy currently exist within law schools.

Section 4 - what is the purpose of legal education?

In this section, I hope that an analysis on the potential purposes of legal education will help me to reflect further on debates over content and delivery of legal education operating within a contemporary university setting

This section reflects on the ways in which canonical, privileged legal education has existed, and continues to exist, within university law schools - this being a traditional reification of the notion of legal doctrine and the 'case law' method of teaching. From this, I highlight some of the antagonistic alternative approaches to legal education that have been considered both within law schools and wider scholarly writing; and seek to reflect on how these alternative approaches *may* offer a more expansive, critical conception of law and legal systems. Most importantly, this section reflects on the challenges of achieving potential alternatives to core teaching of legal education, fuelled by the power of neoliberal discourse already described. Within this, there is a clear difference between the agency within legal scholarship developments compared with practical pedagogical changes.

This section also touches on the changes that have appeared most recently within professional legal education in the form of the central Solicitors Qualifying Exam and how this may continue to influence both the content of legal education, but also the ongoing development of the providers of legal education - thus noting the potential expansion of private universities or other private non-universities in the HE space.

Therefore this section is framed within the dynamic already described - that of the dualism, of law as an academic subject on the one hand, and of law as a precursor for professional legal practice on the other; and of the neoliberal logic towards sameness and standardisation of content rather than more critical pedagogic aims.

Legal positivism, legal formalism and the doctrinal approach to legal education

It is my developing reflection that the traditional dominant pursuit of law as an *academic* discipline centres around notions of legal positivism, of legal formalism and of law as a doctrine.

As a starting point here, legal positivism is defined in the Oxford Reference as follows:

> An approach to law that rejects natural law and contends that the law as laid down (*positum*) should be kept separate – for the purpose of study and analysis – from the law as it ought morally to be. In other words, a clear distinction must be drawn between "ought" (that which is morally desirable) and "is" (that which actually exists) (Law and Martin, 2009)

Legal positivism, as defined here, rests on the notion that law is something real, objective and separated from the socio-legal or morality; known as the 'separability thesis' of legal positivism.

This definition acknowledges how legal positivism is a *theory* of law, and therefore how it is often dualistically pitted against natural law theory. However, what the quote perhaps does not acknowledge, is that there has been much disagreement around the exact extent and nature of legal positivism between time periods and theorists in different jurisdictions.

What I focus on, therefore, is the way in which the positivistic features of 'truth' may have developed from Legal positivism as a *theory* of law into a way of analysing how law is, or should be developed and made i.e. as practice. This may be described as a *normative* version of positivism, or perhaps more specifically as Legal Formalism: "Building upon legal positivist theories of reason and truth birthed during the Enlightenment Period, the idea of formal knowledge in law, or legal formalism, gained prominence in the late nineteenth century as a guiding normative theory of law" (Toussaint 2023, p.35).

As Brian Leiter (1999) points out, there is easy conflation between legal positivism and legal formalism: "Positivism is a theory of law, while formalism is a theory of adjudication. If positivism is one's theory of law, nothing substantial follows about one's theory of adjudication. Indeed, it is perhaps the most notable failing of positivism as one of the great traditions in jurisprudence that it has so little to say about adjudication" (p.1150). This is an important insight- I focus on the way in which law may be perpetuated as a set of 'correct', objective doctrinal judgments; thus most specifically focusing on what Leiter would describe as Legal Formalism, but what may also be described as positivist in nature.

Rather than embark on a debate on the varied justifications and nuances of Legal positivism as theory in and of itself, this section therefore seeks instead to focus on the way in which legal formalism, perhaps developing out of a particularly 'hard' version of positivism, may have been enacted as the correct, or dominant, way in which core legal *teaching* is taken up by law schools. The focus of the critique, therefore, in terms of a formalist notion of positivist thinking, is the subsequent potential for de-prioritising a methodological critique of law; thus missing a debate over the various lenses that may be *assumed* when approaching legal critique, and the perpetuation of the status quo thinking that may result.

Bal Sokhi-Bulley (2013) writes in a very accessible way about the concern for law students of learning predominantly through legal positivism, which she equates with the *doctrinal* approach to studying law: "Most of the time students are not aware that, on the one hand, their attitude or ability to choose a methodology is impaired by having been disciplined and trained in a legal positivist tradition only and, on the other hand that their 'chosen' approach, if doctrinal, should be labelled legal positivist" (p. 11). Sokhi-Bulley focuses here on the version of Legal Positivism that extols a formalist, doctrinal reification within the teaching of law.

Sokhi-Bulley (2013) makes an insightful point about the way in which such an approach could be seen to *dominate* law school teaching: "in most Law Schools law is taught in a traditionally doctrinal sense. Subjects such as legal theory, legal philosophy or jurisprudence, are typically considered 'peripheral subjects' – as opposed to the 'core subjects' that make up qualifying law degrees (such as Land Law, Criminal Law and European Union Law)" (p.9). So, Sokhi-Bulley's claim is that, even where a critique of positivism is attempted, this can be pushed to the periphery of law degrees, whereas the 'standard' core of a law degree is taught as learning and applying legal doctrine. With the QLD model of a law degree, these subjects can only ever come later within a law degree once it opens itself up to 'elective' content.

The resulting concern from such an analysis is the challenge for students to be *critical* legal scholars through recognising critique of legal doctrine and imagining alternative approaches to concepts of law and legal systems. Sokhi-Bulley is passionate about what should be done

about this, to allow for more critical and alternative viewpoints to flourish among those studying law: “I argue that the external approaches, or what I am calling ‘alternative’ (i.e. to legal positivism) approaches to law are necessary so that we, and our students, might discover alternative truths about the law and about society” (Sokhi-Bulley 2016, p.126). How this could be done, of course, requires further unpacking.

The canon of legal doctrine

One way of describing a dominance of curriculum content within law school teaching, is to describe it as forming a canonical, privileged set of legal principles and judgments that ‘ought’ to be taught as part of legal education. What follows, is the risk of assuming too readily that there are topics and knowledge that ‘are’ law; and therefore, from this framing, there are topics and knowledge that are ‘not’ law.

As a reminder, in the jurisdiction of England and Wales law and legal systems operate with a common law system - that is the building up of doctrinal law through a system of case law precedent (as delivered by the judiciary) together with legislation (which holds sovereignty, or precedence over case law decision) as developed through the Parliamentary executive: “Western law is understood to be enshrined in particular institutions which we assume to be the repository (if not the source) of what we understand to be ‘law’” (Davies 2023, p.44).

Traditional common law theory bases itself on a declaratory version of law; specifically it sees “judicial function as one of acting impartially and objectively and only in accordance with established law, while political and inventive actions are taken by Parliament” (ibid, p. 49). In this way, the common law of England and Wales, when delivered as part of legal education, can imbue a law and politics divide.

This canonical, common law approach to legal education is arguably mainstream, is deep rooted and is granted value. One way in which the canon may have been perpetuated through law schools, is through the tacit acceptance of what makes up the ‘core’ of a law degree. The QLD as explained in the previous section, introduced post-1971, contained seven core subjects: Contract law, Land law, Tort, Equity, European Union Law, Criminal law, and Constitutional law. These subjects were, until 2021, a mandatory requirement for law degrees to be ‘qualifying’ (for the purposes of students progressing to legal practice). As a reminder, 2021 saw the Solicitors Regulation Authority remove the requirement of this QLD for entering legal practice; instead any ‘graduate degree’ is now all that is technically needed, albeit no student will realistically undertake the Solicitors Qualifying Exam without some study of law.

These QLD core subjects were traditionally taught in the first and second year of a three year LLB (Bachelor of Laws) undergraduate programme. These core subjects sought to deliver the major features of each of these subjects with the support of ‘core’ textbooks. As Davies notes, these core textbooks were written to help communicate the basic doctrinal principles of these core subjects to students, given that they developed as an essential aspect of their legal education: “the reduction of areas of common law to textbooks which illustrated the elementary principles of law in a unified and coherent fashion” (Davies 2023, p.167).

Given that the QLD subjects were traditionally taught at the start of a students' legal education, the reification of doctrine and assumptions about the 'correct' viewing of legal principles can take hold. Resultantly, as Sokhi-Bulley (2013, 2016) examines above, alternative methodological approaches and critique of doctrinal principles of law can be pushed to the periphery of elective parts of the QLD (which were designed to appear in the second and final year of the QLD). One result of this is naturally that a lower proportion of students study these elective subjects.

Following 2021 changes through the SRA, one may now argue that, given the QLD has now been removed, there is space and opportunity for an alternative structure to a law degree to better flourish. The likelihood of this, however, will be critiqued further below.

The case law method - dominant legal pedagogy and 'indoctrination'

In addition to the basic underpinning doctrinal concepts that were extolled as the 'core' of a law degree, it is the dominance of tradition within legal *pedagogy* that is perhaps most problematic in terms of perpetuating a respect for legal formalism and doctrine. This is the notion that 'core' legal knowledge ought to be taught by way of the case law method. It is this pedagogical tool that perhaps most significantly continues to downgrade a deeper critical debate of positivism within law school classrooms.

The reason for this perhaps has as much to do with the historical context of university law schools as anything. As has been described earlier in this thesis, law schools underwent a rapid and sustained expansion in terms of student numbers actively seeking out to study 'the law degree'. For Davies (2023), "when law became an object of systematic study at British Universities, it was necessary to improve this image of the law: an obscure and illogical mass of technical rules" (p.165). Most interestingly, the task for university law schools was to make law a "respectable and worthy object of university study" (ibid, p.168). So, once law became established in law schools, rather than recognising and embracing the aspects of law that may be described as obscure, technical or illogical (and therefore open to critique or transformation), law schools instead looked to build a clear, defined and 'worthy' law degree. And of course, one that could eventually be sold as part of the neoliberal logic of aspiration, privilege and popularity.

Firstly in the US, and afterwards in the UK, this respectable version of legal pedagogy took place through the case law method. At its core, this method of teaching focuses on careful and close attention paid to judicial case decisions, and specifically the principles (or ratio) that were developed through these cases. This method was first attributed to Christopher Columbus Langdell (Dean of Harvard Law School) in the late 19th century, and quickly took hold in both the US and UK law schools as a respectable teaching method.

Although Langdell's method originated long ago, a reverence for cases and for students learning case facts and legal principles remains a powerful influence today. In the UK context, Russell Sandberg provides a powerful contemporaneous analysis of the problems with a respect for doctrine through the learning, and presentation of case law authorities: "The study of doctrine quickly becomes a form of indoctrination. Law students learn not only how to use but also how to respect authority and how to operate within the world of law. Students are trained that their role is to systematically present and apply the law. Their role is also to critique the law but, crucially, this is only within the law's own terms" (ibid, p.1).

‘Indoctrination’ through doctrine is a well phrased turn; this is, the perpetuation of the doctrine or ‘rule of law’ for law students, and therefore *respect* for it.

In the US context, Etienne Toussaint (2023) also provides a very powerful analysis: “doctrinal law school courses often convey a jurisprudence rooted in a “fidelity to law” framing of professional lawyering, not an identity rooted in a fidelity to community or social justice” (p.28). It is this fidelity to law and its ‘professional’ framing that I look to highlight in particular at this stage.

For Toussaint (2023), a professional lawyering attitude is summarised as ‘thinking like a lawyer’, and this is directly an objective, and value-free version of law and legal systems: “in many law schools, law students are inevitably taught that “thinking like a lawyer” entails analyzing hypothetical facts and abstract legal principles through the eyes of an objective and faceless “reasonable” person, not through the eyes of a marginalized or oppressed individual” (ibid, p.54). Most insightfully here for me here, Toussaint raises one of the most pertinent critical reflections of a dominance of formalist thinking in relation to law; that of not acknowledging the heterogeneity of legal subjects under the law when acquiring law’s doctrinal principles, and instead looking at law through a homogenous, abstract lens.

As a further practical critique of case method dominance, the act of reading and trying to learn canonical legal knowledge can be a barrier. This ‘expectation’, that students ought to read, understand and be examined on a large amount of doctrinal law in a number of core areas, means that studying law can be hard, technical work. Often there needs to be dedicated teaching time simply to allow students to unpack how a case decision is written, let alone take on a deeper critique of its content within its wider context.

So, study becomes a grind, and something that often seems insurmountable and unfinished. As Will Mason and Meesha Warmington (2023) recently found in a qualitative study of students experiencing academic reading, students can see academic reading generally as a ‘grudging act’ that can be both stressful and disaffecting; “Reading became grudging when (i) it was difficult to engage with, (ii) students felt like there was too much of it, (iii) they did not have the time to do it, (iv) they were unsure why it had been assigned and (v) they did not know how to approach it, or what to take from it. These experiences all generated emotional responses ranging from stress to disaffection” (p.855). Although this was outside of legal education specifically, the case law method of studying law can certainly be described in such terms.

Therefore, fitting new critical methodologies and attitudes on top of doctrinal ‘work’ has to contend with the challenge of enthusiasm for reading having already been used up. In addition, increasingly such case law legal principles often don’t make sense to contemporary societal attitudes; the logic of law is questionable, and if this is not openly acknowledged when addressing case law in particular, reading has the risk of becoming increasingly jarring or feel irrelevant for students (especially where some case law from a significant time ago, in antiquated language, still holds precedence today).

Alternative attitudes in legal scholarship - socio-legal studies

The tradition of the doctrinal, canonical approach to learning law, has not existed without challenge, at least within legal *scholarship*. Most notably, following the upsurge in the

number of law schools and students studying law at university in the UK in the 1960s and early 1970s, a critique to legal positivism started to emerge in scholarly work. Boon and Webb argue that this critique to positivism was influenced by "the growth of socio-legal research in the universities, which escaped the 'black-letter' straightjacket....." (2010, p. 82).

In terms of defining a socio-legal attitude to law and legal systems, Guth and Ashford (2014) provide a useful definition:

> ...Socio-legal studies focus on the study of law in a wider context and go beyond doctrinal studies of legal principles. Socio-legal studies are concerned with how law works, how it impacts on people and how it plays out beyond the legal text itself (p. 7).

Clearly, therefore, socio-legal study of law is seen as a direct critique of positivist, formalist thinking, through its acknowledgment of the lived experience outside of the text of the law.

Margaret Thornton (2014) again attributes this positive growth of socio-legal research to the influx of 'academics' with a Phd background rather than a practitioner background, into universities at this time. This potentially allowed legal research that critiqued positivist attitudes to seep into law schools: "Young academics, increasingly, were recruited with PhDs rather than from practice. They often had no practical background, no interest in and little contact with the profession." (p.83). Further, counter-culture within legal scholarship started to adopt a more sustained critical legal scholarship of legal formalism (this is to be explored in the next section of this thesis). I again note the jarring effect of Thornton's writing here given my lack of legal PhD experience.

On this challenge to positivist 'norms' about law and legal systems, scholarly thinking owes credit in particular to notions of postmodernism being developed. Specifically here, postmodernism being developed as a critique to modernism, and the notion of the rational legal actor: "this idea of a unified actor who is independent and rational forms the basis not only of many areas of substantive law, but also of the idea of law itself, as it has been traditionally presented" (Davies 2023, p.368). So, whereas traditional positivist thinking focuses on the notion of universality and abstractness without a consideration of the wider social context, postmodernism instead contests the legitimacy of this form of canonical, universal 'knowledge' i.e. "what assumptions do we need to make, in order to claim that something is scientifically proven…?" (ibid, p.370). Further, "what is eventually known cannot therefore be totally distinguished from the power of those who determine what constitutes power or knowledge" (ibid, p.372).

So, through this philosophical shift, legal scholarship at least permitted a wider consideration of how legal knowledge is intrinsically tied up within its social environment and therefore cannot possibly be explained, or legitimised with 'true' overarching rules. The question remains to what extent this scholarship influenced core teaching in the classroom of law schools.

The 'liberal' law degree

As this type of legal scholarship started to grow within law schools, law schools began to claim that their degrees were 'liberal' in nature, in particular that they did not focus narrowly on the case law method espoused by Langdell in the 19th century.

Morrison and Ashford (2014) posit as follows:

> A liberal legal education is one which does not focus on education for a particular purpose other than education itself. It is not aimed at preparing students for a particular job or profession ..... It is, however, concerned with pursuing knowledge for knowledge's sake and developing skills of knowledge acquisition through research, critical thought and debate. It is also a buzzword and one that is perhaps not that well understood (p.8).

So, although only a summary here, a liberal law school rallies against the purpose of legal education being about preparation purely for graduate employability (particularly the legal profession), and instead focuses on education for 'education itself'. In particular, this quote notes that a liberal legal education suggests a picture of open research, critical thought and debate; as opposed to a more narrow, formalist version of a law degree that may frame the rote learning of case law and precedent as the key aim.

Notwithstanding the attempt by law schools to badge themselves as liberal in nature, it is acknowledged that a liberal law degree can clearly be an ambiguous term, not least because its purpose being about 'education itself' does not expand on what version/s of education this envisages. There is clearly the risk that law schools can label themselves as 'liberal', and that label can achieve enough on its own without further auditing of what this means for the content and direction of legal education. As explored in the previous section of this thesis, this approach is amplified by neoliberalism, which attaches value only to the 'label' of the product being sold.

Developing a critique of notion of a liberal legal attitude further, Etienne Toussaint offers a very interesting further perspective: "The conservative, neoliberal framing of political economy manifests in the virtues of liberal legalism, which emphasizes procedural fairness, individual rights, and precedential authority" (2023, p.47). So, in addition to the ambiguity of defining precisely what is encompassed within a liberal law degree, Toussaint powerfully recognises how liberalism in and of itself may not be a virtue to promote within legal education; instead it can separate law from politics and procedural fairness from substantive collective equity. It does not therefore push the dial far enough away from legal formalism, even where it is embedded.

The employability agenda and the 'post 92' universities (ex-polytechnics) - alternative approaches?

As a reminder, the historical setting of law schools at universities was to ignore teaching law specifically with a professional practice focus in mind, given professional legal education was deemed a task for the trade schools/professional institutions outside of the formal university setting. This became increasingly untenable as a neoliberal 'business decision' for law schools, particularly following the 1971 Ormrod Report, given that it was recognised that law how could be harnessed as a popular, aspirational label for applicants: a choice that could be delivered relatively cheaply, and a degree that could produce graduate attributes.

Within this developing space, all was not equal. For the post-1992 'new' universities, given their applied skills based background together with a lack of 'prestige' or history compared to 'old' universities, it was felt they had to battle much harder in recruiting students.

Teaching law with a *professional* practice focus (and away from the classic definition of a liberal law degree) was therefore more of a natural fit for such institutions. Such institutions could wear an applied, skills based curriculum on their sleeves, claiming boldly that students studying in this way achieved a good grounding in what was needed to operate as a solicitor, barrister or similar in the jobs market. Unfortunately and ironically of course, the legal profession often looked down on degrees and graduates provided by 'ex-polys' as lacking the prestige of a law degree from a more established university, Instead, those from older universities had the upper hand when CVs were reviewed.

In terms of pedagogy, teaching to a professional practice, skills based curriculum permitted post-92 universities to potentially move away from the dominance of learning case law principles *alone*. Law schools in 'newer' institutions could experiment with problem-based learning, or practice-based learning instead e.g. using 'real life' scenarios to frame the content and direction of tasks and assessments within legal education

Although this may pour cold water on the dominance of the case law method of teaching across *all* law schools, it remains debatable as to whether this focus on skills for practice actually permits a more *critically* reflective focus on law and legal systems. Instead, such practice-based learning focuses on the aim of 'being employable', and so the holding up of current market ideals for legal practice can nevertheless be prioritised over a deeper critique of the legitimacy of such ideals.

The pressure to survive was not there with older universities, at least in terms of attitude to law for professional practice: "The view in the 'old' institutions tends to be that the profession's prescribed curriculum already overcrowds the degree, that many law students do not go into practice and it is the role of the liberal law degree, advocated by Ormrod, to educate rather than to train" (Boon and Webb 2010, p.85).

Boon and Webb here acknowledge that older universities could potentially therefore 'act' as if they embraced a professional focus through at least nominally offering the flexibility of subjects prescribed by the QLD; however at the same time they could of course continue to maintain content within these subjects on an academic footing. All it takes is to get students through the door; and achieving that at an older institution (one that has the allure of prestige) often is easier through a heavy reliance on reputation, rather than having to commit to sustained change of teaching focus. Given the lack of granularity, and lack of hyper auditing by the legal professional bodies, there is definitely scope for law schools to actually fill the content of their degree with *their* choice - and of course, to retain the dominance of the case law method of teaching.

Additionally, for older universities after 1971, they were able to leave a more direct focus on law for professional practice to the 'vocational' stage of legal education i.e. the postgraduate LPC for future solicitors, that was mandatory (until September 2021) after a Qualifying Law Degree (or equivalent conversion course) and before entering legal practice as a solicitor. Since the early 1990's, the UoS School of Law did just this - interestingly, they offered an LPC within the walls of the law school rather than directing students to LPC courses at new universities or private providers (UoS was one of only two Russell group universities in England and Wales that chose to take this route).

Returning to Boon and Webb: "...the embedding of the vocational courses in many universities has not yet resulted in a renaissance of scholarship on the interface between the academic discipline of law and legal practice. Most of the vocational course teachers were recruited for their practice experience and their priority is to reflect contemporary practice" (Boon and Webb 2010, p.91). Once again, this claim here again reflects the hierarchical attitude towards the vocational/professional aspects of legal education and those predominantly employed within it; as such it again feels like a sleight against my background. Vocational focus is perceived to be about teaching the skills of appreciating what the law 'is'; and so such a vocational process is at risk of being left adrift rather than included in the wider debate over the content and direction of the undergraduate law degree.

The chicken and the egg

Without the direct influence of the legal profession and of professional legal education, law schools (particularly older, pre-92 institutions) could choose to focus on something they considered more worthy, that being the academic study of law. As a result, this downgrades the value of the legal profession in shaping law schools.

However, professional competency has the potential to acknowledge the uncertainty of legal outcome; further, it also centres the 'legal client' as a human being within the experience of law and legal systems. Therefore, it is not by its nature purely doctrinal or positivist.

More importantly for my own writing, to identify the legal profession for a downgrading of the quality of legal education (as alluded to at times by Thornton and Boon and Webb above), is to perpetuate the stratified hierarchy of law as 'an academic discipline', and to suggest that law schools *without* the influence of legal practice are better placed to deliver something better. This can be a reductive and troubling approach, particularly when seeking ways to antagonise neoliberal hegemony. For me, it distracts time and energy away from a possible critical pedagogy project within contemporary law schools; it suggests that law schools may be beyond reproach.

To continue to suggest that law schools, when focused away from the vocational, are able to deliver something more worthy, completely ignores both the long pedagogical reliance of the case law method in law schools, the influence of legal positivism and formalism, and the hegemony of neoliberalism in contemporary law schools cementing sameness rather than change or development.

Neoliberalism perpetuates the status quo

Although there are clearly debates over the nature of legal theory and jurisprudence that take place within legal scholarship, the practical delivery of legal education within universities remains challenged through law being delivered according to the 'sameness' of content to maintain competitiveness; and this sameness giving undue priority to the case law method of teaching (as well as to a skills-based curriculum within post-92 universities).

Staying caught in a conflict zone over what is 'better' for law schools does not address the challenge of breaking down the neoliberal discourse of sameness and competition, of labels over critical content:

> In being torn between two masters (the profession and the university), the Law School ultimately chooses to satisfy neither. Law students are inducted into a specific, very self-contained community. Writing doctrinal essays is unlikely to prepare them well either for a career in legal practice or for further academic study (Sandberg 2023, p.108).

As Sandberg recognises here, law schools remain conflicted and unresolved about what their purposes are, or could be. A blame game and conflict zone within law schools is to deny the value or worth of the legal profession and indeed denies the voices of those who have experienced the legal profession first hand. This for me misses opportunities for collaboration and respect amongst those working together in law schools; not only can lived experience, whatever the context, be extremely valuable when shared, but also those ex-practitioners working in law schools tend to have had a very high teaching load.

In my experience, even if critical self-reflection over the type and form of the legal education being delivered remains vital, teaching focused ex-practitioners have a wealth of experience of working with students in the classroom and of how to operate within an increasingly burdensome load.

My wish, therefore, is for a more hopeful conversation being formed around the purposes of legal education, and of more actively recognising law schools' contemporary complicity within neoliberalism. There needs to be a greater collaboration over what possibilities actually exist with this acknowledgment in mind; denial, or blaming will not achieve this.

Unfortunately, change is risky within neoliberal complicity. Promoting 'difference' can create a perception of ostracisation in a hyper competitive neoliberal market, and therefore moving too far away from orthodoxy is a challenge when framed in economically *worthy* terms: "The striking thing about most undergraduate law programmes in England is how similar many of them are. Most, but not all, law schools approach law primarily through a content-based view of the subject" (Bowyer 2019 p. 118). It is again a contradiction of neoliberalism that a sameness of content is antithetical to the dream of a consumerist 'freedom of choice' model promised by universities; once again, the messaging simply doesn't add up.

A brave new world - the additional challenge of private providers of higher education

Within all this complexity of what is actually taught in law schools, there is an additional challenge of private providers of university education entering the academy 'space' i.e. providers, like Ulaw (my ex-employer), that are for-profit. Private providers have not been prevented from entering the HE market, and, within legal education, their influence is increasingly present.

For Andrew McGettigan private providers are well placed to fit into a marketised HE setting: "The clear advantage of new providers from the perspective of 'supply-side reform' is that they look very different to the current established sector. They are more flexible with regard to timetabling, open to online learning, two-year and 'no frill' degrees. They are likely to be closer to industry and more interested in preparing 'job-ready' graduates" (2013, p.97).

So, a key commercial and competitive edge of the private provider is their flexible and dynamic nature - a perfect fit for a neoliberal marketplace. For private providers, like Ulaw, their status as private companies rather than exempt charities or similar, additionally drives

their ability to answer primarily to their shareholders rather than additional gatekeepers such as the Charity Commission.

Whilst public universities can be stagnated in terms of internal policy change (for example, sticking to the tradition of delivery and length of programmes), private providers can constantly adapt to prevailing market demands. Of course, the main complicating factor for private providers is a desire of being granted 'university status' (like Ulaw); clearly some of this dynamism then becomes subject to the Office for Students (Ofs). However, it is easy enough to spin a private university towards Ofs priorities, given the central objective of the Ofs to achieve 'value for money'. A private commercial enterprise is potentially more hard wired to focus on such a commercial metric.

McGettigan (2013) predicts that private providers of HE will only continue to expand, given that contemporary funding for HE plays into their hands: "Reforms to the funding of English HE make it easier for private equity to acquire a private education company and take advantage of the government's enthusiasm for change. Easy access to student loans, essentially risk-free money, may even make the sector more lucrative for a longer game than normally played" (ibid, p.102).

This analysis by McGettigan (2013) is insightful; Ulaw, as noted, was previously owned by a private equity firm (a firm that manages money and assets from various institutions and individuals looking to achieve a suitable return on their investment).The HE space is ripe for a return on investment for private equity, given that student funding for universities carries no substantive risk. As funding in HE comes from student debt, this is considered to be 'somebody else's problem' i.e. the obligation for repayment is between student and loan company, and if this fails then the government is currently ultimately responsible for the shortfall; private equity firms are not responsible.

From this, a danger noted by Collier, is of an increasing influence of private providers within a HE setting focusing on the neoliberal extraction of value: "...in time, the rise of new private providers in law will intensify efforts to extract value from ever larger numbers of legal trainees and students, new 'edu-businesses' concerned, ultimately, with remunerating the investments of shareholders" (2014, p. 30). So, rather than other aims being a contested part of the HE narrative, a primary aim for private providers is to deliver education that results in a return for its shareholders. Under the legislation of the Companies Act 2006, directors of limited companies have a statutory *obligation* to act for the benefit of its shareholders. This aim is perhaps best achieved by recruiting as many students as possible as often as possible, given the current fee paying model for universities.

With private providers, the draw for 'employability' and 'canonical knowledge' foci for legal education is potentially even more powerful than for public universities. These can be directly framed as 'expectations' for fee-paying students and more widely as expectations for how a law school should align itself with a service model of education. Private providers are unshackled from any conflict or debate about advertising in such terms.

For recent context on the economic prosperity of private providers, Ulaw has previously noted its 'year on year' increase in net profits: for example, the Law Society Gazette reported "On a like-for-like basis based on average revenue per month, the company's profit

before tax increased by 63% and revenue by 34% on the previous reporting period" (Hyde 2023) for the accounting period up to 31 May 2022.

Notwithstanding this trend, there is always a chance of some caution to be noted for the business models of private providers over students that do not pay their fees. So, over-recruitment may not please shareholders that then see the subsequent writing off of student debt and the reduction in profits as a result i.e. as a result of students withdrawing from the institution and not paying off their debt. In early 2024, the Law Society Gazette reported as follows: "The company, which owns the University of Law and subsidiaries in Scotland and Hong Kong, said the 2022-23 losses stemmed mainly from writing off £15.6m that was classed as aged debt" (Hyde 2024).

Perhaps private providers are therefore not completely without risk in the HE legal 'market'; and perhaps the notion of shareholder value may actually encourage providers to be more strategic about recruiting a consistently large number of students who actually successfully complete their studies. So although Andrew McGettigan (2013) paints private equity investment in university education as 'risk free' (because the loan is taken out by a student personally), there is still the requirement that students have to pay their fees with this debt to the institution. If students do not pay their fees in full up front (instalment payment plans are much more common), and subsequently leave before completion, this can have a clear knock on effect on private providers' profits.

This may not actually have any impact of developing an alternative approach to legal education within such institutions of course; instead, there are 'business answers' that can be available here instead e.g. increased grade entry requirements, or up-front fees, or heavy handed debt management over students.

The University as a 'charity'

To focus in further on the potentiality for private universities to more easily enter the HE provider space, it is interesting to analyse the way in which Ulaw became a recognised University in 2012. Mary Synge has illustrated this in detail in her book 'The University-Charity' (2023). Synge analyses the position of the College of Law being granted university status in 2012 in return for setting up 'the Legal Education Foundation', a registered charity (non-exempt). Synge acknowledges that little is known about this transaction, other than £200m being paid by Montagu Equity (the previous parent company owning Ulaw) to the Legal Education Foundation. Synge in particular notes the lack of public details provided by the Charity Commission for this deal.

For context, the Legal Education Foundation continues to operate as follows, "We are an independent grantmaking foundation distributing around £6 million a year to organisations undertaking charitable work which promotes our strategic objectives" (The Legal Education Foundation 2023). However, to clarify, this foundation operates completely independently of Ulaw.

The most problematic aspect of private universities for Synge lies in the potentiality for private providers to ignore any 'public benefit' or indeed charitable benefit in their operations:

> ...we should not be surprised if it (*a for profit university - emphasis added)* chooses to focus on sharing existing knowledge - rather than creating new knowledge - of a type and in ways that are most likely to create profit for individuals…A for profit university represents a very different undertaking from one whose rationale is public benefit, and it would be foolish to ignore the likely consequences (2022, p.466).

Private providers, in this way, *require* themselves to deliver doctrinal legal knowledge as a 'service'; thinking more creatively or openly over possible alternatives for legal education is economically risky, intangible and does not deliver specific aims or outcomes. Further, for Synge, even with public universities there exists a worrying lack of regulation by the Charity Commission, given either the exempt charity status of a number of institutions (like UoS):

> The fact that most universities are exempt, however, results in a two-tier regime which is distinctly unsatisfactory. In part this is because the framework itself imposes less onerous obligations on exempt universities, but it is also because the Ofs has taken on the role of Principal Regulator, with seemingly little appreciation of, or interest in, the particular law (or its compliance) that it is expected to promote (Synge 2022, p.411)

So, with the Ofs now acting as the *primary* regulator for universities, charity law and the role of any university in promoting charitable purposes is substantially weakened.

The new Solicitors Qualifying Exam

In addition to the various debates and pulls of dominance over what version of legal education exists in law schools, there are also the recent changes brought in by the Solicitors Regulation Authority (SRA) to re-acknowledge.

In a significant moment, the requirement for law being a 'law graduate subject' in terms of a formal prerequisite for the profession of a solicitor, has now returned to a pre-1971 regime. Specifically, the SRA from September 2021 brought in a new graduate regime to become a qualified solicitor, whereby a degree in any undergraduate subject (rather than a formal prerequisite of a QLD or equivalent conversion course) is required; this is then followed by successfully completion of the central Solicitors Qualifying Exam and two years' 'qualifying' work experience in wider legal practice.

Interestingly, notwithstanding the conflict zone existing between the legal profession and universities, representatives from both professional bodies and organisations as well as academics within universities formed a *bond* of criticism of these SRA changes. Prior to the changes in 2021, the SRA organised three consultation processes and reviews in order to allow stakeholders in both HE and the wider legal community to respond. There were a number of issues raised in these consultations, not least queries as to why the SRA felt it was justified to make this change to the 'gateway' to the solicitors profession.

The central SQE exam (now held in two parts 1, and 2, combining both 'academic' and 'professional' knowledge within the assessment) brings professional legal education back to the centralised exam format not seen since the Ormrod report changes of 1971. The SRA has justified this change through the need for 'maintaining quality standards' and 'SRA Competencies' through such a centralised assessment (as opposed to the system

developed with the LPC where institutions set their own assessments) as well as claiming the flexibility and subsequent diversity that the new method of progression would bring.

Changes through the end of the QLD?

As has already been suggested, such a change by the SRA in the process for entering the legal profession *could* open up the potentiality for newly designed law degrees, casting off the shackles of the QLD and its prerequisites. Could alternative approaches more critical of the canon of legal knowledge be embedded therefore, and some of the challenges of dominant positivist attitudes to legal pedagogy change?

It is of course challenging to audit or find out more about this change, beyond what law schools publish on their websites or what legal scholarship may come out of these schools. There has however been recent research on the both the core and 'elective' elements of what modules are being offered: a study by Giles and Ang noted the following, "the legal curriculum in England and Wales in 2023–2024 is both diverse, by historic comparison, and yet demonstrates a degree of standardisation despite an increasing number of providers. To some extent, this appears to be shaped by the legacy of the qualifying law degree and the foundation of legal knowledge subjects" (2025, p. 19). This study does acknowledge that its statistics, at least in part, were limited to website details or general course specification documents.

It is challenging to drill down into the *reality* of how law schools are approaching legal pedagogy. However, the power of the neoliberal project must not be underestimated. Notwithstanding the SQE development, other systemic mindsets have not been suddenly removed - the contemporary law school remains seated in a hyper marketised space, and a conflict zone still remains about the purposes of a legal education. It therefore remains challenging for any School of law to reject entirely presenting 'aspiration' of legal education that in some way prepares students for a variety of marketised priorities; this selling tool is too powerful to jettison:

> …it is the pressures of the higher education system, exacerbated by the extremely competitive law graduate market, that means law schools want to ensure students have the foundational knowledge to enter the legal professions. In this period of SQE uncertainty, law schools continue to model themselves on other law schools and are reluctant to break the mould in an effort to ensure their organisational survival and attract both undergraduate and international students (Dunn et al 2023, p.38)

To counter the suggestion that a change will bring new directions for content in legal education, the SRA has not acknowledged critical legal approaches anywhere within their expected 'competencies' for future solicitors. Instead, all the language remains based on an understanding of doctrinal concepts and 'professional' skills. Unfortunately therefore modules must match such competencies, or fear a student backlash and lost competition for places; after all, the perception is that the student consumer expects to learn how to become a solicitor, even where they often do not enter the legal profession.

This perpetuates dominance of the respect for the doctrine and of the notion of the legal professional, rather than incorporating a committed critique of it. In addition, as has become

clear since 2021, the SQE assessment is extremely challenging to pass, and seems to be hitting students from various oppressive angles.

To Section 5

This section reflects on the perpetuation of a version of legal education that, in various ways, respects the notion of canonised knowledge - that of a system of objective rules to be learnt, and applied to legal problems and debate. Notwithstanding the attempts to develop a more socio-legal, subjective approach to legal theory and scholarship, the contemporary law school faces a significant battle to remove itself from the teaching of 'sameness' of content of its competitors; this is particularly true within its 'core' work. This is not least in part because of the insistence of maintaining the pedagogical case law method of legal education. For law schools at 'newer' universities together with private law schools, an even greater pull of such standardisation is felt.

But what if law school environments could achieve something different? In particular, could law schools be convinced of the benefits of a more critical approach to legal education at the *programme* level, one pedagogically instilling in students a fuller critique of the implicit 'trust' in the rule of law that a positivist, case law approach to law engenders? How could this convincing take place?

Section 5 - future possibilities for critical legal education

Critical legal studies movement and beyond - challenging the status quo

This section is borne out of the critical reflection of the reification of legal doctrine in legal education. During my research, I *discovered* the development of 'critical legal studies' ('CLS') within the literature on debates over legal theory and methodologies. I use discover here as an important point of context; I had not come across CLS (or its later iterations and developments) prior to commencing this thesis; notwithstanding my 25 years of experience of legal education and legal practice.

The potentiality of CLS is that it operates on two footings. Firstly, CLS forms a debate over the 'subject' of law and the developing critique of the way in which legal theory is produced and re-produced; but secondly, CLS scholars also interact with legal pedagogy and the way in which law is *delivered* within law schools. So, could CLS prove the catalyst for activist, resistant pedagogy?

At various points in my teaching career to date, I have been motivated to prioritise with students the skill of applying law as it is. Although I have perhaps considered socio-legal angles in my teaching when approaching essay question technique and dissertation supervision, I have certainly not sat at length with some of the deeper theoretical approaches to legal theory that I have read for this section. This recognises both the transformative potential of this thesis reflection, but also the challenge of carving out time to think more critically and creatively about critical pedagogy in an atmosphere of efficient performance of tasks.

So what is CLS? - origin story and historical observations

It is posited that CLS, as some form of consensus of thought, first emerged in the USA in the 1970s, notably at a time of counterculture and critique more widely, and specifically emerging as a point of critique for the learning of law in higher education at that time (from the perspective of legal academics working in the field at the time). Notably, a coming together of scholars espousing CLS "grew out of the 1977 inaugural Conference on Critical Legal Studies held in Madison, Wisconsin" (Stewart 2020, p.128).

Beyond these origins, I have found it challenging to define precisely what CLS was at its outset, and what it came to become. As will be expanded upon, this is perhaps not surprising given the way in which CLS appears to have operated as it emerged.

Notwithstanding the challenge of defining CLS, this quote is a useful start in terms of some identifying features:

> The working assumption…was that many students are depoliticized, demobilized and much more conservative. The hypothesis was that law school training produced this effect. CLS thought – in scholarship and in the classroom – was thus aimed at 'demystifying' the law school (Schlag 1999, p.202).

So, it appears initially that CLS was highly politically motivated, and the early academic work on this topic communicated strongly that legal education was producing graduates that were not willing to challenge dominant norms at the time. This is a crucial point, given that later development (both in the UK and US) seems to have distanced itself from such a *defined* agenda. Schlag suggests that CLS was developed, at least initially, to incorporate *pedagogical* tools for law schools and notably for the students of law schools (as well as staff) to be actively resistant to dominant norms.

In terms of the political agenda for this critique, it was specifically US legal liberalism that early CLS writers were contesting: "Legal liberalism thus places law above politics and culture. The crits rebuked the embrace of these ideas as apologias for the status quo and argued that these ideas were complicit in masking the deep injustices created through law" (Blalock 2015, p.75). This liberalism was, for US CLS writers, the dominant political narrative at the time and open for contestation.

CLS followed specifically on from previous work on legal realism, and therefore did not come out of nowhere: "Although legal realism ultimately failed in directly overthrowing formalism at Harvard Law School, its influence was felt throughout the 20th century, culminating in new jurisprudential approaches, including CLS1" (Stewart 2020, p.139). CLS harnessed legal realism, which sought to critique the formalistic approach that preceded it, specifically by arguing that judges in legal cases operate in a human and complex way, and that law exists, is applied and therefore is made through judges' decisions. Legal formalism on the other hand sought to argue that judges simply apply the law with *logic* and without human behaviour influencing these decisions as such. Legal realism therefore also sought to recognise that judicial decisions in particular could lead to competing outcomes and were potentially indeterminate in nature.

For CLS, moving on beyond legal realism (but naturally inspired by it), it was this contested, contingent and indeterminate nature of law that leads to the argument that political narratives

influence legal narrative; and for CLS writers, this intertwining of law and politics was to be exposed as a central critique to arguments of the law being neutral or determined in nature.

The forefathers of CLS

Duncan Kennedy was one of the preeminent forefathers of what could be considered Critical legal *studies*. For context, emphasis is added in this sentence because, in terms of analysis, it is significant that males initially dominated the CLS space in the US. This, together with attempts to define and commit CLS to a collective movement, became two of the subsequent grounds of critique to early CLS work.

James Gilchrist Stewart, refers to Harvard Law School in particular, and Duncan Kennedy, together with Morton Horwitz and Roberto Unger, as being: " a microcosm for CLS1. It was home to some of the most prominent names in CLS1" (ibid, p.140) (here CLS1 is reference to the original US CLS consensus). Stewart notes that all these three scholars were hired by Harvard at the same time in 1971, which was seen as quite a moment within US HE 'elite' institutions at the time, particularly given that Yale Law School rather than Harvard had previously nurtured such critical scholars (Kennedy had been hired from Yale Law School, for example). These three writers will be introduced further below.

In fact, there were 9 organising names, or 'forefathers', for the first Critical Legal conference in Wisconsin in 1977: Duncan Kennedy, David Trubek, Mark Tushnet, Mark Kelman, Karl Klare, Morton Horowitz, Peter Gabel, and Roberto Unger. Some of these individuals will be explored and analysed further below; as noted above, these organisers were all white male academics, and all were working within well-respected US law schools at the time (albeit of course that was also the trend for most published, or popular academic writing at this time).

Kennedy refers to his time at Yale Law School, prior to joining Harvard, as a time when "I was radicalized, along with millions of students all over the world in relation to the liberal establishment, the state, the whole range of civil society institutions and the educational system" (2021, p.755). So, for Kennedy, in his reflections looking back, he developed a radical political opposition to the liberalism of the US at the time; not least through his lived experiences of the Vietnam War and through working prior to Yale Law School for the CIA.

Further, for Kennedy, he interestingly reflects on this viewpoint, and the starting point for his own work on CLS, as developing from a Law and Modernisation module run by David Trubek at Yale (another organiser of the 1977 conference and a Yale Law School teacher at the time ; now Emeritus Professor at the University of Wisconsin): "Dave managed the program in the mode of open-minded willingness to engage absolutely anything anyone wanted to propose" (ibid, p.760). So, for Kennedy, clearly his time studying within HE affected his worldview and impetus for action, particularly in terms of the potential pedagogical impact CLS could achieve. It makes sense therefore for Kennedy in particular to embrace the potentiality for legal education to achieve a critical legal mindset.

Whilst at Yale, Kennedy wrote "How the Law Schools Fail: A Polemic" (1970), in which he concluded, "There is no question in my mind that the Yale Law School is one of the best in the country. There is also no question that as an academic institution it greatly lessens its own effectiveness by perpetuating an atmosphere which makes it difficult for its students to be academically creative" (p.75). So, Kennedy was clearly motivated from his formative point

within HE, with a viewpoint that law schools needed to foster a more creative law student who could better critique and develop the status quo; and that this would in turn make a law school more 'effective' as an institution. Further, if this was not even happening within the 'elite' Ivy League institutions of the US, for Kennedy this was a problem bound to be felt more widely for other law schools too.

For Kennedy, it was his monograph (whilst working at Harvard Law School) of 1982 entitled 'Legal Education and the Reproduction of Hierarchy' that perhaps proved the most passionate espousing of CLS. This monograph read as extremely provocative at the time and focused specifically on the state of legal education in the US. A quote to illustrate as such is "Teachers teach nonsense when they persuade students that legal reasoning is distinct as a method for reaching correct results from ethical and political discourse in general (i.e., from policy)" (1982, p.598). Further, "Legal education structures the pool of prospective lawyers so that their hierarchical organization seems inevitable and trains them in detail to look and think and act just like all the other lawyers in the system" (ibid, p.607).

The monograph took attack at the very institution that Kennedy was working at (Harvard at the time), and at legal education across the US. As with Kennedy's previous work, this monograph passionately called for a change to the status quo in terms of legal thought and legal training (and the perpetuation of problematic political notions that therefore resulted), specifically in the direction of critiquing the neutrality or objectivity of law and legal systems.

Kennedy, in this 1982 monograph, also put forward a number of practical examples to attack the alleged reproduction in hierarchy and to help explore a more critical approach to legal education, for example: "helping students organize an act of resistance of some kind against the authoritarian classroom; curriculum change to reduce its political bias to the right and its incapacitation for alternative forms of practice; and the establishment of a politically sensitive legal services clinic for poor people operated" (ibid, p.610).

These pedagogical examples do appear to have been variously taken up in subsequent academic writing, as will be explored further below; and there is certainly an argument for pedagogical practice of this nature developing in law schools. Most notably for me, the legal clinic, for example, does remain a feature of a network of law schools: given its focus away from the case law method of teaching and towards activism over the lived experiences of individuals with *unmet* legal needs, my own sense is that the support for running legal clinics with students may indeed prove a useful critical approach. I am involved in the UoS legal clinic, and so will expand on this further in Section 6 of this thesis.

In terms of specific impact at the time, it should be noted that Kennedy's 1982 monograph was "a short essay privately printed and addressed mainly to American law students" (Dana Neascu 2000, p. 434); so perhaps its immediate effect more widely was not felt. Notwithstanding this, this time was a hotbed of publishing on CLS, in particular for some of those 'forefathers' noted above. Kennedy notes, again in a reflective interview looking back,: "But it was clear already by 1976 that the three of us— Horwitz, Unger and I—were in some ways disrupting the school" (Krever et al 2015, p.19). For Kennedy, the key to early CLS work was disruption to the status quo of Harvard Law School, much to the chagrin of some working within the School at the time.

In 1983, Roberto Ungar published “The Critical Legal Studies Movement”, also whilst working at Harvard Law School. In this, Ungar noted: “But every truly radical movement, radical both as leftist and as deep cutting, must reject the antithesis of the technical and the philosophical. It must insist upon seeing its theoretical program realized in particular disciplines and practices if that program is to be realized at all” (p. 674). Further, “The legal academy that we entered dallied in one more variant of the perennial effort to restate power and preconception as of right” (ibid).

Ungar, like Kennedy, incites in this piece a call to arms to seek to attack notions of the law being objective and neutral. Specifically, Ungar in this writing (1983) critiqued the notions of formalism and objectivism present within legal doctrine (two key critiques for CLS work as commented on above). However, unlike Kennedy, Ungar was specifically arguing here for the potential of wider transformative *social* change, rather than simply noting the problems with how law, legal systems and law schools espoused the law and ways in which this could be torn down.

As a result, Ungar’s writing here to me reads more constructively in some ways than Kennedy. Rather than only focusing on the law school, Ungar talks about rethinking the law and legal rights with a wider specific purpose in mind: that of wider social empowerment through the harnessing of the power of individuals escaping the constraints of legal preconceptions. As a counter to the potential for teaching inspiration, Ungar reflects less on the potentiality of pedagogical approach within the law school environment.

It is no surprise therefore, that Ungar went on from this early CLS work to write extensively on a large variety of topics away from HE pedagogy, as well as becoming quite heavily involved in Brazilian politics. Ungar developed a deep philosophical approach to critical legal thought, and has stayed associated with Harvard Law School to this day. In 2015, Ungar republished ‘The Critical Legal Studies Movement’, and reflected thus: “One of the greatest merits of the critical legal studies movement was to have created an intellectual space in which law and legal thought could be better used to resist the dictatorship of no alternatives” (2015, p.12).

However, Ungar also reflects that the CLS work in the US was flawed, given that to him, much of it critiqued without offering a transformative alternative proposal to that which it attacked: “Nothing therefore supported the movement from explanation and criticism to proposal— from the is to the ought , from the actual to the adjacent possible— without which legal thought ceases to be the practical discipline that it has always been and loses its transformative potency” (ibid, p.24). It is perhaps for this reason that Ungar personally moved beyond CLS work to wider and more varied interests. The breaking down of concepts without a subsequent rebuilding, is therefore an important point of critique for early CLS work. Like Ungar, I share a passion for the ‘doing’, and I often fear that deconstruction without offering alternative examples can easily be dismissed out of hand by those that we may be trying to convince.

Notwithstanding Ungar’s critique, CLS writing did embrace self-reflection, not least through the ongoing debates at the yearly CLS conferences; the writing did not rest on its laurels, and perhaps therefore performed more self-critique than Ungar gives it credit for. For example, Mark Tushnet, another name often cited as part of the early CLS movement (one

of the 9 noted above), provided an early reflection on CLS in 1986, with ‘Critical Legal Studies - an introduction to its origins and underpinnings’. For Tushnet at the time,

> ...the CLS program is justified in the way all modernist programs are: The program consists of shattering congealed forms of life by showing that they have no particular integrity. And whatever makes that demonstration effective - Utopian yearnings, close analysis of legal texts, concrete proposals - is part of the program. Perhaps this analysis could be continued indefinitely (p.517)

So, according to Tushnet (1986), the theses for CLS at this early time were varied, and intentionally so. Tushnet notes the differences in nature and form of CLS scholars (like Kennedy and Ungar, as well as himself) notwithstanding a shared appreciation between scholars of a need for increased criticality and breaking down norms. For Tushnet, this did not matter - there is more than one way for this mode of thinking to be ‘effective’, and it did not make the CLS writing unjustified. Clearly also for Tushnet, one of the ways was through concrete proposals for action, which could of course include pedagogical practice. It feels important and relevant that scholars do not have to all agree on the nuance of critical legal thought; but I also certainly recognise that debating theoretical approaches without then framing examples of action can also risk apathy and stagnation.

Finishing off the Harvard law School 3 (noted by Gilchrist Stewart as coalescing at Harvard in 1971), Morton Horwitz is also considered a key proponent in the early CLS writing. In particular, Horwitz published ‘The Transformation of American Law 1780-1860’ in 1977; this book was, perhaps in contrast to Kennedy’s monograph in particular, widely acclaimed on publication and won the Bancroft Prize (a prestigious prize given to American history writing). In particular, Horwitz focused on a critique of previously wider accepted analysis on the attitude of judicial decisions, by arguing that judicial decisions within the US during this period (the antebellum period from US formation to the Civil War) favoured capitalist relations and that this was *planned*: “Law, once conceived of as protective, regulative, paternalistic and, above all, a paramount expression of the moral sense of the community, had come to be thought of as facilitative of individual desires and as simply reflective of the existing organization of economic and political power” (1977, p.253).

Furthermore, Horwitz (1977) powerfully argued that the notion of legal formalism was actively utilised to quell any suggestions that law and politics were intertwined, “The new and defensive emphasis in orthodox legal theory on the "scientific" nature of the law arose simultaneously as a reaction to the claim of the radical codifiers that the common law was political” (ibid, p.257). Horwitz’s writing is powerful here for two reasons: not only does he recognise that CLS did not invent the wheel of critique, but also references the orthodoxy of legal thought being a scientific and objective approach to law. As reflected in the previous section of this thesis, such a ‘scientific’ approach is attractive in order to present uniformity, rationality and aspiration for law school culture.

From Horwitz’s writing, it is perhaps not difficult to see why he was labelled as espousing a more Marxist view of critical legal thought than Kennedy and Ungar i.e. seeing law and legal systems as driven by material economic conditions. Further, it perhaps also becomes more clear that Kennedy, Ungar and Horwitz established themselves as quite opposing voices notwithstanding working at the same institution and being labelled as part of a CLS ‘core’.

Kennedy himself reflects on this in 2015, "...Morty Horwitz and I were arguing about a series of different methodological issues that had a lot of influence on the first stages of Critical Legal Studies at the intellectual level. Morty was allied with the Marxists around the basic idea of history as a totality which has both ideal and material elements and in which theoretical formations serve interests" (Krever et al 2015, p.24).

For Kennedy, it was indeterminacy that was of more crucial importance than explicit capitalist bias:

> My line, repeated at a dozen crit events, was that the problem was not bias but indeterminacy. In other words, interests exploited indeterminate law to promote their objectives, but the indeterminacy made it possible for conflicting interests to struggle to develop it in other directions. Fine, Morty would say. But then my final argument was that the very doctrines developed to promote, say, the 'interests capital' were themselves indeterminate, not 'inherently' biased" (ibid).

The notion of indeterminacy as a key feature of such critical legal thought will be explored further below; but for now, it is interesting to see how Kennedy and Horwitz argued over the nuances of the theory within CLS, yet remained closely situated and working at the same institution.

Ian Ward, drawing on another recognised forefather, Mark Kelman, reflects: "Coining a particularly resonant phrase, one leading 'crit', Mark Kelman suggested that critical legal thinking is dedicated to 'trashing' the various mythologies of liberal legalism, particularly notions of adjudicative neutrality" (2004, p.144). In Kelman's original work, 'Trashing' (1984), he notes, like Tushnet above, "What strikes me as most distinctive about Critical Legal Studies, especially in comparison with left academic movements of the past is its focus on ambiguity, its resolute refusal to see a synthesis in every set of contradictions" (p. 296). So, once again, it is this commitment to highlight the complexity and indeterminacy of legal rules that should be at the root of CLS. This could of course be the primary aim for pedagogical approach: a lens of exposing *contradictions* in law rather than embedding a perception of logic or order to legal development through case law and parliamentary precedent.

However for Kelman, who specifically refers to himself as a trasher rather than an anti-trasher (interestingly, Kelman at this stage of his writing, labels Ungar as an anti-trasher), he feels that the essence of CLS is deconstruction and tearing apart of prior frameworks without the imposition or advice on replacement rules or frameworks: "the actual detailed content of our deconstructive agenda, our lists of others' ploys, is not so immediately accessible, not just another rehash of a familiar framework. It requires far more liberatory, creative energy than one more recitation of the social theory that may well have actually created it" (ibid, p.300). So Kelman commits to the deconstruction agenda being a key feature of CLS, without necessitating any subsequent specific rebuilding; or certainly without too quickly simply replacing one framework with something else too similar.

I certainly agree, as Kelman highlights here, that it is important not to *immediately* replace the dominant discourse with another specific framework on the grounds that this may be done without careful critical thought and may inadvertently re-create the same issues exposed before. However, I still maintain that inaction for too long can lead to backlash – 'what do you suggest we do instead then?'

What I like most about Kelman's 1984 writing here is his reference to 'creativity'; a skill I see as deprioritised when approaching law teaching through an objective, doctrine heavy lens. Perhaps the most attractive part of CLS writing of this style, therefore, is the chance to reconsider pre-conceptions about the 'rules' of the way in which to approach law and legal systems (and the teaching of them); instead I can imagine myself, with students, spending more time on what legal frameworks could or should exist without the desire to immediately fill in or determine the precise frameworks to implement.

A CLS 'movement'?

Beyond the early CLS writing and the CLS conference in the US, it remains contested as to whether CLS amounted to a *cohesive* movement, methodology or consistent way of approaching legal education:

> But one could also well claim that the CLS movement was never really a proper 'movement'. It was, rather, a community of loosely affiliated individuals who worked mainly in North American law schools from the late 1970s to the mid-1980s representing various non-doctrinal approaches. Although CLS researchers were politically all clearly left-of-centre, their political kinship was never enough to consolidate the various approaches into a 'method' (Minkkinen 2017, p.148)

So, for Minkkinen, CLS was never a cohesive defined set of practices. Minkkinen raises this argument to note, in particular, how CLS quickly became more disparate and contested from its first collaborative musings (but that also a critical legal method can, and should, still exist). Based on the analysis of Kennedy (1982), Horwitz (1977) and Ungar (1983) above and their differences of opinion, I can certainly see where Minkkinen is coming from here in terms of a lack of consensus in writing.

James Gilchrist Stewart has published a hugely helpful recent article to try and produce a 'family tree' of the development of CLS since its early days. Stewart, like others, notes the following: "when asking the seemingly simple question 'what is critical legal studies?' the answer given depends on a number of factors including the time, location, and associated theorists, with each combination providing a host of different answers" (2020, p. 125). Thus, like Minkkinen, Stewart recognises the nuance of CLS writing.

Interestingly, Stewart does refer to CLS as a movement, to differentiate this from the potentially broader notion of critical legal studies that seemed to develop after the 'early' CLS writing. For Stewart, a 'wider' basis of critical legal studies from a contemporary viewpoint, is an ever developing list of critical thought and theory:

> The broad category houses a non-exhaustive list of critical legal studies, including the aforementioned critical race theory and feminist legal theory, but also critical historical scholarship, psychoanalytical theory, postmodernism, law and literature, and queer legal theory… (2020, p.130)

Stewart takes this from the influence of Margaret Davies. Turning to Davies' work in 'Asking the Law Question' (2023), she powerfully argues that a contemporary feature for critical legal studies and/or wider critical thought is the intention of *not* defining limits or coherence: "any attempt to define the broad phenomenon of critical legal studies would limit it and thus contradict its critical commitment to open and interdisciplinary theory" (2023, p.199). So, a

more pluralistic attitude away from a self-limiting movement is perhaps now being encouraged for critical legal approaches.

So, whether or not early CLS writing in the US was actually a cohesive movement in reality, more contemporary critical legal approaches appear to have developed into a much more nuanced and pluralistic approach - and intentionally so. ‘Critical commitment’ appears to have become the only contemporary identifier, and, for Davies (2023), there appears no continuing need to identify any specific movement or any sense of cohesion providing this overarching *attitude* to critical thought continues.

I can certainly see the value of this argument, as it allows for flexibility, and potentially more open minded thinking and contemporary attitudes. It also avoids a very specific attack on a very specific political set of practices, which early CLS writing could be seen to have been focused on. The notion of defining a cohesion or something that critical legal studies ‘is’ therefore holds two flaws: firstly, it creates a more easy target for attack more generally, but secondly, and more importantly for me, it creates the argument that there is something that is ‘not’ critical legal thought . This in turn creates arguments of *irrelevance* to more contemporary notions of critique. If critical legal thought is to be transformative, arguing the toss over what ‘counts’ between its exponents weakens its transformative power; and weakens the creativity in developing new practices.

Notwithstanding this, there remains a danger in becoming too nebulous in this regard - after all, as Minniken (2017) points out, committing to a set of practices for critical thought permits others to utilise such practices as a method or toolkit to operate similarly. There is the potential to become overwhelmed with the plurality of attitudes, and subsequently not cohere around any specific action.

Clarifying early CLS concepts

Returning for a moment to early CLS work, Corrine Blalock does note centering of *thought* for CLS at its advent (despite there perhaps being no defined methods): “CLS shared the first three veins in common with CRT and feminist legal scholarship. These included the indeterminacy critique, the refutation of the law–politics distinction, and the debunking of the myth of the autonomous legal subject” (2015, p.74). These central theories are therefore worth exploring.

Indeterminacy

Blalock expands on the aim of recognising indeterminacy as follows: “the crits demonstrated that legal principles could be used to justify almost any outcome such that judges could not reach decisions based on legal doctrine alone” (ibid).

Jeff Manza agrees with this assessment, stating that indeterminacy formed a central part of early CLS: “If there is a single concept which serves as a leit-motif for Kelman's work, and that of the first generation of CLS scholarship generally, it would be the notion of the "indeterminacy" of law i.e. the inability of the legal system to adjudicate disputes in a non-arbitrary, politically neutral fashion” (Manza 1990, p.141)

From my reading of early CLS work, Mark Kelman (1984) and Duncan Kennedy (1982) in particular passionately argued that CLS was about exposing that law is not determinate, and therefore

is contingent and contested. Crucially, CLS for them was about *exposing* indeterminacy by demonstrating how judges, despite arguments to the contrary, do not neutrally or objectively base their decisions on legal doctrine alone (the essence of legal formalism). The importance of this being recognised, particularly in judicial decisions, was that the deconstruction of objective legal positivism and formalism could be better achieved as a result; and therefore the relative power or loyalty to specific legal doctrine could more legitimately be questioned and potentially set up for fundamental change.

This is a powerful observation to harness from CLS writing; as I have reflected on already, it is tempting through delivery and prioritisation of the case law method of teaching law, to present case law precedent developing along determined, objective and logical lines against objective criterion. Even if one recognises that judges are human beings and therefore are subject to bias, indeterminacy more deeply allows an exploration of the relative *value* of case law judgments.

Now, importantly, one critique of this focus on indeterminacy that began to emerge, particularly with Kennedy's writing, was the question of 'what comes next'? (as alluded to above). Peter Gabel (another of the 9 forefathers) notes as follows,: "I believe CLS was always fundamentally a spiritual enterprise that sought to liberate law and legal interpretation from its self-referential, circular, and ideological shackles…the indeterminacy critique is basically a bummer, leaving the listener in a kind of secular liberal hell of scattered and disconnected individuals with no common passion or direction binding us together" (Gabel 2009, p.516, 518).

The reference to indeterminacy being a 'bummer' here is powerful. This highlights a possible critique of legal deconstruction on its own as a concept, by noting that a focus on breaking down alone could inadvertently act to de-energise any forthcoming transformative change or development. So, breaking down and criticising can leave us all a bit bummed out, and possibly lost in terms of future direction. For Gabel, this loss of 'passion' thus missed the opportunity for 'spiritual' liberation of law and legal systems. I see this danger through the eyes of my students - if I suggest there is *no* direction or purpose in the decision of judges, the danger is that any respect whatsoever in the notion of the rule of law may be dismissed out of hand.

Further, for Neil Duxbury, writing on American jurisprudence more widely, there is also another criticism to be levelled at the concept of indeterminacy: "...the assertion that the indeterminacy thesis is inevitably either overblown or uncontroversial represents, to my mind, the most penetrating criticism of the movement" (Duxbury 1995, p.490). So, here Duxbury focuses on the argument that the concept of indeterminacy was not new and special to CLS, particularly given that legal realism had potentially noted the lack of determinacy in legal judgements prior to that point.

Perhaps indeed indeterminacy did not need to be repeated so much through CLS, when legal realism and its scholarly work had already pushed this argument sufficiently forward. More importantly for me, however, Duxbury (1995) and Gabel (2009) remind me of two important features for my own ongoing analysis and action.

I feel a little lost by simply stating judicial statements are indeterminate without any committed form of follow up debate and activity; case law *is* powerful and does form part of

legal education. Complete trashing along these lines is rather unhelpful, particularly when attempting to engage students with the features of law and legal systems. As I have highlighted, it is more the dominance of the case law method of learning legal principles that is more problematic when attempting to form a deeper critique focused on breaking down, rather than perpetuating, hegemonic assumptions about law.

Law is politics

Building on this, another key feature of CLS (as noted by Blalock above) is the recognition that law and politics are intertwined and systemic in nature; and therefore crucially not distinct from one another. This is clearly linked to indeterminacy, as it harnesses the critique that the law is somehow neutral or objective in its creation or working. But also, moving beyond this, 'law is politics' critiques the notion that individual liberty and protection is delivered neutrally and separately through the legal system: "Legal liberalism is the corresponding belief that the courts are the means by which the values of liberty, autonomy and rights-based equality can be preserved when impinged by the political system" (Blalock 2015, p.74).

So, for the Crits, "they illustrated that law was political in the sense that it was neither neutral nor objective, but instead embodied a particular set of beliefs and furthered a particular set of interests—white, male, heteronormative, ruling-class values— that actually perpetuated the subordination of other groups in society" (ibid, p.75).

Therefore, when combined with recognising indeterminacy, this law and politics connection presents itself as a potentially exciting and empowering method for my teaching. In particular, establishing this critical argument with my students could allow for the further exploration of where neoliberalisation expresses itself in, and through, the development of the law. Students often express distress over not being able to establish a critical framing for their essay work in particular, and this critical lens could provide some inspiration.

Notwithstanding this, I do still wonder whether students may still be tempted to dismiss the courts and case law judgments altogether, given the cynicism that neoliberalism can cause in law and legal systems. In addition, there may be a challenge for students in learning about the notion of the separation of powers between judiciary, legislature and executive in a UK legal system without dismissing this ideal altogether.

The autonomous legal subject

Perhaps to address this remaining concern, CLS writing (according to Blalock) also looked to come together around the goal of questioning law and legal *subjects* as being measurable, neutral or indeed self-sufficient and autonomous. I see this in Kennedy's writing (1977, 1982) in particular. Crucially, this focus on autonomy causes the othering and subordination of groups, and a prioritisation of the white, male, heteronormative gaze, "It is precisely through law's claims of neutrality and autonomous choice, the crits argued, that racial and gendered hierarchies are maintained" (Blalock 2015, p.75).

This is therefore for me the most exciting critical concept that I can harness for my own teaching, given that it aligns directly with my developing critique of the 'perfect' neoliberal subject explored in Section 1. Specifically, I can see myself raising the framing of the 'legal subject' as *living within* legal systems, rather than only a focus on the rules and regulations

implemented. Most crucially, this critique of self-sufficiency and homogeneity of legal subjects opens up discussions for those that do not, or cannot, be held up within the framing of procedural liberal equality, or perceived objective neutrality of the rule of law. This pushes forward a socio-legal framing, and allows students to put legal concepts within critical context. I plan to expand on some specific examples of activities to further this way of legal learning in the final section of this thesis.

Did CLS 'die'?

Interestingly, US CLS writing and any level of cohesion appeared to lose its direction, influence and traction by the 1990s: "Critique demands that one always starts again. Perhaps this is the question that killed American Critical Legal Studies" (Douzinas and Geary 2005, p. 237). So, for Douzinas and Geary, the 'killing' or 'death' of CLS work was a notable event. They argue here that it was a *meta* critique by proponents of CLS that dampened a sustained development for the US CLS writing. In particular, a collision of theoretical approaches, and the seeking to develop nuanced 'critical' methodologies and theories of legal education, pushed cohesion apart.

Stewart posits the 'end' of US CLS work culminated in an article by a Harvard law student in 1995, where they interviewed Kennedy and Horwitz: "Turning to both Kennedy and Horwitz, as well as Clark, Yen receives unanimous confirmation that CLS1 is not as it once was" (2020, p.146). In fact, the year before this, Kennedy was interviewed in 'the Advocate' (Suffolk Law School journal), where he noted, "We lost the sense of a dynamic, ever expanding group that was unified both by its theoretical themes and by activist legal education practice, but for many of us that was more than compensated by the chance to participate in a whole new set of more specific kinds of race or gender or class oriented little groups" (1994, p.58).

So, Kennedy declared the 'death' of any defined notion of CLS in 1994. For Kennedy, this 'death' of an initial coalescence of what CLS was, meant that this early writing and thinking could lead into wider conversations around notions of law and critique. So, critical legal *thought* was not an end, but merely had moved on - 'reborn' as a new set of practices.

James Gilchrist Stewart however points to something more worrying about this moment of 'death'. US CLS work clearly also began to be pressured from the tensions that arose following the advent of Reagan's election in the US and an increasing dominance on 'law and economics': "the election of Ronald Reagan in 1980 and the push towards supply-side economic policy thematically resonated with law and economics. Culturally, there was a push towards what would become coined as neo-liberalism, which affected politics and institutions alike" (2020, p.143).

This is a troublesome, key thought. Rather than just being about the advent and debate of new ideas, Reagan's leadership (aligned with Thatcher economics in the UK) brings neoliberalising government policy to the door of CLS writing. So, rather than a 'rebirth', perhaps CLS work may also have been *weakened* as neoliberalisation began to take hold.

Carrigan similarly agrees that the falling out of favour of CLS was down to this *corporate* power: "What occurred on the legal educational front is more plausibly explained by seeing it through the prism of the long-term growth of corporate power. Legal positivism went on the

retreat for short bursts of time, then an inevitable blowback was experienced as mechanical jurisprudence reasserted its dominance" (Carrigan 2013, p.335).

This is also a powerful statement, and confirms some of my other reflections on the power of a neoliberal hegemony; given that a neoliberal hegemony requires a faith in the market and complicity to provide its energy, and seeks to encourage corporate power as a result, legal positivism in its objective, rational formation is a perfect fit. Perhaps CLS was never coherent or developed enough to provide a committed alternative to this rationality, and to avoid the 'blowback'/backlash of positivist thought.

Returning to Kennedy, reflecting back more recently in a conversation with Krever, Lisberger and Utzschneider in 2015: "The main way to interpret a person in America who is saying 'do something radical to change the status quo' is to assume they are either communist or nihilist" (Krever et al 2015, p.25). Kennedy here recognises how powerful the notion of neoliberal *rationality* can be: as its hegemonic attitude of logic and rationality takes hold, critical attitudes to it can be reductively labelled as 'communism' (exposed as a system of totalitarianism) or 'nihilism' (labelled narrowly as a belief in nothing meaningful). So, utilising the neoliberal logic particularly of Hayek, individualised faith in the market provides a *safe harbour* from these 'problematic' alternatives.

More worryingly, Kennedy also reflected that critical attitudes may have evaporated, despite the possibilities of a CLS 'rebirth': " But the new norm is not at all crit; it is either humanist, or merely professional" (Krever et al 2015, p.13). Despite the negativity of this reflection, Ungar sets out an important point of being realistic about the potentiality of CLS when assessing the level of any problems caused by its 'death': "Critical legal studies was never intended to generate a permanent genre of legal writing, or to take its place among a standing cast of schools of legal theory. It was a disruptive engagement in a particular circumstance" (Ungar 2015, p.9).

So, for Ungar, there was always the need to move on beyond CLS to other forms of writing and theory, and importantly this was because CLS was wedded to time and place and thus fixed rather than utopian or forward facing. For Ungar, movement forward is always the imperative.

I find favour with Ungar in his reflections here - the course of earlier CLS work certainly seems to have had a specific target at a specific time for specific people. However, what remains? How did critical legal thought develop beyond the 1990s, and was it harnessed in contemporary law schools?

Meta critique and moving forward

Perhaps the most crucial downside of early CLS work and its 'specific foci', is that it did not allow for open discussions over new transformative notions of critique.

In particular, feminist legal theory and critical race theory, both began to develop around the same time period as early CLS work and came to critique the direction of CLS: "CRT and feminist legal theory emerged in the 1980s to address the notable gaps and biases regarding race and gender in both the dominant discourse and CLS" (Blalock 2015, p.72).

Notwithstanding this, early writers in both of these theories, acknowledged the *influence* that CLS had over their ability to write on critiques of the dominant narrative of law and legal systems at the time. For example, the esteemed feminist legal theorist Drucilla Cornell, noted ""We are left with the invitation to realize the potential inherent in the "would be's" of our social reality. The invitation is always there, but it is up to us to accept it" (Cornell 1988, p.1229). So, here is a more heartfelt and positive utilisation of CLS conceptual thought to imagine creative and more wide ranging critical theories - evidence of a 'rebirth' indeed perhaps?

For Feminist legal theory, the key critique of CLS work centered on the dominance in writing of white, male, academic elites, and additionally the lack of focus on a patriarchal lens. For feminist scholars, this potentially led to the disempowerment of writers that fell outside of this category as a result: "...no matter how much gratitude we might feel toward institutional CLS for the insights it has offered, it is nevertheless an institution within which we work from a position of relative disempowerment….in spite of its present anti-feminist bias, the CLS members are surely the logical audience to cultivate" (West 1986, p.85, 92). So, for West, CLS is a conflicted space: it perhaps did inspire, at least in some small way, the writing of feminist legal theorists, but also could not specifically be taken up as a method, without careful reframing, given its lack of acknowledgment of the disempowerment through patriarchy.

Therefore, Feminist legal theory is framed quite differently from early CLS at its core - there is a strong aim to not centralise a specific political agenda, and instead to consider wider political and social empowerment through embracing both theory and practice. In fact, Kennedy acknowledged this point in his own developing writing, and did clearly seek to try and develop his understanding for emerging feminist legal theory: "I don't see myself as neutral…I would describe myself as a straight white male middle class radical trying to come to terms with the radical feminist challenge…it promises understanding, routes to change, and a possible political alliance towards transcending our gender regime" (Kennedy 1992, p. 1510).

Separately, for early Critical race theory, again there was acknowledgment of the influence of CLS to allow such theorists to write more critically around dominant legal norms: "One cannot experience the pervasive, devastating reality of a "right," however, except in its absence…that does not mean we should not welcome CLSers as our allies…but…if CLS is to maintain its relevancy for peoples of color, then…its practitioners must be able to write in comprehensible prose English and deal with important and complex issues in a serious and purpose mature fashion" (Williams 1987, p.134).

So, similarly to the critique from feminist legal theorists, critical race theorists like Williams, despite noting the ability for CLS to critique the reductive notion of objectivity and neutrality in the law, argued that the writing of early CLS scholars could not remain relevant to non-white positionality, given the lack of centering of race within critique.

Derrick Bell, one of the most important early writers on Critical race theory, provided a very useful analysis of the similarities, and important differences, between CLS and critical race theory:

> This is not to say that critical race theory adherents automatically or uniformly "trash" liberal ideology and method (as many adherents of critical legal studies do). Rather, they are highly suspicious of the liberal agenda, distrust its method, and want to retain what they see as a valuable strain of egalitarianism which may exist despite, and not because of, liberalism (1995, p.899)

So, it was the element of CLS that sought to 'trash' doctrine and rights that critical race theorists like Bell found most problematic. As Bell articulates, if rights, doctrine and the rule of law are ignored altogether, what hope is there for any enforcement of rights for the marginalised? Instead, the marginalised need identification of rights and power in order to resist: "...When I say we are marginalized, it is not because we are victim-mongers seeking sympathy in return for a sacrifice of pride. Rather, we see such identification as one of the only hopes of a transformative resistance strategy" (ibid. p.901).

This is a very important point, and cements my own desire to avoid a complete 'trashing' of the rule of law, and of law and legal systems. Notwithstanding that liberalism creates a racialised and gendered individual as its focus, there remains the obligation to amplify the *potential* power of the law to represent the marginalised. Recognising the work that can come after the critical task of tearing down law as objective and fair, is crucial.

To ignore the ability of the law to uphold rights for the marginalised is to perpetuate the relative privilege of those doing so: "some people can take their rights for granted because they are regarded by the prevailing ideology as the typical holders of such rights" (Davies 2023, p.225). It could be 'easy' for me to say we should ignore the rule of law and start again, but that is because I am largely not, due to the safety net of whiteness and of relative privilege, relying in the same way on legal rights as empowerment, and as protection from precarity. I must remember that one can homogenise experience of law and legal systems, rather than recognising sameness and difference.

As an aside, as someone who has studied law and practised it, I want to believe in the potentiality of law and legal systems; Bell's comments therefore serve as an additional reminder that trashing legal judgments can lead away from transformative potentials for future legal practices.

The better aim therefore, when speaking on *formal* rights, may be to recognise the limitations of formal rights in achieving substantive fairness and equity. Further, focusing on building something better anew; of deconstruction and then reconstruction is powerful: "Feminism serves as an exercise in de-construction and re-construction. Feminist scholarship does not simply diagnose; its grounded nature means that it is especially well-placed also to be the needed medicine that rebuilds, re-strengthens and improves" (Sandberg 2023, p.95).

CLS and the BritCrits

US CLS thought, particularly through feminist and critical race critiques, was supplanted by a new 'era' of critical legal thought through the UK and beyond. One example of this is through the 'BritCrits' movement that started to develop shortly after the advent of CLS in 1977. Again, like in the US, a British CLS movement is located in origin to the first Critical legal conference in the UK: "The British Critical Legal Conference (CLC) is a school of thought

committed to a plurality of theoretical approaches to law and to radical politics. The first CLC took place at the University of Kent in 1985", (Douzinas 2014, p.189). It appears that the *location* of this conference is where 'BritCrits' got its moniker from, notwithstanding the 'new era' of writing after the early US CLS work involved academics from all over the world including the US. Such writers used the 'BritCrits' label as a form of differentiation and movement beyond the US CLS work.

Predominantly in the early days through the CLC, together with journals such as 'Law and Critique' produced through Birkbeck University, the BritCrits started to re-explore the notion of a critical legal approach. Importantly, according to Douzinas, the BritCrits movement had, particularly in the earlier days, a different take to CLS in the US:

> Unlike our American brothers, we did not place much trust in 'trashing' doctrine or exposing law's 'fundamental contradiction'. It is not particularly hard to show that a text, any text—the Bible, Aristotle or the latest decision of the House of Lords—is full of contradictions and inconsistencies. It is much harder to work out what practices, procedures and ruses make texts authoritative and coherent despite their inner inconsistencies. It was clear that evidence of textual discrepancies does not undermine law's legitimacy. Pursuing a radical agenda after the defeat of a type of radical politics meant returning to the text and opening it through the use of rhetoric, hermeneutics, deconstruction, semiotics and psychoanalysis (2014, p.191)

So, for Douzinas (one of the pre-eminent writers in BritCrit work), the specific moving forward of critical legal thought in the UK involved a move away from 'trashing' legal doctrine, or indeed from simply highlighting that law in its indeterminacy contains no logic or rationality. Instead, Douzinas argued that the key to ongoing 'Crit' work is through using specific methodologies of interacting with legal text and opening it up to deeper critique: "The critics read legal texts not just for their coherence but also for their omissions, repressions and distortions, signs of the oppressive power and symptoms of the traumas created by the institution" (ibid, p.195). It seems therefore, that BritCrits writers had in particular learned from the writing of feminist legal theorists and critical race theorists noted above, to move beyond the early CLS method of writing.

This thesis does not seek to delve into these writers in too much specific detail, albeit the concept of opening up the text of law to see it through different lenses is something I return to in my final section manifesto. The primary reflection here is to note the development of critical legal thought beyond CLS and into BritCrits, specifically the development of the notion of law and power, but also the development of the plurality of approaches to critical thought rather than cohesion around a particular agenda . Again, Douzinas noted, "it is far more productive to celebrate the plurality and variety of all of these critical approaches to law. In other words, the disunity (dissensus or non-identity) of critical legal thinking is key to its insights" (ibid, p.196). Further, "the approach moves away from the Marxist location of power in class. The various discourses that create knowledge of the social world effectively organise, define and deploy power" (ibid, p.244).

In these two quotes, there was clearly some consciousness here from the BritCrits about being pigeon holed, and indeed therefore potentially making their work harder to attack specifically for its outdatedness. Interestingly, there also seems a specific attempt to avoid being labelled as a 'Marxist', perhaps for a similar reason to what Duncan Kennedy (2015)

reflected on in relation to early CLS work i.e. it is easy to dismiss critical reflection on dominant political power reductively as totalitarian and unworkable.

However, at the same time as wanting to move away from CLS, it is clear that this BritCrits development was still operating at the *radical margins* of accepted legal scholarship, and perhaps even revelled at doing so: “On this side of the pond, Critical Legal Studies was even more at the margins of legal education. It has been described as ‘the enfant terrible’ of contemporary legal studies” (Sandberg 2023, p.67). Whether this actually served to assist the BritCrits in transformative changes to legal education along critical legal lines is something to reflect on further: ‘popularity’ and ‘critique’ are increasingly challenging bedfellows in the contemporary law school.

Post-structuralism

Pausing for a moment on the BritCrit development of critical legal approaches to law, it is important again to reflect on the notion of post-structuralism and postmodernism. As admitted above by Douzinas (2014), wider and more pluralistic critical legal theories perhaps owe much to the philosophical challenges developed within postmodern thinking and writing, specifically in terms of critiquing the modernist ideals around universality, individualism and autonomy.

Within this postmodern mode of thinking (of challenging preconceptions), post-structuralism specifically goes beyond, but is reliant upon, the notion of structuralism. Structuralism is: “something which can be identified as an intellectual approach to the question of how language relates to the world and how meaning works” (Davies 2023, p.376).

So, traditional structuralist thinking developed the notion that “there are no pre-existent ideas, but that ideas arise from language” (ibid, p.379) i.e. that meaning, or value, to language is determined through differences in language and not through pre-existing ideas that have just been labelled. So, crucially, this way of thinking permits thinking around the notion that reality is, at least in absolute universal terms, inaccessible; “the way we think, and our comprehension of the world is situated in discourse, and does not have a natural ‘existence’” (ibid, p 381).

For the study of law, structuralist thinking is therefore an important critique to any notion that definitions for law can exist as universalities, and independent of context and difference. Thus, it can help to potentially break down the dominant discourse of legal positivism; instead tying law and legal systems to places, systems and people.

Semiotics (as noted above by Douzinas and Geary 2014) developed out of the notion of structuralism, through acknowledging how signs and meaning developed through things other than language alone. Davies helpfully gives a legal example of this in terms of the robes that judges’ wear, and that “the system of court clothing is a system of professional signification - it is the expression of some very particular relationships, organised hierarchically” (Davies 2023, p.383). The power of semiotics in a legal context therefore is to expand the idea of how meaning is created, and perpetuated, by symbols (in addition to language) within law and legal systems, rather than by a system of objective formalist rules.

Post-structuralism specifically builds on structural notions, but critiques the idea that structuralism still maintains rules for considering language i.e. that structuralism in some way

presupposes there are unified systems of language. So, post-structuralism "has…challenged the idea of the stable and fully determinate system" (ibid, p.389). Furthermore, post-structuralism critiques the notion that there is a specific subject (an 'I') from which language can be objectively observed. Instead, all positions are subjective and relational; and furthermore from this, the author of work "has no particular authority over the ultimate or final interpretation of a text" (ibid, p.393).

Framed in this way, post-structuralism holds real power, as it allows for additional ammunition for critiquing the notion of the 'perfect neoliberal subject' idealised within a neoliberal ideology (as being one that is self-sufficient, autonomous, and most likely white, cis gender, able bodied, male and so forth). Specifically 'opening up the text' of law in this way can focus the debate on what the meaning of the text *should* be within contemporary social settings rather than what the legal text *does* mean according to its authors.

This also seems to me to be a powerful specific method for exposing the reductive notion of law being objective, certain or remaining separate to societal needs. Providing of course that I can avoid backlash of this method being 'what is the point of any law?', I certainly see favour with using post-structuralism as an additional tool for critiquing the notion of 'right' and 'wrong' meanings of law (or indeed things that should remain constant and those that should not): "to realise that the insistence that there is only one meaning is a political strategy which reinforces the oppression of those that do not share the dominant view" (ibid, p.395). Instead, the key is to recognise how law, and legal language, is contingent, potentially unstable, and depends on relationships of power and influence.

Harnessing the rule of law

So, the BritCrit attitude to critical legal thought was seeking to open itself up beyond the confines of a more specifically defined political project against a 'known' enemy of liberalism; and certainly seems to have been impacted by some of the backlash to the more Marxist-oriented writing within CLS (particularly Horwitz noted above) which prioritised the struggle and resistance along class lines and along a more monolithic structure of liberal political oppression.

Further, the BritCrits clearly wanted, at least initially, to ensure that the 'rule of law' and legal doctrine was not completely dismissed as a concept but rather critiqued in its form. William Twining, a very well recognised scholar of jurisprudence and legal education in the UK, agrees powerfully with this recognition of doctrine:

> Academic Law cannot do without doctrine. It is a necessary but not a sufficient element of understanding law. I think a better approach is to adopt a nuanced view of doctrine, which includes more than just rules and allows that most expository works assume some tacit, often local, knowledge about the institutional, processual, and cultural practices in the background. I don't think that concedes too much (Twining 2020, p.212).

So for Twining, like Douzinas and Geary (2014), it is a nuanced appreciation of the influence and development of legal doctrine that needs to be recognised and instilled, yet with a clear acknowledgement that law does not exist neutrally or separate to culture, society, and indeed power. This is fair commentary here from Twining; as I have already said, I agree that

law and legal rights should not simply be dismissed out of hand given that rights may become effectively extinguished or unclaimable at all as a result. I perhaps however prefer the way in which Derrick Bell articulated this 'obligation' (noted above), as it more passionately recognises the perpetuation of 'whiteness' through dismissal of the rule of law.

I do wonder if the BritCrits were concerned that a narrower focus or set of rules could mean, like CLS, that any good work would be detrimentally impacted by infighting, backlash and corporate economic power; after all, you can build yourself a target that is then easier to see and attack. Notwithstanding this, in later writing, Douzinas goes on to note that, in more contemporary society, particularly after the financial crisis of 2008, cohesion and focus of the BritCrits (or critical legal theory more widely) may actually need to re-centre around law and the political agenda of the day, "Today critique cannot survive without resistance to governance and acts of de- and re-subjectification. This is our responsibility to the honour of the name of Europe and critique" (2014 p.195).

So, maybe the fight for critical legal thought in more recent times reminds us we must still come together. This may indeed be because, much like in the late 1960s in the US, the tide has again turned to a problematic dominance of governmental policies and doctrinal legal agenda - in this case, the neoliberalising project starkly exposed in the global financial crash of 2008. Plurality of thought must not mean a dismissal of collective power.

The failure and the loss - neoliberalism and modern critical legal thought

On this potential for further cohesion, Blalock provides a recent insightful critique as to whether critical legal theory has created a positive and sustained impact on the way in which law is perceived, including how legal theory is considered within law schools.

As a starting point, "Most contemporary legal theories recognize politics as influencing legal outcomes within a zone of discretion created by the law itself (although debates persist over the precise size of the gap for such discretion left by texts and precedent)" (2015, p.76). So, Blalock recognises the notion that contemporary legal theory can acknowledge a lack of determinism and neutrality in the creation of the law. I agree with this - indeterminacy, or at least bias, of legal judgments, does not seem to be a new argument and therefore may well have had time to embed itself (specifically given the earlier work of legal realists).

However, Blalock moves on from this acknowledgement to assess if CLS has also failed in some way. As to why, various allegations are posited as follows "And so the story goes, the legal academy eventually tired of CLS's relentless critique of liberalism's contradictions and power relations" (ibid, p. 77) i.e. if you simply critique without suggesting specific alternatives, this becomes tiring, lacks transformative potential, and becomes easier to ignore or suffer backlash from other theoretical perspectives (concepts acknowledged above).

Blalock notes again the criticism, "Even the critical project itself sought to undermine the idea that the solution would be found through theory—that it might lie just beyond the next hermeneutic bend" (ibid, p.78). But, for Blalock "there is an inherent absurdity to the premise that, in order to critique the current paradigm (i.e., liberalism or law), one has to be able to provide an alternative to law or liberalism itself" (ibid, p.79).

So, once again this purports that the inherent method of critique itself must remain; imagined alternatives can be created and promoted purely through the process of critique of dominant discourse rather than through specifically offering up defined agendas or specific alternatives. I remain conflicted on this argument; I remain concerned that not working through practical, specific actions (the 'doing') can soon create an ever stronger backlash of 'what is your alternative then?' I am not convinced that solutions can be completely ignored. However, I also note the potential for creative practice through not coming up with a defined, specific agenda as a direct follow on from critique. Further, who am I to develop solutions alone, without ongoing discussions and debate from the othered? To do so would be to cement hierarchy and privilege.

Centering neoliberalism in critical legal thought

In her piece, it is Blalock's claims on neoliberalism that are most intriguing for me: "neoliberalism is now hegemonic—it is not one theoretical account among many but, like liberalism before it, a set of principles and modes of governance so ingrained as to constitute the common sense of the age" (ibid, p. 80). I certainly favour this framing, given my reflections noted in Section 1 of this thesis.

Most powerfully, Blalock argues that "critique of neoliberalism as a political rationality has been excluded from the legal academy generally, despite its prominence in related fields such as political and critical theory" (ibid, p 89). This is crucial, and highlights again the key disconnect between scholarly work and the classroom pedagogy: "by not recognizing neoliberalism's logic, critical legal scholars fail to challenge it and risk further implicating law and legal theory in neoliberalism's legitimation" (2015, p.73).

So, two points emerge from Blalock's writing for my own practices. Firstly, it is the important reflection that contemporary critical legal scholars fail where they do not implement critique beyond the confines and power of a neoliberal ideology.

Secondly, critical legal scholars and any continued critical legal method must follow a wider, critical approach that recognises neoliberalism more deeply:

> When attempting to counter hegemony, what one needs to do is disrupt the legible—to expand the contours of what is considered political—not to accept the narrowly circumscribed zone of politics neoliberalism demarcates…(ibid, p. 98, 103).

It is a commitment to recognise neoliberalism at the ontological level in law schools that is therefore crucial. Neoliberalism is more than just a set of actions, it is a way of being that can undermine and attack without explicit championing and without specific labelling (it is both 'big' and 'little'). It is imperative therefore that law and legal education continue to deeply explore and critique practices through the lens of neoliberalism, to avoid such arenas perpetuating the status quo of neoliberalism's acceptance: "neoliberalism is law's problem because the law (and the legal academy, by extension) is complicit in its legitimation" (ibid, p.105).

Reflections for my own teaching practice - hopeful pedagogy?

Unfortunately, prior to this thesis, I have rarely engaged at a theoretical level with some of the knotty concepts explored above. To do so at this stage of my career involves some jarring unpacking of my preconceived appreciation of law and legal systems. Even previously where I may have introduced a wider appreciation of the law and legal systems for students (for example by noting examples of the prioritisation of economic value for directors of private companies, or highlighting the lack of protection for small business owners in contract law, or the potential bias of judges in the courts of England and Wales due to their gender, race and socio-economic background), my depth of reflection and ability to assign these examples to a critical legal *methodology* has been lacking.

Therefore, my teaching practice has been self-limiting when attempting to apply a more critical lens. As Margaret Davies saliently points out, "Limiting jurisprudence to the idea of law in a legal system is therefore only reinforcing the artificial distinction between law and non-law" (2023, p.12). What reduces this personal guilt of my prior teaching practice, is reading quotes like this: "modern legal education is based on positivist foundations - this is how we have all been trained to think and so it is difficult to think differently" (ibid, p. 114). I have been trained to think a certain way, and therefore it remains challenging to unpack that attitude. Committing now is better than never committing at all.

In terms of what has been most interesting for me when reflecting on CLS and critical legal thought, is the initial political mission of US CLS scholars to *resist* the culture of the time; that of the dominance of classic liberal ideologies focused on the value of individual liberty and of idealised individual rights. And for this to include pedagogical approaches. Therefore, I return to my reflection in section 2 of this thesis, around the potentiality of pedagogy as a resistant activist force. Perhaps, for my own discipline, a critical legal pedagogy can enact counter hegemonic practice.

In particular, it is the overarching focus, from CLS and critical legal methodologies, that I respond to. My own lens of law has, at least on occasion, perpetuated the dualism of concepts that 'are' law (such as state imposed legislation, or the interpretation of law through legal judgement) and therefore concepts that are excluded (or deprioritised) as 'not' law.

Therefore, to counter this, a philosophy of critical legal approaches should instead be harnessed: that law should not operate solely at the level of *procedural* equality, or that of the homogenous legal subject; and instead law should work towards principles of substantive equity, and of promoting heterogeneity and difference. This dismantles hierarchy and critiques neoliberal logic of narrowing the value of law around the success of the perfect neoliberal legal subject.

For example, within the field of Employment law, adopting a philosophy of critical legal approaches could involve an analysis with students of how legal 'employment rights' generally do not apply to those working in precarious 'zero-hours' contracts. Given the statistics of those most likely to work under such contracts, this approach perpetuates a marginalising narrative. So, the discussion can start from this framing, to consider how the law *could* work to better substantively protect such workers

So, building recognition of neoliberalism as an ontology within law, legal systems and indeed legal pedagogy is key. Now, for Blalock, it appears clear through her LPE work that there is a desire to reclaim Marxism from prior backlash to achieve a resistant strategy against neoliberalism; in particular, Blalock looks to reclaim the essence of Marxism as struggle and resistance against dominant discourse. As Douzinas reflects,: “Marxism has always taken its essential meaning from an ethical position: the struggle against oppression” (Douzinas 2005, p. 224).

In this specific framing of Marxist theory I see possibilities - after all, I have developed a strong personal feeling of struggle and resistance against some of the specific measures and priorities of higher education. This strength of feeling has only increased from reflections that my teaching practice to date may have stifled a more transformative attitude to law and legal practice, as well as perpetuating an individualised and ‘othering’ narrative for myself and the students operating within contemporary HE. I certainly feel a desire to fight the ‘oppressive nature’ of neoliberalising attitudes and practices.

However, I remain mindful of avoiding a complete ‘trashing’ of law. I want to recognise the potential value of law and legal systems to be able to support othered voices, but also of the agency of those voices away from a narrative of victimhood. Furthermore, “simply saying that something is socially constructed…will not do: the point of critique is to understand the techniques and method of construction in order to provide a basis for critically-informed reconstruction” (Davies 2023, p.424). Like Davies, I want to be able to focus on deconstructing AND reconstructing as notions in my own ongoing practice.

As Adams notes, from the perspective of a critical legal scholar, “it is only if we can better understand, and engage with, the ways in which the law constructs and structures social reality beyond the law—including structures of exploitation—that we will be able to embrace the law as a means through which to change that reality” (Adams 2021, p.467). I therefore seek to hold on to Adams’ and Davies’ writing here in an effort to retain a more hopeful, active version of future teaching practice.

Rage

At this juncture, I bring back Simon Springer and add Jana Bacevic as two essential points of critique for my movement between theory and pedagogical practice, and for further reflection of my writing.

Firstly, this quote from Springer really speaks to me:

> To dig down and unpack these abilities we need to appreciate the nuances of what could be meant by the phrase ‘fuck neoliberalism’. Yet at the same time, fuck nuance.....Our community, our cooperation, and our care for one another are all loathsome to neoliberalism. It hates that which we celebrate. So when we say ‘fuck neoliberalism’ let it mean more that just words, let it be an enactment of our commitment to each other” (Springer 2016, p.285).

Like Springer, I have had similar feelings on the debate around the nuances of what critical legal theory might actually mean, or indeed what foci may be ‘better’ to rely upon. Instead, I too want to say ‘fuck neoliberalism’, and focus specifically on a resistant strategy based on

more communitarian, transformative attitudes to both the content of my teaching, as well as the wider teaching practice and systems that I operate within.

Interestingly, this attitude in some ways reflects a quote from Kennedy's early CLS focused conversation when speaking with Peter Gabel, documented in the article 'Roll over Beethoven':

> ...because it's abstract bullshit, whereas what we need is small-scale, microphenomenological evocation of real experiences in complex contextualized ways in which one makes it into doing it (1984, p.3).

Kennedy speaks to me here, particularly after considering some of the breadth of theoretical voices and opinions contained in both early, and later critical legal work. Is the time not nigh for getting on and committing to a project of transforming attitudes, rather than debating an abstract vantage point from which to justify this from? An obsession over the 'better' theoretical or conceptual angle can create both the impression of an ivory tower academic rooted in the abstract rather than the practical, and further this debate could inadvertently lead to a focus on only theorising rather than doing.

Notwithstanding my internal frustrations, Bacevic provides an excellent and important critique:

> Screaming 'fuck neoliberalism' into the safe confines of journal articles or social media–while, undeniably, important as a mobilising force–is hardly sufficient to undo multiple infrastructural, political, and other inequalities, including those that are reproduced through the same venues" (Bacevic 2019, p.385).

This thesis clearly operates within a 'safe' system of control and cannot have sufficiency on its own; so perhaps screaming 'fuck neoliberalism' here may well be just a scream into the void. More importantly, Bacevic reminds me to not deny that the writing I have engaged with on critical legal scholarship has itself been produced, and championed, from a place of power and bias. And therefore of course that my own writing and teaching practices can do the same. This reminds me again of the necessity of reflection AND action; the practical work needs to be done, rather than simply written down.

Post Neoliberalism?

At the same time as a need for action, I do not wish to falter from continuing to imagine alternatives to neoliberalism i.e. post-neoliberalism or post-neoliberalising practices. What reflections on CLS literature has taught me, is that *contingency* is key to knowledge, language and meaning; and therefore a clear reminder that neoliberal hegemonic assumptions are contingent: "Neoliberalizing practices are thus understood as necessarily and always overdetermined, contingent, polymorphic, open to intervention, reconstituted, continually negotiated, impure, subject to counter-tendencies, and in a perpetual process of becoming" (Springer 2016, p.8). If nothing is set in stone, then surely the hope is that there are opportunities for change to exist, however micro in nature.

Returning to Connelly and Joseph-Salisbury, through "recognising the contradictions and problematics of the space in which we operate...recognition of how we are wrapped up in (or complicit in) the injustices of the university, and…working within and against the

university….we are in the university in order to subvert it" (Joseph-Salisbury and Connelly 2021, p.182).

'Practical' pedagogical methods

On enacting, can I explore specific post-neoliberalising *methods* for pedagogical development, from within critical legal scholarship? I intentionally frame 'practical' here in inverted commas, to express my disquiet around the legitimacy of taking up any of these examples of practice listed below. As will be explored more in my final section of this thesis, the extent to which I am able to test, or critique some of the below examples in my own practice, feels often quite limited when my role's boundaries are re-drawn around metricised and strategic tasks such as marking, teaching in bulk or offering pastoral and academic support to students.

Where is the space created, or granted, for these methods? This feels very much like a work in progress; a list of possible options to build on and develop, or indeed to not build on and develop where the weight of expectation or indeed the recuperation of my time in favour of neoliberal logic occurs. Notwithstanding this, I use this part of my thesis to imagine possibilities; what 'might' come at some point.

Douzinas and Gearey talk of critical jurisprudence as a viable option, specifically as a topic to be taught as part of legal education. Within this, one idea is to include the use of fictional legal literature rather than strict legal sources within reading lists or module guides, "legal scholars turn to fiction about the law in order to examine the wider cultural understanding…personal and professional assumptions" (2005, p.339). So, specifically going beyond case law, legal judgments and non-fiction secondary sources on the law, towards fictional literature and the more 'artistic' outputs that exist beyond the strictures of a traditional law degree reading list.

Now of course, with such an approach, the canon of legal knowledge is interrupted. Therefore, noses can be put out of joint: "Art is assigned to imagination…while law relates to control, discipline and sobriety…law is presented as the solution to the conflict of values" (ibid, p.343). So, feel free to imagine in your own time, but when studying, practising, and developing law, one may need to remain solution-oriented, practical, consistent and disciplined.

My sense, particularly from more recent conferences on legal education that I have attended, is that things have moved on a little bit since Douzinas and Gearey's 2005 critical attitude to arts and literature within legal pedagogy. There certainly exists a number of good practice examples of 'law and culture', 'law and film', and 'law and literature' programmes in contemporary law schools e.g. the Law, Film and popular culture module at the University of Strathclyde, the Law and Literature module at the University of Essex, and the Law and Literature and Film module at the University of Kent .

What is most interesting about this method of exposing students to fictional legal literature therefore, is that my own School now sits within Arts and Humanities Faculty (moving from Social Sciences) - could I therefore link up with a scholar of literature to work together on an interdisciplinary law and literature based module, or at least a partial reading list? This excites me, particularly given, for example, that I already feel that students should be

exposed to wider sources e.g. watching the play *Prima Facie (*written by Suzie miller and performed alone and powerfully by Jodie Comer), or *Mr Bates v The Post Office (*the recent ITV Drama re-exposing the Post Office sub postmasters). Even without linking with others that have more examples, I have recognised through personal viewing the potentiality for such sources to challenge assumptions about the objectivity of law and to critique the notion of the power of the Rule of Law.

Outcrits - outsider jurisprudence methods

Another practical method presented in more recent times, is through the lens of 'Outcrit': "Outcrit positionality, as a concept, strives to encompass a wide range of analyses predicated on diverse struggles for social justice that interconnect outsider subordinate groups in society" (Velez Martinez 2015, p.601). Here, Velez Martinez uses in particular the work of Francisco Valdez, as a guidance for what outsider jurisprudence and Outcrit should be: "OutCrit perspectivity therefore encapsulates the embrace of outsider sociolegal identification, the adoption of a critical intellectual posture toward all forms of subordination, and, recalling specifically our collective jurisprudential experience, a forthright rejection of straight privilege, all as integral to social justice" (Valdez 2000, p.1320)

Valdez, developing from his work on LatCrit (a sub-genre of outsider jurisprudence focused in particular on the rights of Latinos in the US), noted that: "As OutCrits, we can take up the serious business of defining and committing ourselves to an egalitarian vision of a postsubordination society, an undertaking that effectively requires all OutCrits personally to embrace the struggle against all forms of oppression under today's Euroheteropatriarchal status quo" (1999, p.845). So, for the Outcrits, it is the recognition of both sameness and of difference within intersectionality, and again the moving forward from previous work on Critical Race Theory and CLS towards a wider, potentially more transformative and productive, notion of achieving social justice within dominant discourse. As noted, Valdez in particular argues for a 'post-subordination' society i.e. moving beyond subordination within law and legal systems through the harnessing of those systems for change in the form of holding up those deemed 'outside' of the dominant ideal.

Given my own thoughts on the reductive notion of the perfect neoliberal subject being upheld within a neoliberal ideology, I feel energised to embrace an outcrit mindset in my future teaching practice. Velez Martinez's writing speaks to me, given that she too acknowledges the heart of the problem with 'traditional' legal pedagogy is that it is focused on positivism and the prioritising of law as an objective doctrine: "Furthermore, through traditional pedagogy, law professors contribute to the continued legal consolidation of power and legal knowledge in preservation of the status quo" (2015, p.586). So, crucially, change cannot occur if legal power and knowledge is not critiqued; and further, that such power can be consolidated as 'right' or appropriate without specific action.

In terms of a practical method of pedagogical change, Velez Martinez helpfully focuses on changes to the dominance of the 'case method' within legal education; as mentioned earlier in this thesis, the case law method is the analysis of judicial decisions (or case law) and their development of doctrinal precedent. For Velez Martinez, the insistence of the case method of teaching is problematic:

> ... the central power dynamic that surrounds the use of the case method: a hierarchical control of power and knowledge that mirrors society and marginalizes students in multiple levels….It is oppressive because it perpetuates a power structure that privileges a white AngloSaxon-hetero perspective and dominance as too what is knowledge, truth and law under the mask of neutrality and reason (2015, p.596).

As I have already reflected on, if students continue to experience a legal education that focuses on an orthodoxy of learning the facts, and outcomes, of judicial decisions (and the related development of case law precedent), then this risks perpetuating the dominant narrative of law being neutral, rather than in fact it contains an undercurrent of power and privilege (for Velez Martinez, this most worryingly being white heteronormative privilege).The answer can therefore lie in practical changes to teaching: "...tempering the excesses of the case method, using diversified teaching tools, distributing more handouts, building better relationships among students and faculty, and hiring more diverse faculty" (2015, p.611).

However, articulating suggestions for change and actually seeing these through to fruition, can be two very different things. In particular, there exists a number of barriers in the way to achieving these practical changes. One example of the challenges of an Outcrit mindset, in terms of practical change to curricula and programmes within legal education, is:

> It is interesting to note that Outcrit scholars...have largely occupied themselves with changing the substantive themes of law school. This includes the creation of additional courses on race, Latino culture, feminism, queer culture, indigenous culture, and human rights— inclusion of outside perspectives in the traditional courses taught in law schools. What has largely been absent in the discussion is how to teach in a way that represents the principles of critical pedagogy (ibid 2015, p.600)

So, there is a need for more than new courses within a law degree or legal education (albeit it is acknowledged that new courses such as those noted in the quote challenge the orthodoxy, at the very least for those students taking those courses); instead there needs to be a wider discussion about teaching more generally *across programmes* and law school policy, through the lens of critical pedagogy. This is challenging where there is little energy to 're-validate' or 'restructure' entire programmes of study along such lines; after all, such revalidations and reviews are perceived as time-consuming, challenging and a conflict, particularly within law schools that are not working collectively towards the emancipatory vision that Velez Martinez imagines. This mission only becomes harder when pulling against the embedded version of the 'orthodox' legal curriculum already discussed in this thesis.

One critical reflection on achieving critical pedagogy across programmes, is the dominance of teaching and research academics continuing to research within their research interests, and teaching specialist colleagues to teach and engage in 'lesser' notions of scholarship or development. Now of course, teaching and research academics may happen to focus their research within the field of critical legal thought, but a committed approach to critical legal thought within and across HE institutions requires a sustained commitment, and the recognition of the potential power of all members of academic staff. Downplaying the 'expertise' of teaching specialist staff to engage with notions of critical pedagogy does not assist in this.

Despite this, I do note that the School of Law at UoS certainly has made a series of diverse hires in the last few years. Although these hires are all within teaching and research contracts, as a teaching focused academic I am committed to speaking with some of these staff about their research interests and sharing potentialities for developing an 'Outcrit' attitude to teaching practice. From this, my hope is that I can try to work on reducing the insistence of the case law method alone in my teaching e.g. taking out some cases from the reading list, focusing on fewer principles within modules, adding critical legal theory to reading lists, specifying gaps and spaces in learning for critical reflection on the module content. The biggest challenge remains the dominant perception that there are irreducible minimums on what case principles *must* be taught.

Critical methodologies

If I can 'find room', how can I encourage a focus on critical methodologies in place of the learning and re-learning of well-established legal principles that present themselves as beyond reproach or dispute?:

> Exposure to theory as methodology, or skill, should really happen in the early stages of the student's life – so, ideally in the first year of the degree. This would ensure that not only are students exposed to the essential elements of black-letter law, but that they learn to interrogate the assumptions made therein and to thereby see black-letter law (or what I have above called legal positivism) as a single perspective …(Sokhi-Bulley 2016, p.128).

So here, the repeated message is that alternatives to legal positivism should not be seen as some form of 'add on' to legal education or as an elective for those that may want to choose it. Instead, a law degree should start with a focus on methodology and ontology, in order to explore and critique the assumptions of law as something neutral or objective. Importantly, as acknowledged by the BritCrits movement, there is a recognition here that legal positivism should not be dismissed out of hand, but instead ought to form part of a wider debate about other alternative methodological approaches to learning law.

Luke Mason believes that, through the removal of the QLD in 2021, there *is* the potential to now properly harness this lack of prescription or active regulation of the content of legal education. Again, here it is the possibility of embracing theory and discourse in legal education that Mason specifically calls for: "Every act of legal education embodies a theory of law" (2018, p.414).

So, for Mason, there is a clear need for the recognition of theory; like Freire (1970), Mason notes that it is impossible to consider practice without theory, and therefore it is crucial that legal education permits reflection by students (and staff) of the theories that relate to law, in order to avoid preconceptions to be maintained.

An insistence of teaching legal theory across all modules or programmes in a law school is potentially risky where this *conflicts* with a perceived need for students to learn about the canonical positivist knowledge of statute and case law: where does it fit? Further, I am very conscious again of my own hierarchy within HE and the law school - can I persuade

programme leads to bring in a wider debate around critical methodologies from the first year of undergraduate for example?

Perhaps, as noted below, a *micro* change here is possible - at the very least, raising the words ‘methodology’, ‘ontology’ or ‘epistemology’ (or even simply asking students to think about the assumptions or preconceptions they have about law and legal systems) might work as a starting point to encourage a debate around doctrine or case law rather than a taking up of case law as a set of abstract principles to be learnt and respected without critique.

Micro changes

On the topic of micro changes, Ungar sees their real potential: “The comparative advantage of legal thought according to this approach lies in its ability to use the small-scale variations in established law, and the deviant or subordinate solutions in current doctrine, as instruments with which to imagine and develop alternatives for society” (2015, p.25). This is powerful: ongoing attempts at critical legal thought does not have to involve huge scale changes or a complete overhaul of current dominant approaches to approaching legal doctrine. Instead, it is more about developing imagination within the current systems and allowing subordination of dominance to be harnessed as a result. In addition, critical legal thought at the micro and covert level, may indeed be the predominant approach for my role right now given that more macro change out in the open could be either quickly dismissed or lead to disciplinary behaviour of some sort.

Peter Gabel notes a very interesting practical example of how the law on legal remedies should be developed with critical legal thought in mind. I take this advice in particular as a useful practical reflection when teaching students about criminal or civil procedure or remedies (something that I currently teach)

> ...a transformation of remedy, beyond money damages passed between socially separated litigants conceived as interested only in material outcomes, and beyond a due process model of civil and criminal procedure that links justice to merely the vindication of rights through the dutiful monitoring of a fact-based public hearing that leaves the parties as disconnected or more disconnected than when their legal process began (Gabel 2009, p.532).

This is such a useful insight, and offers a focus for my ongoing teaching of a critique of individual legal remedies in favour of a more collective, loving attitude towards future legal processes. Specifically, Gabel suggests that a way of achieving this is to critique how legal procedures for accessing civil or criminal remedies delivers only ‘material’ outcomes (and only for those successful) and ignores the building of connections and the respect for the non-material. This is a great way of critiquing legal remedies, and ties nicely within the way in which a neoliberal ideology cements the notion that individual rights are to be pursued for individual gain (or indeed loss). Setting up this critique allows for more discussions over what legal remedies do *not* achieve, and so also how other developments beyond the ‘hard’ legal doctrine could, or should, flourish.

Critical Legal Pocketbook

Further on the topic of *micro* pedagogical changes, a recent powerful publication is the 'Critical Legal Pocketbook' (published in 2021) which was co-authored by academics at Warwick School of Law together with students studying at the institution. The aim, it seems, was to produce something practical and easier to digest, for law students to read and be inspired from within their own institutions. Interestingly, the Pocketbook was not just contributed to by research academics, and there are examples within it of writing from those with a teaching focused legal practice background. This is what grabbed me the most about this publication - it speaks to my teaching educator lens, and methods of contemporary critical legal activism within the classroom.

The Pocketbook is emboldened with its introductory thoughts, such as: "In any case, whether you trust 'the Law' or not, the critical legal attitude is to be suspicious (Wall 2021, p.28)..... For you as a law student, it means that it is never enough to read the case or the legislation. It is always necessary to explore the lived experience of law in whatever ways you can" (ibid, p.29). So, as with other writing noted above, the key here is to embrace the attitude of subjectivity and the lived in the law; it is alive and is intertwined with wider concepts, rather than neutral, objective or beyond critique.

A couple of further quotes from this Pocketbook really jumped out as me:

> As critical lawyers we must be prepared to unlearn and challenge our mainstream legal education and be willing to honestly examine and interrogate our norms…We must have conversations about how mainstream legal education reproduces hierarchy…(Islam 2021, p. 48, 49)
>
> ...we must accept that law alone will never be enough. We need to work closely with others that are working towards change in their respective spaces; educators, activists, advocates, grass root organisations and storytellers (ibid, p.51)
>
> This effort of thinking gives you a feeling, a little joyous buzz as your synapses ping with connections. You feel the joy of understanding something neat, self-contained, and finite. The theories are also attractive to lecturers who hold idealised notions of 'the Law', or who feel the need to teach the canon so that students can then understand the critique of it (Wall 2021, p.25)

I reproduce the first two quotes here partly as potentially powerful motivators. Although it appears the Pocketbook is aimed at law students, I feel that legal academics can get a lot from reading the various chapters of this short and accessible book. As a starting point, the pocketbook is a cheap download for students and staff, and so therefore forms an accessible piece of reading. I plan to add it to my reading lists where possible.

However, I am perhaps most interested in the acknowledgment in the last quote by Ilan Wall that raises an important critique of critical legal approaches and the power to change: teaching to the canon of law and the 'rules' of the game can be powerful and less chaotic for academics, given that legal principles offer up an *easy win* of being 'understood', and of being seen as the 'correct' thing to teach. Teaching critical legal thought continues to create

a significant challenge where neoliberal affect is felt - it takes time to think differently, and can seem like an insurmountable amount of work to develop more carefully teaching that critiques the canon and prior 'accepted' knowledge. Doing no more than picking up and tweaking resources from previous delivery is very tempting, particularly when faced with time pressure, deadlines and the fear of being dismissed.

Could I become a 'crit', for future inspiration?

As part of my ongoing reflection, I attended the Critical legal conference that took place at Durham law school in September 2023. I managed to obtain funding from my own institution, as well as through the EdD programme, on the proviso that I presented on a topic of my choice. I chose 'Becoming unprofessional- learning to fail in a neoliberal world' where I presented a formative discussion on the possibilities for speaking about active failure from a neoliberal discourse with students within HE.

The talk itself was to only a very small number of people; perhaps it was the timing, perhaps it was the subject matter or perhaps indeed it was the institution I was from (I was working for Ulaw at the time). It was difficult to separate the irrational fear of being an imposter from the reality of the conference experience for me, but it certainly felt a mixed experience when attending. Although the topics and nature of the conference were like none other I had previously experienced (for example in the welcome notes there was explicit reference to the marketisation of Durham University and the deleterious impact resulting), I felt in a precarious place. It was clear a lot of other attendees knew each other, and I was also conscious of a lack of teaching focused academics that were in attendance; the delegates often presented themselves as teaching and research colleagues either part way through a PhD or having completed a PhD.

As a result, for whatever reason, I lost a lot of confidence in speaking with other delegates or indeed raising the topic of the intersection of theory and practice - if a critical legal approach is justified, how does this practically play out in the classrooms of law schools? As noted above, this stands out as an important point of reflexivity for me - why such a conflict between discussions of theory and concepts from the practicalities of pedagogical approach?

I have since read this quote, which is interesting to reflect on in the weeks and months following the conference: "Operating in this potentially fertile liminal space between the profession and the academy presents an opportunity to develop insights that will have direct relevance to both" (McFaul 2020, p.160). Speaking for myself, as a person who has experience of both the legal profession and the HE academy, I do not currently feel in a 'fertile' space capable of code switching between ex-practitioner, to tutor in a private university, to early career researcher, to 'crit', and then delivering opportunities for insight. In fact, I feel once again frozen in passivity in some ways; exasperated to continue.

This personal reflection speaks to my insecurity around my role as a teaching-focused academic, and somewhat to my frustration as to events such as this that may both exclude my role or fail in their focus on pedagogical action.

Legal History

Russell Sandberg, Professor of Law at Cardiff University, has recently published a book calling for a wider respect for teaching legal history, as a way of encouraging deeper discussions about the contingent, subjective nature of law and to de-prioritise the respect for entrenched, objective and 'certain' legal doctrine: "The study of the current law in isolation tends to suggest that only modest legal change can occur within the confines of the system. Yet, a historical approach shows that the system itself is not universal and modest incremental development of the status quo is not the only option" (Sandberg 2023, p.13).

I feel I can harness some of Sandberg's suggestions in my own teaching; he recognises, like some of the other writers I have read in this section, law's 'reality' is one of subjectivity, various incoherence and inconsistency, and subject to dominating discourses of biases and inequality. In particular, Sandberg's reference to law as a series of 'stories' is interesting to me - focusing on the human experience of the law, and the people involved in law's histories. For me, human stories are often forgotten or de-prioritised when law is taught, given there is a perception that the priority is to learn as many legal principles as possible. More time is needed to reflect on the heterogeneity of experience by those living within law and legal systems, particularly in doctrine-heavy subjects.

I of course recognise once again the 'power' of doctrinal knowledge for law students, particularly if looking ahead to the legal profession. However, Law is in danger of being further entrenched as a truism if there is too much *respect* for historical legal development without critique. Sandberg recognises that a focus on the social construction of legal principles can avoid an indoctrination, or uncritical respect for legal principles, and can instead permit imagination of alternative ways to create future legal principles: "These stories and the resulting characteristics of the common law need to be explicitly presented as being authored, as constructed stories of the common law. Law students need to be aware of these stories in order to question them, in order to be subversive (Sandberg 2023, p.223). This is a powerful call to action, and one I hope to follow.

Teaching vagueness

A final point of interest that I have recently been exposed to, related to the above, is the specific teaching of law as 'vagueness'. Returning again to the provocation that law in some ways 'needs' to be taught according to a case law method and according to a set of agreed principles, a problem that can result can be the prioritisation of *precision*: a focus on the 'right' answer to questions over law. Amongst the most common queries I get from students is whether or not their answers provided are 'right', in terms of following an approved structure of precise application of the rules of legal doctrine.

Instead, an alternative opportunity is through better *embracing* law's indeterminacy and vagueness. As CLS espoused, law is indeterminate in its nature (potentially deliberately so, if you follow a Marxist CLS approach) and so this 'vagueness' of law should be better embraced between staff and students on legal education from the start. As Chadra-Sridhar explains, "Legal cultures seek to curb subjectivity and neutralise context by reducing vagueness and strive to make legal language as precise as possible" (Chadra-Sridhar 2021, p.70). Instead of precision, law should be discussed and presented critically as complex, vague, contingent and subjective: "Precision and its insistence on abstraction

reduces the scope for complexity and undermines context. Vagueness's value is rooted in its understanding of this context and its sensitivity to the lived experience of people who are governed by rules" (Chadra-Sridhar 2021, p.81).

I can use Chadra-Sridhar's suggestions here for my own practice. Firstly, I can try to better empower students to reflect on how they subjectively 'feel' the law. The crucial follow up step is to then stop students associating this 'vagueness' with a lack of clarity or, to consider this a 'wrong' way of thinking about the law. Instead, embracing vagueness could assist in better prioritising learning from the lived experiences of those existing within law and legal systems.

Relatedly, and specifically within problem questions, I can encourage more explicit signposting of vagueness within a set of facts or aims for a 'client', and of course more explicitly acknowledging that students will be given *credit* for highlighting and discussing how this vagueness may be resolved by judges or statute. If I explain better that the law is vague and therefore subject to argument, students might get less tied up with the notion that there is a *right* answer for the client. Furthermore, it may be that students are able to see where statute in particular is intentionally vague, and to spring from this to debate how this has been impacted by case law interpretation i.e. a deeper critical analysis than simply learning case law principles.

Now of course, all this sounds wonderful in theory. But the overbearing weight of the challenges of achieving any of these things within a contemporary university law school returns to me, and I am once again concerned: "Although many of the ideas and principles of the Critical Legal Studies movement have become widely accepted, this is typically in areas that are peripheral to Law Schools" (Sandberg 2023, p. 69). Where to go next?

To section 6

This section has been a hugely important reflection for me. It has allowed me to fill my mind with possibilities for a critical approach to the canon of legal positivism and the case law method of legal education. These possibilities have formed into some very practical and potentially very achievable pedagogical methods.

However, I remain cognisant that a commitment to critical pedagogical ideas can be dampened, and altered, when played out in reality. As I seek to develop my teaching practice within my current teaching role, the outcome could well be that my pedagogical activities become assimilated into my job role and do more to achieve complicity than subversion, and therefore do not amount to counter-neoliberal activist practice.

Therefore, as I move into my final section of this thesis, I look to set out a personal manifesto; a pledge of intentions. The reasons for this are twofold - a written pledge of this type helps to solidify some of my changes; but more crucially, as a final part, it is something for me to continue to return to, with the aim of seeing the work as ongoing and reflexive.

Section 6 - my personal manifesto

The central focus for this final section of my thesis is focused around this statement- can I re-energise myself around a hopeful set of intentions and future motivations for my setting right now, as a University Teacher in a university law school?

Given that I have already considered some pedagogical possibilities in the previous section, my aim in this section is twofold. Firstly, I want to cement some practical commitments to action (both pedagogical and beyond) that I can try to implement *now* within my current role in higher education; but secondly, I also want to consider more widely the *imagined* possibilities. In doing so, I frame again the key personal challenge to transformative action. Complying with the perceived 'need' of graduates to enter the workplace and to 'succeed' can mean sustained practice countering this perceived need, particularly beyond the fleeting interactions with students within the classroom. Can this be overcome?

Most importantly, by setting out some forward steps, rather than backwards steps or passivity, I also recognise the critical attitude of not being 'settled' with the actions I mull over here - even if I implement all of these plans, there may not be realised outcomes. Instead, my hope is that, long after this thesis is submitted, I can keep coming back to what I write here to reflect, develop, discard, analyse and most crucially run past other stakeholders working resistantly to neoliberal hegemony. I set out this section very much therefore as a 'work in progress'.

Love and the collective

This first personal action is inspired from my ongoing critique in this thesis of the vision of the 'perfect' neoliberal subject, and its unremitting prioritisation of individualism. This pledge seeks to counter the overarching atomisation that is felt when pursuing neoliberal metrics of individual economic prosperity. As explored in this thesis, this notion of perfectionism is particularly stark within legal education.

I therefore choose to set a regular reminder for myself to recognise and embrace the notion of caring for others. I push back against a narrative of independence and self-sufficiency within a university setting, particularly because it is far too easy to place the burden once again on the individual and to forget about the varied and nuanced challenges of studying in a contemporary university setting: "There is clear evidence that emotions are inseparable from the processes and people involved in the law school. Disregarding and suppressing emotions can be damaging to both well-being and learning, and fails to utilise the growing importance of emotional competencies as an integral part of the higher education's skills agenda" (Jones 2018, p. 479). Studying is emotional, and this should not be ignored.

What does a caring and loving attitude look like? As a starting point, I am setting an ongoing reminder on my desk to see the human and the lived experience in who I am engaging with, to avoid quick judgement or dismissal, and to do so without expectation of response. These are not small challenges, particularly if stress, tiredness, perceived responsibilities and general life experiences all make achieving such a goal subject to my own mood and

wellbeing. But, I set this reminder nonetheless as I feel this visual keeps me *actively* thinking of the human emotion enmeshed within my role.

One important critique I have developed over caring, is that this can have the potential to contain loaded elements; not least the neoliberal narrative ascribed to such notions. 'Caring' within a neoliberal framing can be addressed *efficiently* through a procedural framework - framed as available to be taken up by the individual involved, but therefore requiring individual self-sufficiency to take the first step towards support.

Focusing on caring for others requires an increasing amount of time and effort, particularly where student numbers are increasing for the study of law. Therefore, I feel I do not always possess enough time or energy to actively care for all students I engage with. Put plainly, it can sometimes feel exasperating and tiring to work on caring more for others, particularly when you are part of a system where such care is not necessarily reciprocated or acknowledged.

Notwithstanding the challenge, I harness the activist obligation to remind students whenever I can that they are not alone, that they should prioritise their leisure time and wellbeing and that they should themselves seek to reflect on what they might hope for from their university experiences (outside of the goal of 'having' a set of marks and an ultimate qualification). These are all points I have had to remind myself regularly of when studying for the EdD, and I believe this personal experience of the varied and multiple challenges of studying emboldens a sense of care for others.

My specific teaching ethos

As Section 5 of this thesis identifies, pedagogical methods may hold potential. I remain hopeful about the power of pedagogy, however problematic the contemporary university classroom may be.

As a follow on, I aim to explicitly introduce students to words like methodology. ontology, epistemology (and their connections) within my teaching sessions, as a precursor to framing discussions about methodological lenses that can attach to student writing e.g. a critical methodology that acknowledges the subjectivity and othering that the rule of law can create. At its core, this is about challenging the prioritisation of a doctrinal lens to law above all others. A practical method to start this, is to ask students to critique their assumed methodological lens for approaching essay questions on a point of law or legal development.

Most crucially, I will work to resist the unerring focus on the traditional 'case law method'. This can best be achieved through reducing the *number* of cases looked at; and introducing students to a re-framing of how cases are analysed that is not dominated only by learning a set of clear principles, but instead focusing on the ways in which cases do highlight complex and unclear lived experiences with contested attitudes of right or wrong. Included in this is the idea of reminding students of the human actors, their subjectivities, and their stories within the narratives of the cases presented, rather than just the legal ratio or principles that the cases highlight.

As a case study reflection, I am teaching two modules on the undergraduate LLB programme in the UoS School of Law. Both modules (Employment and Remedies) are modules that are relatively new to me, with Employment Law being a subject I have not actively studied or practised for over 20 years. Employment Law is delivered to final year undergraduates, and Remedies is delivered to first year undergraduates. The initial feeling about teaching of this nature is trepidation: I am a 'non expert', it will take me a long time to read over the content and get to a level where I can explain concepts to students confidently, and I only get limited prep time for this teaching.

Through a hopeful reframing I acknowledge that such new teaching might also allow me to develop a fresh 'critical' lens both in terms of the ontological approach and my pedagogical methods; further, I might be able to more direct relate to, and work with students on, the challenges of learning a new subject.

I have found previously that being honest with students, through expressing my own personal insecurity and vulnerability, and through acknowledging the challenges of studying technical legal concepts, have assisted in harnessing a better connection with the students that I teach. There is of course a limit to such an approach - opening up too much doubt to students over knowing the subject matter can potentially lose the trust between student and staff over the accuracy and quality of what they are learning.

To try and embrace a *critical* lens for my new teaching, I refer back to the critical legal scholarship. Zoe Adams, considered in Section 5, reminds me that: "Legal discourse can only 'see' social relations as interpersonal relations between formally equal individual subjects….Thus, as law resolves legal disputes between subjects, or 'addresses' social problems, it does so without ever touching, or engaging with, the logics, and structures, which shape and condition their actions" (2021, p.437). This is an excellent quote, and one that I plan to put directly on one of my set of teaching slides (or VLE) at the start of the module. It really highlights a crucial critique of legal formalism and that of the dangers of framing cases as legal principles to be harnessed rather than the subjective conditions and experiences within case law scenarios.

Adams provides a couple of very interesting suggestions for my teaching on the topic of Employment law in particular:

> ...It might, for example, seek to highlight how the legal form itself systematically excludes certain groups from the scope of labour law, and explain why this is problematic, by exposing the structures that justify the application of labour law to those groups in practice (2021, p.445)
>
> ...a more productive intervention would emphasise instead that, through the lens of the juridical form, the existence of de facto obligations, a product of the economic pressures imposed by the market, and the imbalance of power between Quashie and the club, were obscured, or rather, discounted as irrelevant to the legal question at hand (ibid, p.463)

These quotes for me summarise some excellent practical suggestions for my ongoing teaching from a more critical legal perspective. Picking up the thrust of Adams' suggestions

in terms of approaches within the teaching sessions, I seek to highlight cases such as ‘Quashie’ through a critical lens and the ‘othering’ that law can create (this case involved a strip club worker arguing, unsuccessfully, at an Employment tribunal that they were a legal ‘employee’ when working at the strip club).

Further, I can expose the precarity of the ‘gig’ economy (for example, highlighting the lived experiences of those working in this sector, and how Employment law may not fully address with such atypical work), and the law’s primary focus on procedural over substantive fairness through a prioritisation on procedural equality i.e. offering *individual* redress against singular protected characteristics rather than better embracing intersectionality.

Of course, as noted previously, I already envisage the inner conflict that a critical approach to teaching law in this manner may create with the students; this being a somewhat precarious line between highlighting both the perpetuation of ‘othering’ that law and legal systems create, and of recognising the potentiality for law and legal systems to create something ‘better’.

Reading lists

Related to the above, and taking inspiration from others, like Joseph-Salisbury, Connelly (2021) and Ungar (2015), who all acknowledge the potential power of resistance at a more ‘micro’ level, is work to widen and diversify the reading lists for my modules. This is of course more restrained where I am not the module convenor, and where reading lists are already often vast and unwieldy for students. Further, a diversification of reading lists alone does not solve the problems of a narrower framing of value; it must work in tandem with other measures.

So, perhaps three modes of attack here:

1. Add overarching books, such as ‘Asking the law question’ by Margaret Davies (2023) which I have used extensively for my thesis

2. Seeking advice from critical scholars as to resources I currently have not engaged with in depth, such as ‘a Critical introduction to Law’ by Wade Mansell, Belinda Meteyard and Alan Thomson (2015). This textbook is framed from a critical legal perspective, and sets out an excellent introduction highlighting pre-conceptions over what law and legal rules are:

   “We think of rules as things which are to be found in books and which tell us what we may or may not do. Many lay people characterise the job of lawyers as one of applying rules which they know, in order to determine legality and to ensure that actions conform to the rules. Although the rules may be slightly malleable, one of the great benefits of the Rule of Law is believed to be that the rules are always both discoverable and transparent” (2015, p.4)

3. Including articles, blogs, podcasts and other content developed by ‘crits’ as essential reading for modules, in place of some of the other content that is delivered to students

Returning to the ‘case law method’ within legal teaching, and its prioritisation for doctrinal sources (either primary or secondary), it remains a significant challenge to carefully craft where to cut down this doctrinal content within a module. In addition, is the ever present overarching question mark over what ‘ought’ to be included in modules within a law school. Therefore, two options currently emerge.

Firstly, an undercommoning attitude of sneaking in a more critical approach to module reading lists; seeking to actively move away from the canon of sources most regularly finding their ways onto reading lists, and embracing sources that are not only the type of established textbook and journal sources that remain powerful within module content. Alternatively, or perhaps additionally, more explicit flagging to programme leads, of a change of reading lists, to ‘better align’ with the institutional priorities of ‘decolonising’ the curriculum and embedding ‘educational for sustainable development’.

After all, these initiatives at their core contain the value of delivering plurality of legal theory and thought, and so could be harnessed for specific buy-in: “it seems evident to me that the required shift is to a conception of law which acknowledges, and it fact emerges from, the entangled nature of existence and that as a species, humanity needs to adapt and respond to the physical environment…” (Davies 2020, p.530). This option may actually work better, particularly where I will need to persuade others to change reading lists.

On the practical legal level, within my teaching of Contract law, I plan to simply pose the question of ‘what are your reflections of your contract with the University?’ as part of an ongoing reflective process. This centres a critical debate over the role of the University in relation to students, at the same time as drawing in the subject matter of Contract law itself.

My extra curricular roles

As part of my current role, I have been assigned the job of ‘quality assurance’ on the Education committee and of ‘Deputy director of employability’ on the skills and employability committee. I acknowledge that these two roles could feed directly into a neoliberal narrative.

As this thesis has explored, quality assurance at its most reductive is simply an assurance that the National Student Survey (NSS) and internal ‘Tellus’ (student reflection questions) survey are filled in to a sufficient extend by students so that the metrics can be published and harnessed by the University as additional marketing tools; or indeed as part of the tools of power to press staff to more directly ensure that ‘poor marks’ and ‘critical comments’ in such surveys are quickly and ‘effectively’ reversed.

An employability and skills narrative at its most reductive only feeds into the discourse of encouraging an uncritical entrepreneurial mindset in students i.e. the development of those skills that are perceived by students to be most important for future employment, and thus ‘badged’ as such. What can follow is a focus on merely having this set of skills, rather than experiencing the process of obtaining, and reflecting on, skills.

But, where can I find the cracks or opportunity for transformation? Perhaps with the quality assurance role there is room to discuss with the rest of the Education committee team where we need to move beyond metrics, towards a more carefully analysed way of co-constructing

with students based on their qualitative lived experiences; so in particular framing the collection and auditing of data less through a 'you said, we did' voice and more through a 'we worked on this together' approach. Specifically, it would be good to talk with students more carefully about the strengths, and weaknesses, of the surveys we present to them in the first place. My institution is not simply going to ditch these external surveys and also have no influence over the questions that are asked on the NSS survey.

With the employment role, perhaps I can work towards including events within the 'skills' programme offered to students that focus on wider topics such as: embracing and working with notions of failure (see below in imagined possibilities for my specific thoughts on this), wider examples of future job roles beyond legal practice, challenging heteronormative goals for employment etc. Also, actively seeking speakers who can talk from a wider, critical angle will probably embrace a wider range of perspectives in such sessions e.g. specifically looking for non-white speakers, or queer theorists, or charity and community workers.

Reviewing the curriculum

As part of my current role within UoS, I have the opportunity to speak with the members of staff that are tasked with analysing and re-validating the scope and programme level oversight of the undergraduate law and criminology programmes.

This gives me an opportunity to at least put forward some practical suggestions for change. For example, a consideration of critical jurisprudence as a mandatory module in the first year?; 'critical' pathways (alongside other pathways) being advertised to students and being carefully explained to students along with the other pathways they could choose?; a more careful and collective approach to module outlines and module creation, whereby a wider range of staff can provide comments on module outlines and module content (something that currently works as standard on assessment creation)? My current hope is that I can at least have a conversation as a starting point with those persons tasked to make any changes.

Would pursuing a design or management role assist? I am unsure about applying or pursuing management. I recently decided not to apply for a Director of Education post, on the grounds that I was both fearful of the strategy I would be asked to implement from faculty and university level without critique, and also the move away from classroom teaching (through buyout) that this role would have brought.

Talking more about critical concepts and pedagogies

This idea of talking collectively is inspired from moving away from a conflict zone of legal education in particular, and a perceived hierarchy of legal knowledge. Conversations involve others, and move away from the individual.

I have found already that having conversations with staff and students about some of the issues and topics that I have explored in this thesis have led to engaging discussions. For example, I might catch two or three colleagues in the kitchen and mention my reading around critical methodologies; or I might have a feedback consultation with a student on essay technique and ask them to what extent they have considered their theoretical

underpinnings for their arguments; or indeed I can talk more explicitly about my research at ‘work in progress’ research sessions, informal scholarship circles and internal school meetings.

Although these conversations are often fleeting, randomly ordered and out of direct context to my teaching, perhaps these are the spaces where I can at least share my feelings, and for others to share their feelings with me. After all, this seems like the development of praxis, in terms of reflection and action, in some ways. On this point, I enjoyed the work of Morrish and Sauntson, “At least we have a critique, and we must sustain it. This critique must take place explicitly, through for a such as publications and conference presentations, but also ‘off stage’ in staffrooms, bathrooms and classrooms” (2019, p.220)

Of course the battle remains, as exemplified by McFaul: “...legal education is likely to be undertheorized due to legal academics reserving their research efforts for substantive law rather than the teaching of law” (2020, p.160). So, harnessing a collective community of staff within my direct School that are focused on developing approaches to legal pedagogy remains an ongoing challenge.

Mentoring and supporting

This reflection comes from my reflection on my journey into and through HE over the last 14 years. As a starting point, I draw back to colleagues both within the School of law and beyond, that are engaged on teaching focused contracts. My ongoing sense is that these staff are potentially downgraded in their abilities due to their ‘status’ as teaching staff. Within law schools, this hierarchical nature is further perpetuated for those staff who have entered directly from legal practice.

I want to better promote a collective attitude away from *personal* blame, shame and self-doubt for colleagues, like myself, who may have felt ‘othering’ within HE institutions. I am keen to discuss my own reflections on why this othering occurs, and how specifically it is intertwined with a systemic attitude developed over a long period of time within the ‘walls of academia’ towards those ex-practitioners turned teachers, and towards those who focus predominantly on teaching rather than teaching and research. In essence, I want to share how the ‘conflict zone’ I present in Section 3 of this thesis is systemic, rather than the *fault* of the individual.

Further, I am considering the setting up of a reading group along the theme of ‘what is a University’. I take inspiration from a project from Peseta, Fyfee and Salisbury at the University of Melbourne and University of Western Sydney. In their reading group, these authors centered on the following *problem* for HE: “today’s new Australian academic or professional staff member is likely to receive a general induction that orients them to the strategic goals of their university (and how they can direct their effort towards those goals) but they are unlikely to learn about the history of the institution they labour in, let alone engage in a scholarly dialogue which signals that the idea of the university itself is contested” (2020, p.115).

So, in a similar way, I want to be able to share reflections with others on how it can *feel* to be managed and directed within academia towards ‘strategic’ priorities and goals, how jarring it

can feel if you start to contest such priorities, and how conflicting it can feel to want to encourage critical thinking for students yet be denied, space support and time for critical thought around the contested notion of the contemporary university. In this way, my hope is that conversations may move away from personal blame, apathy or passivity, towards energising action.

Clinical legal education

I have as part of my role at UoS been tasked with developing the 'Freelaw' clinic within the School of Law. This clinic is run as an example of clinical legal education, and so forms an interesting analysis point; specifically such clinics commonly have a dual focus on the employability agenda for students (in terms of specific legal skills development) but also a focus on serving the wider public.

This focus is *conflicting*, as there is always the risk that a reductive entrepreneurial attitude can take precedence: "The general approach is to prioritize pragmatic considerations of how CLE programmes can develop professional or 'lawyering skills' and provide effective services to the public" (McFaul 2020, p.157). For context, the Freelaw clinic offers initial legal advice to members of the public, which is primarily delivered through students in interview and letter form (working in the clinic as an extracurricular activity alongside their studies), and overseen and checked by me and another ex-practitioner colleague.

Unfortunately, as has happened before, this quote really bites hard: "Typically, this (*clinical legal education…emphasis added)* resulted in ex legal-practitioners, or part-time practitioners, being recruited, the majority of whom were selected on the basis of professional experience, rather than a formal academic research or teaching background. Arguably, this has a dampening effect on the development of a theoretically engaged discourse around CLE" (ibid, p.158). So, again whilst I still seek to be *proud* of my ex-practitioner background, McFaul presents a 'professional' background here as a potential badge of dishonour within academia.

My current thinking is to work with students on their ongoing reflections of engaging with Freelaw- what they enjoy, what they don't, what they believe Freelaw to be for, and crucially where they feel they are able (or not) to reflect on the theoretical underpinnings of the clinic. My aim, through these open questions, is to try and connect the ethos of Freelaw, specifically its direct interaction with the lived realities of its clients, with critical approaches in other taught modules. So, posing follow up provocations to students that undertake Freelaw such as:

> Where do the clients of Freelaw fit within legal structures?; what views do you have on justice and access to that justice?; what governmental policies or laws seek as their purpose the prioritisation of these Freelaw clients?; does Freelaw offer a public service that cannot be properly accessed elsewhere?; what are the limitations of the Freelaw clinic?

With questions like this, my hope is that I can better prioritise in students a critical reflection of the clinic, over and above a more surface level utilisation of the clinic as a 'practical skills'

or ‘CV builder’ opportunity for students. As fuel, I do this to move beyond McFaul’s statement (2020) that professional experience in Freelaw does not engender a deeper theoretical reflection.

Audio feedback

This particular idea comes from my prior research in HE: the provision of audio feedback on assessments (as part of the marking process) rather than traditional written feedback. Now, on the one hand, a change such as this can appear very self-limiting without addressing some of the wider challenges of: over-assessing students, assessment design, clarity over ‘good’ assessment approach for students and so forth. However, I see audio feedback as a way of encouraging a more emotive, empathetic attitude with students.

This view is supported by literature on the subject, albeit there is also an acknowledgment that data collection from students and staff of audio feedback experience remains under-developed. What data exists, is encouraging “there was strong data from both tutors and students that these perceptions of presence led on, for some, to perceptions of connection between them” (Turnbull 2022, p.117). Further, “Audio-visual technologies may have something to offer in the rebuilding of emotionally aware pedagogic relationships fractured by contextual change” (ibid). During my brief personal data collections on audio feedback from students, I have noted similar experiences.

So, albeit as part of a wider picture of developing change, audio feedback has the potentiality to embrace a more caring and emotional connection between students and the academy within which they study. And this can specifically rally against the cold, homogenous and procedural aspects of ‘traditional’ written feedback alone.

I have one module that I teach alone, and therefore have nobody else to *convince*. I can implement audio feedback without resistance from colleagues. From this, the aim is to collate further reflections from students on this feedback method and to then share such reflections more widely with other colleagues.

Assessment methods

As a final practical commitment, I want to review the current assessment methods that I utilise on the modules that I teach. Firstly, I am very conscious of the high number of assessment that students still appear to have to engage with during legal education - it still seems, despite institutional attempts to reduce assessment burden in recent years, that law students regularly have both a practice and actual assessment on their modules (which are still often unrelated in topic and scope), that the actual assessment often involves more than one mode of assessment (predominantly essays and problem questions), and that students may well choose modules where they are completing between 3 and 6 separate assessments each semester.

Secondly, and more important for my own focus, I am interested in how different assessment methods may better permit engagement with critical legal methodologies. So, assessments that link more closely to a larger single piece of work could be useful (where students have more words to explore and develop their personal methodology and ontology), assessments that focus less on only permitting application of the case law method to a client scenario

(without additional reflection or critique of this method), and assessments that potentially cross modules (known as synoptic) or build up from formative work that is reviewed and supported with markers rather than completely separate tasks.

Challenges, resisting, and imagined potentialities

At this point, I feel it is important to highlight some of the biggest practical challenges to my 'current' plan of action.

The first is the lack of time that I have with the students within formal teaching sessions. At present, I have 6 hours of tutorials with students per semester on any undergraduate module. This 6 hours is scant time for even getting to know student names and addressing all of the basic content set for the module, let alone having time to develop a critical community that is able to more openly co-construct. Without this time increasing, I am currently struggling to engage in committed and critical conversations with students along the lines of critical methodological approaches. Given the increasing nature of undergraduate numbers on the law degree in particular, combined with the lack of further teaching staff, it does not seem that this time increase is going to be implemented carefully or sensibly any time soon. At most, I could see increased lecture time implanted, as this is easier to timetable en masse.

My sense is this limitation of time is precluding the building of positive, affective, relationships with students that may then encourage subsequent deeper reflections. This is reflected in Ruth Barcan's writing: "Large student cohorts and fragmented attendance and curriculum structures have the potential to undermine the element of relationship in the classroom, both between teacher and students and between students themselves" (2013, p. 166). Where the students and I are limited in time, the prioritisation of doctrinal content is difficult to shake. I feel that I must spend the time getting across key concepts to avoid dismissing legal doctrine altogether, and students feel they need to learn such key concepts as a priority.

The second is the specific assessment set for the modules I teach on. Currently these consist of both a problem question and an essay question (with a very tight word limit of approximately 1500 words for each). So, even where the essay question technique can be utilised as a forum for discussing critical theories and approaches, the word limit is extremely self-limiting. Further, the primary aim of any problem question is to apply the legal doctrine 'as is' to a client's legal problem, and therefore totally eliminates any scope for wider critical discussions about the potentialities for legal theory.

Therefore, the assessment (which also battles for time against a number of other assessments in other modules, both formative and summative) is not fit for purpose in this regard at present. At present, my institution requires at least 2 years prior notice for major assessment changes, and so this challenge is not easy to address.

The third is the challenge of the case law method. There exists a wealth of doctrinal content and 'presumed knowledge' that is expected of students within the modules I teach. There simply are far too many topics, cases, and 'hard' law elements that are considered 'necessary', and, as a result, an in-depth and sustained critique of such concepts is often

difficult to fit in. Even if wider issues are brought in, students may prioritise the standard textbook and case law reading that is set for them because of the perceived value of case law imbued in their learning at prior points.

This quote nicely summarises my current predicament in this regard;

> In contracts, say, if a teacher is teaching, or feels compelled to teach, all or even the principal points of doctrine, they have…to cover up to 40 different topics, from contract formation, through parties, terms, performance and vitiating factors, to remedies and illegality. There is no room here for examining the social context of contract…(Rice 2023, p.223)

The fourth, and possibly biggest overarching challenge, is how my ongoing work conflicts with the pressure to take on leadership and management roles, framed as promotion and progression: "No longer are knowledge, ideas and intellectual agility the most highly valued gifts in the academy, nor are they seen as the characteristics of 'promotable' academics. The only aspiration viewed as legitimate is that of 'managing'" (Morrish and Sauntson 2019, p.27).

So, while I continue to focus on developing my critical pedagogical practice, this may be interrupted by a desire to be rewarded financially, or with a sense of personal recognition, through promotion. Are there ways to achieve progression and critical practice?

Imagined possibilities

Given the challenge of the practical, it feels more empowering to focus on the imagined and the hopeful. I would love *pedagogical* theory to be taken more seriously by the School of Law. As noted by Fiona Cownie:

> ...it is a call for law teachers to take seriously their position as academics, as members of a university, which is a place concerned with `the theory of things'. It is a call to take part in a debate about the nature of legal education itself, to explain what we believe the purpose of legal education to be, in philosophical terms, and to work out the implications of that philosophy for teaching methods, methods of assessment and course content (2000, p. 236)

The disconnect between teaching-focused and teaching and research colleagues needs to be dismantled - enough of the separate events for colleagues under each type of contract, enough of the lack of connections and conversations between colleagues, and enough of the design and creation of modules and programmes being left to either managerial roles or module convenors alone. Instead, there needs to be an 'away day', or School Meeting, or 'reflection event' whereby all staff come together and debate the nature of legal education, the notion of legal and pedagogical theory and potentialities for course design in an open and 'imagined possibilities' framing.

In my experience to date, any collective conversations of the type I imagine, bring with them variances on themes of: disagreement, dismissal of possibilities in favour of strategic practicalities, debate without resolution, and a distancing rather than convergence of

consensus. Instead, there should be setting of ground rules for inclusive and respectful debate, establishing the reasons behind conversations, and promoting the inclusion of voices that may systemically be otherwise 'othered' from the centre of debates.

One idea is: "The introduction of a 'University as a plant' metaphor…an ideology of collegiality and unity where all of the different parts are needed to create a functional whole and which carries with it a cognitive typology which is organic, nurturing, part of a larger holistic ecosystem, and which serves an essential natural function" (Morrish and Sauntson 2019, p.230). So, could I raise this narrative, and continue to call out instances of where law school policies and events perpetuate hierarchies or individualise staff?

I also wish for a wider acknowledgement of neoliberal hegemony operating within and beyond HE systems and practices, and permitting the ability for staff and students to be able to more critically reflect and discuss the deleterious impact of such hegemony. I want to encourage both staff and students to share their own lived experiences or reflections on the contemporary HE setting. This of course, as noted elsewhere in this thesis, would naturally include reflections on the notion of failure, specifically sharing the emotions that individual failure can create: " .... failure to cope is attributed to failure of the individual to make the right 'choices'" (ibid, p. 213).

The challenge is what fora could these discussions realistically take place in? Further, how are hierarchies broken down in order to allow a more open discussion on such terms? Finally, and most pertinently, is the School or wider institution seeking to promote an environment where a mirror is held up to its complicity in a system of marketisation?

Can I at least imagine reflecting with students about my own personal feeling of an 'obligation' to talk about this stuff, whilst also acknowledging that for some of my students such opening up may feel upsetting or uncomfortable? As Ruth Barcan notes, this uncomfortable feeling may be rooted in precarity: "Someone with a secure economic base and social position may have a greater buffer against intellectual and existential upheaval than someone in a socially more precarious position" (2013, p.157).

Talking about failure

Above all else, I want to imagine that I can continue to reflect, with both staff and students, about the notion of 'failure'. I want to achieve open conversations about failure away from the hegemony of neoliberalism - that of moving away from framing failure only in terms of deficit; of 'dealing with failure' purely as a pathway to succeeding once again within the market system.

This requires avoiding a neoliberal framing of resilience out of failure: "Resilience of the can-do ideological type is also, we suggest, a perfect fit with the performativity culture of entrepreneurial universities" (Bottrell and Keating 2019, p.161) . Resilience is self limiting when it only focuses on developing how to *individually* battle towards success within the market.

I wish instead to frame failure, and resilience, around a collective attitude to acknowledging the vulnerability of the human condition. So, framing vulnerability at an ontological level, and

something shared, rather than something that can be ‘beaten’ with specific solutions and tools on overcoming failure: “Although it (*vulnerability)* is often narrowly understood as merely ‘openness to physical or emotional harm’, vulnerability should be recognised as the primal human condition. As embodied beings, we are universally and individually constantly susceptible to change in our well being” (Fineman 2017, p.142).

The imagined aim here is to establish ‘talking spaces’ for both staff and students (either separately, or perhaps more hopefully, together) where worries, concerns, and active methods for resisting notions of problematic narratives could be shared and promoted.

Never totalising, but challenges stark

Of course, the backlash remains - our School of Law has just accepted a huge uplift in undergraduate students to try and counter the reduction in international student attendance; we have seen our research and scholarship time reduced; professional services staff are facing being reduced in number and scope of roles; and funding is being restricted for any new projects without specific ‘justification’ being set out.

On the wider front, HE appears in a severely financially challenged state, and the messaging is that this may last for some time - it seems impossible at present to actually find out specifically how bad this financial position is, but certainly the narrative is that our roles are in a precarious, rather than secure, state.

More than ever, I must resist where I am, and in what ways that seem practical and possible and collective, no matter their ‘micro’ nature. How can I ‘fail better’, and seek to make things better, rather than make things worse?

Final reflections

As this thesis ‘ends’, I seek to reflect on its completion as a moment in time. This creates mixed feelings of relief, joy, pride and fear.

At various points in my work, I have certainly enjoyed the process of sitting deeply with the literature covered in this thesis work, and I have felt positively affected by unpacking and dismantling my preconceptions and moving forward from this. This is particularly true in relation to reflecting on what ‘counts’ in my career as a teaching focused legal academic.

Therefore, part of me does seek to encourage others to read my work, and to engage in their own process of reflexivity - of both challenging their preconceptions around rationalised norms, and of seeking to enact or consider alternatives. As an intertwined theoretical and practical process, I have felt liberated by the unburdening of guilt, shame, and personal blame I attached to my own reductive version of neoliberal success.

However, I also recognise the emotional labour involved in the process. Practically speaking, this thesis has been a number of years of committed work, alongside a full-time position as a teaching focused member of staff. I have often had to neglect my commitment to my thinking and writing, because of the time and constant energy required to ‘do the day job’.

Furthermore, unfortunately this thesis work has sometimes left me feeling like a failure in both worlds - neither being ‘productive’ in my thesis work, nor implementing a counter-hegemonic way of thinking to the rest of my working life. I do not fail to see the irony that It has been all too easy to fall back into the personal blame game culture of neoliberal HE, through the process of the thesis.

However, whether or not others feel able to engage in their own process of reflexivity, I feel this thesis presents two main implications for my own further operations within HE; and hopefully for others also operating within the ‘walls’ of HE.

Firstly, I want to share and continue to energise the operation of compassion to those also feeling the weight of individualised neoliberal perfection, including the collective calling out of the way this so often presents itself as a common sense feeling of self-responsibility. To permit others to think systemically rather than personally about the disquieting moments of contemporary HE feels joyous.

Secondly, and just as importantly, I seek to encourage and re-attach value to an ongoing teaching ethos of talking with students about the various ways in which neoliberal discourse may be resisted, even if the starting point is simply to dismantle self-sufficiency. Maintaining an open mind, fuelled by possibilities however challenging, is the ongoing teaching philosophy.

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