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# OF CLUBS AND CLANS: THE ‘NATIONAL PATTERN’ OF HIGHER EDUCATION IN THE UNITED KINGDOM AND ITS IMPACT ON LAW SCHOOLS

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ANDRA LE ROUX-KEMP\*

## I INTRODUCTION

The higher education sector of the United Kingdom (‘UK’) offers many surprises to the uninitiated higher education scholar. Its history is ‘anything but straightforward and symmetrical’<sup>1</sup> and, despite ‘the growth in the number of institutions, in the size of the system, the changes in funding patterns, and the increasingly explicit priorities of funding bodies’, its structure and underlying assumptions have seemingly remained unchanged.<sup>2</sup> In tracing the historical development of this higher education sector, it is evident that although higher education institutions enjoy autonomy, changes at universities are generally more about form than substance and are driven by changes in government and government policy, rather than changes from within universities or the higher education sector more generally.<sup>3</sup> It can be said that the UK higher education sector has always been driven by a top-down approach, from the outside in, rather than from the bottom-up, or from the inside out.<sup>4</sup> In fact, it is through a series of government decisions and actions that the present-day differentiated pattern of the higher education sector came into existence. This differentiated pattern of higher education institutions, or complex pattern of institutional types,<sup>5</sup> impacts significantly on the operations and prospects of UK

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<sup>1</sup> Richard Bird, ‘Reflections on the British Government and Higher Education in the 1980s’ (1994) 48(2) *Higher Education Quarterly* 75, 73.

<sup>2</sup> Michael Shattock, ‘The Academic Profession in Britain: A Study in the Failure to Adapt to Change’ (2001) 41(1-2) *Higher Education* 27, 27-28.

<sup>3</sup> *Ibid* 32.

<sup>4</sup> Michael Shattock, ‘Policy Drivers in UK Higher Education in Historical Perspective: “Inside Out”, “Outside In” and the Contribution of Research’ (2006) 60(2) *Higher Education Quarterly* 130.

<sup>5</sup> Sometimes also referred to as the ‘stratified institutional environment’ of the UK. See Marcelo Marques and Justin W Powell, ‘Ratings, Rankings, Research

higher education institutions. Whether striving to improve their standing on the international or national market of league tables, or competing for public funding from government, all these activities take place within and in terms of a complex pattern of institutional types which pre-determines the standing and potential of these institutions.

This article offers a critical overview and analysis of this historical and seemingly unremitting stratification of the UK higher education sector and is specifically concerned with the extent to which this highly differentiated pattern of higher education institutions impact on law schools.<sup>6</sup> Law schools make for a particularly interesting focus of analysis due to the sui generis nature of legal education. Legal education is a sui generis species of higher education and training as different countries and jurisdictions each have their own unique laws and legal systems. An inevitable, direct, and reciprocal relationship therefore exists between the nature of a legal system and its mode of legal education and training. Dainow explains that '[t]he nature of the former promotes the method of the latter, which in turn perpetuates the original character of the system'.<sup>7</sup> A close relationship between the institutions providing legal education and training and the legal profession which they serve also exist, especially in common law legal systems like that of England and Wales. For example, both the English legal profession and the higher education institutions invested in the education and training of its members have an interest in the maintenance of the hegemony of the legal profession's professional status and expertise: the English legal profession relies on the credentials from higher education institutions to exert control over the market of legal services, specifically also in terms of controlling entry to the profession, and higher education institutions, in turn, are rewarded through revenue and associated prestige.<sup>8</sup> It is this sui generis nature of legal systems and their associated legal education and training that makes of higher legal education a rather localised affair through which the impact of the highly differentiated pattern of UK higher education institutions can be explored.

In the discussion and analysis that follow, it will be shown that the complex institutional typologies of the UK higher education sector (national level), shape the contours of the hierarchical and relational organisation of its higher education institutions (institutional level), and that this configuration or pattern of organisation creates ideological and operational differences for its law schools (academic unit level). The argument is not that the UK higher education sector is an insulated or self-contained entity, or even the primary or exclusive source, dominant

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Evaluation: How do Schools of Education Behave Strategically within Stratified UK Higher Education' (2020) 79 *Higher Education* 829, 833.

<sup>6</sup> Where reference is made to law schools in this article, it is meant to include all law academic units such as law departments and law faculties, etc.

<sup>7</sup> Joseph Dainow, 'The Civil Law and the Common Law: Some Points of Comparison' (1966/67) 15(3) *The American Journal of Comparative Law* 419, 428-429.

<sup>8</sup> Andra le Roux-Kemp, 'A Critical Analysis of the Role of Legal Higher Education and Training in the Institutionalisation of the English Legal Profession: Quo Vadis for English Law Schools?' (2024) 58(3) *The Law Teacher* 396.

actor, or sole end of change and development for its law schools;<sup>9</sup> the goal is rather to take a step back from the globalised world of university systems (international/global level) and to critically reflect on how and to what extent the national organisation (or pattern) of higher education institutions circumscribes the capacity of these institutions and ultimately also their academic units to flourish. To flourish is defined in *The Concise Oxford Dictionary* as to 'grow vigorously; [to] thrive, prosper, be successful; be in one's prime'.<sup>10</sup> The concept *flourishing* and specifically the flourishing of law schools in the UK is used in this article to connote the growing and succeeding of law schools, their ability to make a significant contribution to society, and to realise their potential and aspirations, including that of its staff (academic and professional) and students.<sup>11</sup> Flourishing is ultimately 'conditional on the contribution of individuals and requires an enabling environment'.<sup>12</sup> In the final part of this article therefore, and with reference to *new institutionalism* as a theoretical framework for analysis, some recommendations are made for how law schools can potentially work to disrupt the stratified higher education environment of the UK. This is important, as stratified institutional environments, 'through processes of surveillance and normalisation, change how internal and external constituencies think about the field of legal education ... and encourage schools to self-impose the discipline that rankings foster'.<sup>13</sup>

## II THE HIGHER EDUCATION MARKET IN THE UNITED KINGDOM: THE EVOLUTION OF A DIFFERENTIAL PATTERN OF HIGHER EDUCATION INSTITUTIONS

The history and development of higher education in the UK – which includes England, Scotland and Wales, as well as Northern Ireland and

<sup>9</sup> Thomas Pfeffer and Rudolf Stichweh, 'Systems Theoretical Perspectives on Higher Education Policy and Governance' in Jeroen Huisman, Harry de Boer, David Dill and Manuel Souto-Otero (eds), *The Palgrave International Handbook of Higher Education Policy and Governance* (Palgrave MacMillan, 2015) 152, 153.

<sup>10</sup> H W Fowler and F G Fowler, (eds.) *The Concise Oxford Dictionary* (Oxford: Oxford University Press, 5<sup>th</sup> ed, 1964) 467. For a theoretical overview and application of the concept *flourishing* in the context of education, see Doret de Ruyter et al. 'Education for Flourishing and Flourishing in Education' in Anantha K Duraipappah et al (eds) *The International Science and Evidence-based Education Assessment: ISEE Assessment Working Group 1* (United Nations Educational Scientific and Cultural Organisation, 2022). See also Ana Sofia Ribeiro 'A Normative Framework or an Emerging Theory? The Capability Approach in Higher Education Research' in Jeroen Huisman and Malcolm Tight (eds) *Theory and Method in Higher Education Research* (Emerald Group Publishing Ltd, 2015) 277.

<sup>11</sup> For other applications of the concept *flourishing* to UK law schools specifically, see Anthony Bradney 'English University Law Schools, the Age of Austerity and Human Flourishing' (2011) 18(1/2) *International Journal of the Legal Profession* 59. For the application of the concept *flourishing* to law schools in other jurisdictions, see Debra S Austin 'Positive Legal Education: Flourishing Law Students and Thriving Law Schools' (2018) 77(3) *Maryland Law Review* 649.

<sup>12</sup> de Ruyter et al. (n 10) 98.

<sup>13</sup> Michael Sauder and Wendy Nelson Espeland 'The Discipline of Rankings: Tight Coupling and Organisational Change' (2009) 74(1) *American Sociological Review* 63, 64.

the smaller British Isles – date to the medieval period, when the so-called *ancient universities* were established to provide training for the Church.<sup>14</sup> From these early ancient origins developed a highly competitive, commercialised, and hierarchical higher education sector with approximately 160 institutions currently recognised as higher education providers by the UK Higher Education Statistics Agency (‘HESA’); that is the official agency for the collection, analysis and dissemination of quantitative information about higher education in the UK.<sup>15</sup> For the purpose of this article, the UK higher education sector refers to those tertiary education institutions with degree awarding powers (Bachelor’s degrees and higher).<sup>16</sup> Below, a comprehensive exposition is provided of how the UK higher education sector came to be in its current form or pattern; that is with the long seniority of the Universities of Oxford and Cambridge, the ‘notably tardy achievement of a reasonable regional spread of fully fledged universities’ since the 19<sup>th</sup> century, and the historical and lingering economic stake of local authorities and communities.<sup>17</sup>

#### A        *Higher Education at the Whim of Government Policy and Change*

As indicated above, the so-called *ancient universities* were the earliest known universities in the UK, with the first being the University of Oxford established in 1096.<sup>18</sup> In the late 19<sup>th</sup> century, in an effort to support industrialisation, a further six universities were established in Britain’s big industrial cities, and were subsequently referred to as *red brick universities* with reference to a building at one of these ‘new’ institutions, the University of Liverpool.<sup>19</sup> In 1922, with the

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<sup>14</sup> British Council and Quality Assurance Agency for Higher Education, *Cultures of Quality: An International Perspective* (Report, 2015) 38 <<https://dera.ioe.ac.uk/24827/1/Cultures-of-Quality-An-International-Perspective-15.pdf>>.

<sup>15</sup> The UK Higher Education Statistics Agency (HESA) is a statutory co-regulated sector agency for higher education in England, Wales, Scotland, and Northern Ireland. See <<https://www.hesa.ac.uk/about/what-we-do/statutory-w-s-ni>> and <<https://www.hesa.ac.uk/collection/c21032/introduction>>.

<sup>16</sup> In terms of *Education Reform Act 1988* s 214(1)(b)(i)-(ii), an award is described as a degree and confers on its holder the right to the title of bachelor, master or doctor. In terms of *Education Reform Act 1988* s 216 only recognised higher education providers (see (n 15)) may award degrees.

<sup>17</sup> Bird (n 1) 73.

<sup>18</sup> The other *ancient universities* are the University of Cambridge, the University of St Andrews, the University of Glasgow, the University of Aberdeen, and the University of Edinburgh: British Council and Quality Assurance Agency for Higher Education (QAA) (n 14) 38.

<sup>19</sup> The first of the *red brick universities* were also referred to as civic universities given their embeddedness in the cultural and economic life and built environments of the cities in which they were found. The six red brick universities include the University of Birmingham, University of Liverpool, University of Manchester, University of Leeds, University of Sheffield, and the University of Bristol: British Council and Quality Assurance Agency for Higher Education (n 14) 38. See also Malcolm Tight ‘University Typologies Re-Examined’ 29(1) *Higher Education Review* 57.

establishment of the University Grants Committee (UGC),<sup>20</sup> funding for these 13 universities was placed on a recurrent footing and between 1900 and 1963 a further 13 universities were established to join the original *red brick universities*.<sup>21</sup>

From these early origins and specifically after World War II ('WWII'), 'British higher education stumbled into a closely regulated higher education market through a series of ad hoc [governmental] responses' to pressing, mostly financial problems.<sup>22</sup> The first of these 'problems' was the relatively slow growth of the UK economy following WWII, which was further exacerbated by the world economic depression of the late 1970s.<sup>23</sup> Thus, from the 1960s onwards, especially after the election of a Conservative government in 1979, a range of measures were implemented to reduce public expenditure.<sup>24</sup> In considering different funding models for higher education specifically, the focus turned to the binary of institutions and the dual funding system that had come to develop at that time: there were the universities as described above and funded by government, and the various alternative institutions of post-secondary education established since the late 19<sup>th</sup> century and that were funded by local authorities.<sup>25</sup> These institutions, which included colleges of advanced technology and polytechnics, offered technical and vocational training, produced applied research, and contributed to the expansion of higher and intermediate skills training in collaboration with employers in the aftermath of WWII.<sup>26</sup> As only universities enjoyed degree awarding powers and the autonomy of Charter, 'polytechnics and colleges offering higher qualifications did so through validation by the external examination system of universities (usually London)'.<sup>27</sup> This binary of institutions came onto

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<sup>20</sup> The UGC was later reconstituted as the University Funding Council (UFC). John Wilson, 'A Third Survey of University Legal Education in the United Kingdom' (1993) 13(2) *Legal Studies* 143, 165.

<sup>21</sup> These universities were Aberystwyth University, Bangor University, Cardiff University, University of Dundee, University of Hull, University of Wales Trinity St David, University of Leicester, University of Newcastle Upon Tyne, University of Nottingham, Queen's University Belfast, University of Reading, University of Southampton, and the University of Swansea: British Council and Quality Assurance Agency for Higher Education (n 14) 39.

<sup>22</sup> Gareth Williams 'The Higher Education Market in the United Kingdom' In Pedro Teixeira, Ben Jongbloed, David Dill and Alberto Amaral (eds.) *Markets in Higher Education: Rhetoric or Reality?* (Dordrecht: Kluwer Academic Publishers, 2004), 241, 241; Bird 'Reflections on the British Government and Higher Education in the 1980s' (n 1); Shattock 'Policy Drivers in UK Higher Education in Historical Perspective' (n 4); Peter G. Moore 'Marketing Higher Education' (1989) 43(3) *Higher Education Quarterly* 108.

<sup>23</sup> Peter G Moore 'University Financing 1979-86' (1987) 41(1) *Higher Education Quarterly* 25, 25; Williams 'The Higher Education Market in the United Kingdom' (n 22) 241.

<sup>24</sup> For a discussion of the UK higher education sector prior the Second World War, see Moore 'Marketing Higher Education' (n 22) and Moore 'University Financing 1979-86' (n 23).

<sup>25</sup> British Council and Quality Assurance Agency for Higher Education (n 14) 39; Bird (n 1) 81; Williams (n 22) 243; Moore (n 22) 110.

<sup>26</sup> British Council and Quality Assurance Agency for Higher Education (n 14) 39; Williams (n 22) 243; Moore (n 22) 110.

<sup>27</sup> British Council and Quality Assurance Agency for Higher Education (n 14) 39.

government's radar not only for its dual funding system, but also for fuelling perceptions of a university education being more prestigious than the technically focussed curriculum of the polytechnics and colleges.<sup>28</sup>

During this time and despite government's concerns about higher education funding, the Robbins Committee on Higher Education appointed in 1961 recommended in its Report (1963), the expansion of university provision in the UK to allow all suitable candidates an opportunity for higher education should they so wish, and also advocated for higher education to be treated 'as an integrated system, each part with its particular role'.<sup>29</sup> Extensive reforms followed: from the early 1960s to the late 1980s, a further 13 universities were established<sup>30</sup> and a further 10 universities, subsequently referred to as the *plate glass universities*, were created from colleges of advanced technology.<sup>31</sup> The Council for National Academic Awards (CNAA) was established in 1965 to oversee the award of degrees across the non-university sector,<sup>32</sup> and with the enactment of the *Education Reform Act 1988*, all alternative institutions of post-secondary education came under public (rather than local) control through a new national agency, the Polytechnics and Colleges Funding Council.<sup>33</sup> Yet, a binary of higher education institutions remained in the form of the older, traditional, elite, and research intensive universities, and the 'polytechnics and other colleges funded primarily as teaching institutions and where applied research was to be subsidiary to their core function of expanding student participation'.<sup>34</sup> While the

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<sup>28</sup> Ibid.

<sup>29</sup> Claus Moser 'The Robbins Report 25 Years After – And the Future of the Universities' (1988) 14(1) *Oxford Review of Education* 5, 6; Charles Morris 'The Robbins Report' (1964) 13(1) *British Journal of Educational Studies* 5.

<sup>30</sup> These were the University of Sussex (1961), University of Keele (1962), University of East Anglia (1963), University of York (1963), University of Lancaster (1964), University of Essex (1964-65), University of Strathclyde (1964), University of Kent (1965), University of Warwick (1965), University of Heriot-Watt (1966), University of Salford (1967), University of Stirling (1967), and the University of Ulster (1968). It can also be noted that the private University of Buckingham received a royal charter in 1983. David Jobbins, *UK Higher Education Since Robbins – A Timeline* *University World News* (online, 1 November 2013) <<https://www.universityworldnews.com/post.php?story=20131028123008296>>.

<sup>31</sup> These were the University of Aston, University of Loughborough, City University London, Chelsea College of Science and Technology (originally part of the University of London then later subsumed into King's College), University of Surrey, University of Brunel, University of Bath, University of Cardiff (initially part of the University of Wales), University of Salford, and the University of Bradford: Jobbins (n 30).

<sup>32</sup> The CNAA was abolished in 1993 subsequent the enactment of the Further and Higher Education Act of 1992: Jobbins (n 30); John Wilson 'A Survey of Legal Education in the United Kingdom' (1966) 9(1) *Journal of the Society of Public Teachers of Law* 1, 62; J F Wilson and S B Marsh 'A Second Survey of Legal Education in the United Kingdom' (1975) 13(4) *Journal of the Society of Public Teachers of Law* 239, 244-245.

<sup>33</sup> Of the government's progressive demolition of the local authorities' interest in higher and further education, see Shattock (n 4) 137. Also see Williams (n 22) 243; British Council and Quality Assurance Agency for Higher Education (n 14) 39; Wilson and Marsh (n 32) 248.

<sup>34</sup> Williams 'The Higher Education Market in the United Kingdom' (n 22) 243.

government of that time regarded this plurality of institutions within the higher education sector as desirable, it was also looking for ways to ensure appropriate total coverage of disciplines and subject areas without wasteful duplication, and 'the nurturing of adequate but not excessive research activity within the total system'.<sup>35</sup>

This will to establish a more streamlined and unified higher education sector came to a head in 1992, when 'the public sector of higher education had become large enough and politically and economically strong enough to challenge the monopoly power of the universities'.<sup>36</sup> It was against this backdrop of financial stringency and increased pressure, demands, and competition from alternative institutions of post-secondary education in the higher education market, that the Further and Higher Education Act of 1992 was ultimately promulgated, giving all higher education institutions the same legal status to that of universities, and establishing a unified funding agency, the Higher Education Funding Council for each of England, Scotland, and Wales.<sup>37</sup> A total of 34 universities were subsequently formed from existing polytechnics (generally referred to as *new universities*)<sup>38</sup> and 39 universities were formed from other institutions (generally referred to as *recently created universities*).<sup>39</sup>

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<sup>35</sup> Peter G Moore 'University Financing 1979-86' (n 23) 41.

<sup>36</sup> By 1962, for example, Holborn College of Law, a College of Further Education, was preparing more candidates for their first degree in law than any university law school or faculty in England and Wales, with the exception of the combined colleges of the University of London: Williams (n 22) 243; Wilson (n 32) 61.

<sup>37</sup> Williams (n 21) 244; British Council and Quality Assurance Agency for Higher Education (n 14) 39; David Watson and Rachel Bowden 'Why did they do it?: The Conservatives and Mass Higher Education, 1979-97' (1999) 14(3) *Journal of Education Policy* 243, 246.

<sup>38</sup> These included the University of Anglia Ruskin, Birmingham City University, Brighton University, Bournemouth University, the University of Central Lancashire, University of Coventry, De Montfort University, University of East London, Edinburgh Napier University, University of Glamorgan, Glasgow Caledonian University, Greenwich University, University of Hertfordshire, University of Huddersfield, University of Kingston, Leeds Metropolitan University, University of Lincoln, Liverpool John Moores University, London Metropolitan University, London South Bank University, Manchester Metropolitan University, Middlesex University, Northumbria University, Nottingham Trent University, Oxford Brookes University, University of Plymouth, University of Portsmouth, Sheffield Hallam University, University of Staffordshire, University of Sunderland, University of Teesside, University of West of England, University of Westminster, and the University of Wolverhampton: Jobbins (n 30).

<sup>39</sup> These included Abertay Dundee University, University of Arts London, The Arts University Bournemouth, Bath Spa University, University of Bedfordshire, Bishop Grosseteste University, Bolton University, BPP, University of Buckinghamshire New, Canterbury Christ Church University, University of Chester, University of Chichester, University of Cranfield, University of Cumbria, Edge Hill University, University of Falmouth, University of Gloucestershire, University of Glyndwr, Harper Adams University, University of Highlands and Islands, Leeds Trinity University, Liverpool Hope University, Newman University, Newport University, Northampton University, Norwich University of the Arts, Queen Margaret University, Robert Gordon University, Roehampton University, Royal Agricultural University, Southampton Solent University, Swansea Metropolitan University, University of Wales Institute, Cardiff University, West of Scotland University, West London University, University of Winchester, University of Worcester, and York St John University: Jobbins (n 30).



By the late 1980s, another 'problem' emerged; the inauguration of the annual OECD statistical series *Education at a Glance*, revealed that the UK rates of participation in higher education lagged well behind those of most other OECD countries.<sup>40</sup> 'This, and a growing belief in the importance of a well-qualified labour force for success in the rapidly emerging knowledge society, shifted government concern from saving money to the need for expansion to underpin economic growth'.<sup>41</sup> However, as growing student numbers within the university funding scheme as it applied at that time was already too expensive, government also moved their core funding to institutions away from that of direct payments to a funding formula that was based on student numbers and a fee subsidy from public funds of at least a quarter of teaching costs.<sup>42</sup> Given that universities were allowed to retain all the income they received from any student they recruited on a fees only basis and the government undertook to meet the cost, the scene was set for an explosive expansion of student numbers.<sup>43</sup> For the next six years (until 1995) universities competed with one another to attract as many students as possible. Between 1988 and 1994, for example, new first-degree enrolments increased by 75%, and many universities also supplemented their income by increasing the proportion of more profitable foreign students, postgraduate students, and research students.<sup>44</sup> (These latter student cohorts are more profitable as tuition fees are only capped for local students studying towards an undergraduate degree.)<sup>45</sup>

As student numbers increased at a decreased unit cost for higher education institutions, the total government expenditure grew rapidly, and by 1995, government called an abrupt halt to its policy for the expansion of student numbers by placing a cap on the number of students each higher education institution was allowed to enrol.<sup>46</sup> This cap on student numbers remained until 1998 when the new Labour government reversed the policy of restricted enrolments and encouraged further expansion, but rather than increasing participation

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<sup>40</sup> Bird (n 1) 75-76; see also 'Members and Partners' *OECD* (Web Page) <<https://www.oecd.org/en/about/members-partners.html>>.

<sup>41</sup> This was the origin of what later was referred to as "mass higher education". Williams (n 22) 246. Also see Bird (n 1) 76 and Shattock (n 2) 28-29.

<sup>42</sup> Prior to the 1940s, universities received about a third of their income from student fees, thereafter, and in an effort to achieve greater social equity, tuition fees were reduced and an increasing proportion thereof was paid from public funds. By 1980, all students were eligible for their tuition fees to be paid from public funds based on financial need and declared family income, and universities therefore received less than 5% of their teaching income in the form of direct student fees. Williams (n 22) 246-247 and 254-255.

<sup>43</sup> UK higher education institutions are allowed to decide on their own admission requirements and selection criteria for all academic programmes at both the undergraduate and postgraduate level, and are constrained only by 'market image and a concern to ensure that students who are admitted have a good probability of completing their courses without too much trouble and within a reasonable period of time.' Williams (n 22) 247, 255, 257. See also M A Higgins 'The Student Market' (1991) 45(1) *Higher Education Quarterly* 14.

<sup>44</sup> Williams (n 22) 250, 255.

<sup>45</sup> *Ibid* 257.

<sup>46</sup> *Ibid* 247-248, 250.

in higher education for the traditional three-year undergraduate university degrees, concentrated additional funding for teaching on two-year foundation degrees and programmes aimed at mature students in the workforce developing their skills.<sup>47</sup> With regard to tuition fees, the 1998 Teaching and Higher Education Act 'moved a step further in the direction of a commercial higher education market by requiring the fees, which had previously been paid out of public funds, to be paid by the students themselves. This shifted about 25% of the cost of teaching on to students and their families. The Act [also] allowed universities to charge less than the prescribed tuition fee but not to charge more'.<sup>48</sup> In 2004, the tuition fees were raised from £1,000 to £3,000, and provision was made for student loans from government repayable on an income-contingent basis.<sup>49</sup> Neither universities nor students were in favour of this new tuition fee model with universities submitting that the new maximum fee of £3,000 per year remained insufficient to meet their financial needs or to allow a real market for undergraduate students to develop, and students and families arguing that the tuition fees were too high for first degree studies and discriminated against students from less affluent backgrounds.<sup>50</sup> Following the 2010 election, the basis of university finance was again radically transformed. The government, in declaring an 'age of austerity', largely replaced the teaching element of state grants by raising the tuition fees cap to £9,000 per annum, while the tuition fee loan funding scheme remained in place.<sup>51</sup> Notwithstanding the wishes of government to create a true, competitive higher education market where the price and value of tuition (degrees) inform consumer choice, most universities went ahead to charge full-cost fees (highest fee permissible), whilst doing little if anything to alter the nature of the courses that were taught.<sup>52</sup>

In addition to this tuition fee model, further funding of the UK higher education sector is facilitated and overseen by various funding councils and oversight bodies, and essentially comprise funding for teaching, research, and third-stream activities, with each of these broad streams itself 'a network of trickles of funds, four price bands for teaching subjects, eighty research assessment categories and individual bids for third leg funds. The details of the formulae and procedures involved are complex and it is partly through manipulation of the small print of the formulae that government policy is put into practice'.<sup>53</sup> A

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<sup>47</sup> Ibid 248.

<sup>48</sup> Ibid 255-256.

<sup>49</sup> Ibid 256.

<sup>50</sup> Ibid 257.

<sup>51</sup> The tuition fee cap was raised to £9,250 from the 2017/18 academic year, and is set to rise to £9,535 from the 2025/26 academic year. See Jobbins (n 30); 'Tuition Fee Rise: What Does it Mean?' *Universities UK* (Web Page, 14 November 2024) <[https://www.universitiesuk.ac.uk/latest/insights-and-analysis/tuition-fee-rise-what-does-it-mean?utm\\_campaign=this-month-at-uuk-december-2024&utm\\_source=newsletter&utm\\_medium=email](https://www.universitiesuk.ac.uk/latest/insights-and-analysis/tuition-fee-rise-what-does-it-mean?utm_campaign=this-month-at-uuk-december-2024&utm_source=newsletter&utm_medium=email)>; for a discussion and overview of the politics and policies leading up to this increase in tuition fees, see Bradney (n 11); Jefferson Frank, Norman Gower and Michael Naef, *English Universities in Crisis: Markets Without Competition* (Bristol University Press, 2019).

<sup>52</sup> Bradney (n 11) 63, 66.

<sup>53</sup> Williams (n 22) 248-249.

comprehensive exposition of higher education funding in the UK falls beyond the scope of this article. What is important in terms of the evolution of the differentiated pattern of higher education institutions that came to be established in the UK, is the increasing emphasis, especially in recent years, on research excellence as determined in accordance with the government's Research Excellence Framework (REF).<sup>54</sup> Government funding in the form of financial rewards for excellent research is facilitated through the REF, a research evaluation system, which assess, through peer review, the research output, research impact, and the research environments of universities and their individual academic units. The formula according to which the assessed scores are converted into a funding allocation, 'depends very heavily on government policy and fierce bargaining between universities,' but the financial rewards universities stand to gain are substantial.<sup>55</sup> The REF has therefore encouraged – albeit indirectly – higher education institutions, including the post-1992 institutions, to shift resources, including human resources, out of teaching and into research where the financial rewards of a high research assessment score are more substantial.<sup>56</sup>

These funding allocation policies for the UK higher education sector have effectively reduced the income universities receive directly from government, and have resulted in higher education institutions becoming quasi-commercial enterprises; 'selling services in the knowledge industry to a wide range of purchasers'.<sup>57</sup> This quasi-commercial activity of higher education institutions has also formally been recognised by the Higher Education Funding Council which established in the mid-1990s 'a third stream of public funding to underwrite links with business and the community'.<sup>58</sup> All higher education institutions are now also eligible to receive funds, on a competitive basis, intended to 'provide a basis for work that serves business and the community other than through academic teaching and research – short training courses, consultancy, etc'.<sup>59</sup> A further consequence of this third stream of public funding is that many higher education institutions have now adopted a '[c]entralised strategy and funding of new initiatives, with considerable devolution of authority to

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<sup>54</sup> The Research Excellence Framework (REF) is a periodic research performance exercise that not only ranks UK universities according to the quality of their research output and impact, but also serves as a funding allocation system that was first administered by the UK UGC and subsequently by the Research Funding Councils established in terms of the Further and Higher Education Act 1992. For a comprehensive exposition of the REF see Marcelo Marques, Justin W Powell, Mike Zapp, Gert Biesta 'How Does Research Evaluation Impact Educational Research? Exploring Intended and Unintended Consequences of Research Assessment in the United Kingdom, 1986-2014' (2017) 16(6) *European Educational Research Journal* 820-842; M Henkel, 'The Modernisation of Research Evaluation: The Case of the UK' (1999) 38 *Higher Education* 105.

<sup>55</sup> Williams (n 22) 248.

<sup>56</sup> Ibid 250.

<sup>57</sup> Ibid 251.

<sup>58</sup> Ibid 248-249, 251.

<sup>59</sup> Ibid 248-249.

implement the strategies and initiatives'.<sup>60</sup> This has allowed individual academic units (departments/schools/faculties) with the potential to contribute significantly to their university's general income and funds to acquire autonomy and considerable independent income generating powers, while those academic units with less potential to independently generate considerable income are often grouped together or with stronger income generators to form larger organisational academic units with devolved authority.<sup>61</sup> The expectation is ultimately for each production unit within the larger institutional structure to cover its own direct cost and to also make a contribution to the common/shared services and income of the institution as a whole.<sup>62</sup>

It is evident from the above exposition on the history and development of the UK higher education sector that government responses to various – primarily financial – problems, have impacted profoundly on its higher education institutions. A neoliberal market for higher education has been created and higher education institutions have become hierarchical in their relations with one another and dispirited in their relations with the government. Williams aptly states that '[t]he substance of the story of UK higher education during the past quarter century is essentially one of university responses and government reactions to these responses'.<sup>63</sup> Important for the purpose of this article is the differential nature or pattern of higher education institutions that has developed over time: There are the *ancient universities* dating to the medieval times, the *red brick universities* of the 19<sup>th</sup> and early 20<sup>th</sup> centuries, the *plate glass universities* established from the early 1960s to the late 1980s, and the *new universities* and *recently created universities* established with the enactment of the Further and Higher Education Act of 1992. Today, this differential pattern of the UK higher education sector is generally categorised into *pre-1992 universities* and *post-1992 universities*, and although there now exists a seemingly unified UK higher education sector, the relics of differing origins, underlying conceptions of the purposes of higher education, institutional types, governance models, and operational frameworks can – despite being forged together through legislation – still be observed.<sup>64</sup>

With regard to university governance specifically, Shattock has identified distinct governance models that correspond to the differential institutional typologies as they have been described above. These are the Oxbridge governance model, the Scottish governance model also referred to as the mediaeval or ancient model, the civic university model, and the post-1992 Higher Education Corporation (HEC)

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<sup>60</sup> Ibid 251.

<sup>61</sup> Ibid 251-252.

<sup>62</sup> Ibid 252.

<sup>63</sup> Ibid 265.

<sup>64</sup> Ibid 243; David Raffé and Linda Croxford, 'How Stable is the Stratification of Higher Education in England and Scotland?' (2015) 36(2) *British Journal of Sociology of Education* 313, 313-314.

model.<sup>65</sup> Generally, governance structures of *pre-1992 universities* allow for more academic self-governance and the academic community plays a dominant role as members of university senates and councils in the construction, approval, and amendment of day-to-day tasks, key priorities, and governance mandate.<sup>66</sup> The HEC model of the *post-1992 universities*, on the other hand, has a distinct corporate and managerial – as opposed to collegial – mode of operation.<sup>67</sup> Shattock explains that these university governance models ‘render generalisations about the structure of United Kingdom university governance dangerous [and] simplistic’ and that ‘real differences [exist] in the constitutional machinery that are enshrined in legal forms such as charters and statutes or articles of governance’.<sup>68</sup> By tradition, therefore, as well as enactment, the *post-1992 universities* have retained a homogenous character different from that of the *pre-1992 universities* and the academic and professional staff employed at the *post-1992 universities* have, initially at least, continued to see themselves as employees of an essentially non-academic corporate body.<sup>69</sup>

In addition to these primary categories of *pre-1992 universities* and *post-1992 universities* that exist in the UK higher education sector today, various other ‘institution types’ have also developed in recent years but on the basis of common interests and voluntary association (or ‘own self-categorisations of where they fitted in the sector’).<sup>70</sup> These voluntary associations include, for example, the *Russell Group universities*, a group of self-proclaimed ‘research-intensive’ institutions committed to maintaining standards in research, teaching and learning, as well as links with business and the public sector;<sup>71</sup> the *1994 Group* of smaller ‘research intensives’ which was dissolved in 2013;<sup>72</sup> the

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<sup>65</sup> Michael Shattock, *Managing Good Governance in Higher Education* (Open University Press, 2006) 5.

<sup>66</sup> Shattock (n 2) 29.

<sup>67</sup> Shattock (n 65) 15-16.

<sup>68</sup> Ibid 5.

<sup>69</sup> Shattock (n 2) 29.

<sup>70</sup> Sheila Furey, Paul Springer and Christine Parsons, ‘Positioning University as a Brand: Distinctions between the Brand Promise of Russell Group, 1994 Group, University Alliance, and Million+ Universities’ (2014) 24(1) *Journal of Marketing for Higher Education* 99, 99-104.

<sup>71</sup> Raffae and Croxford explain that the Russell Group universities ‘was formed in 1994 when the leaders of 13 English and two Scottish universities met at the Russell Hotel in London’ and that other universities have since joined by invitation. At present, the Russell Group universities are the University of Birmingham, University of Bristol, University of Cambridge, Cardiff University, Durham University, University of Edinburgh, University of Exeter, University of Glasgow, Imperial College London, King’s College London, University of Leeds, University of Liverpool, London School of Economics and Political Sciences, University of Manchester, Newcastle University, University of Nottingham, University of Oxford, Queen Mary University of London, Queen’s University of Belfast, University of Sheffield, University of Southampton, University College London, University of Warwick, and the University of York. See ‘Our Universities’ *Russell Group* (Web Page) <<https://russellgroup.ac.uk/about/our-universities/>>. Raffae and Croxford (n 64) 314.

<sup>72</sup> These universities included Birkbeck University of London, University of East Anglia, University of Essex, Goldsmiths University of London, Royal Holloway University of London, Lancaster University, University of Leicester, Loughborough University, School of Oriental and African Studies, and the University of Sussex.

*Million+* group claiming to educate over a million students and made up chiefly of former polytechnics and Scottish central institutions;<sup>73</sup> the *Guild HE* which is a representative group of pre-1992 colleges of higher education;<sup>74</sup> and the *University Alliance*, which was formally launched in 2007 and includes technical and professional institutions that have a balanced portfolio of research, teaching, enterprise, and innovation as part of their missions.<sup>75</sup> These voluntary associations of institutions add yet another layer of stratification to the differential pattern of higher education institutions in the UK. Although these more recent 'institution types' differ from the complex pattern of institutional types as described above in that they are formed on the basis of common interests and voluntary association, it will be evident from the discussion in Parts 3.1 and 4 below that these voluntary associations have by now also acquired a hierarchical status within the UK higher education sector, with especially the *Russell Group universities* being able to use their brand promise of excellence, especially in terms of research excellence, in distinguishing their member universities from other UK higher education institutions.<sup>76</sup>

<sup>73</sup> These universities include the University for the Creative Arts, University of Abertay Dundee, University of Suffolk, Bath Spa University, University of Bedfordshire, University of the Highlands and the Islands, University of Bolton, University of Central Lancashire, University of Cumbria, University of East London, Leeds Trinity University, London Metropolitan University, Solent University, Staffordshire University, Edinburgh Napier University, University of Sunderland, University of the West of Scotland, University of Worcester, Canterbury Christ Church University, Glasgow Caledonian University, Queen Margaret University, and the University of Wolverhampton. See 'Shaping the future of Higher Education: The voice of 21st century higher education' *MillionPlus* (Web Page) <<https://www.millionplus.ac.uk>>.

<sup>74</sup> These universities include, amongst others, University of Abertay Dundee, Arden University, Anglia Ruskin University, Bath Spa University, Bishop Grosseteste University Lincoln, Buckinghamshire New University, Falmouth University, Harper Adams University, St Mary's University Twickenham London, University of Winchester, University of Worcester and York St John University. See 'Home' *GuildHE* (Web Page) <<https://www.guildhe.ac.uk>>.

<sup>75</sup> These Universities are University of West London, Robert Gordon University Aberdeen, University of Derby, Middlesex University London, Anglia Ruskin University, Birmingham City University, Leeds Beckett University, University of Brighton, University of Greenwich, Coventry University, University of the West of England, Teesside University, Kingston University London, Oxford Brookes University, University of Hertfordshire, and the University of South Wales. See <https://www.unialliance.ac.uk> accessed 8 July 2024. David Watson, 'United Kingdom Higher Education and the Binary Dilemma: Whatever Happened to Public Sector Higher Education?' In Roger Goodman, Takehiko Kariya and John Taylor (eds), *Higher Education and the State: Changing Relationships in Europe and East Asia* (Symposium Books, 2013) 95, 104; Furey, Springer and Parsons, 'Positioning University as a Brand' (n 70) 99-100.

<sup>76</sup> Furey, Springer and Parsons note, for example, that Russell Group universities tend to distinguish themselves from other universities in the UK based on 'their ambitions and status', while the branding of University Alliance and Million+ universities, tend to be rooted 'in the ambitions of students', rather than those of their university members. Furey, Springer and Parsons, 'Positioning University as a Brand' (n 70) 118.

### III THE IMPACT OF THE 'NATIONAL DIFFERENTIAL PATTERN' OF HIGHER EDUCATION INSTITUTIONS IN THE UNITED KINGDOM ON LAW SCHOOLS

The discussion and analysis in Part II above revealed a UK higher education sector with a highly differentiated pattern of institutional types, with some higher education institutions being:<sup>77</sup>

highly research-intensive, highly attractive to well-qualified students whether undergraduate or postgraduate, and significantly better funded both from the state and from industry and commerce while at the other end of the spectrum there are primarily teaching institutions working hard to attract less-well-qualified, often disadvantaged and, on the whole, older students, in much less impressive locations and with much less-well-furnished facilities. In between, there are universities that have research peaks, often as impressive as any in the top group of universities, but that lack comprehensive research intensity, or universities that are trying to force their way up the research league tables from a low base, or specialist institutions (eg, in tropical health, education, or oriental and African studies) that have a significant reputation but in limited areas.

A paradox therefore exists in the idea, as first envisaged in the late 1980s and early 1990s, of the unity of the UK higher education sector: 'All [higher education] institutions [may now] have a similar formal status, but informal differences in function and standing are widely recognised'.<sup>78</sup> Unity, therefore, is more a product of organisational factors, like the existence of overarching government funding bodies like the erstwhile UGC and the various Funding Councils with which it has been replaced, than it is a reality on the ground.<sup>79</sup>

Moving from the national higher education sector (Part II above) to higher education institutions and their local academic units, an overview and analysis of surveys on the state of law schools and legal education in the UK will next be considered. Key ideological and operational differences that exist amongst UK law schools and that derive from or are a result of the highly differentiated institutional pattern of the higher education sector will be identified and discussed. The periodic general surveys of UK law schools on which this discussion and analysis are based date from 1966 to 2004/5 and were primarily produced by research teams under the auspices of the Association of Law Teachers.<sup>80</sup> Unfortunately, there has not been any recent, similar survey of UK law schools, and the reason why these periodic surveys of law schools and legal education are no longer undertaken is also not clear. One of the aims of this article is indeed to

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<sup>77</sup> Shattock (n 2) 31.

<sup>78</sup> Linda Croxford and David Raffe, 'The Iron Law of Hierarchy? Institutional Differentiation in UK Higher Education' (2015) 40(9) *Studies in Higher Education* 1625, 1625.

<sup>79</sup> Shattock (n 2) 45; Shattock (n 4) 139.

<sup>80</sup> See, eg, Wilson (n 32); Wilson and Marsh (n 32); Wilson (n 20); Phil Harris and Martin Jones, 'A Survey of Law Schools in the United Kingdom, 1996' (1997) 31(1) *The Law Teacher* 38; Phil Harris and Sarah Beinat, 'A Survey of Law Schools in the United Kingdom, 2004' (2005) 39(3) *The Law Teacher* 299.

bring renewed attention to these surveys as valuable sources on the history and development of law schools and legal education in the UK, also with reference to the UK higher education sector more generally.

### A *Law Schools: Divided We Stand*

The complex institutional typology of the UK higher education sector not only continues to shape the contours of the hierarchical and relational organisation of its higher education institutions (institutional level), it also creates ideological and operational differences at the academic unit level, such as with law schools.<sup>81</sup> This much is evident from the various periodic surveys on legal education.<sup>82</sup> The first of these surveys was published in 1966 and was conceived by the Society of Public Teachers of Law 'when the body found itself considerably handicapped in submitting evidence to the Robbins Committee and the National Incomes Commission'.<sup>83</sup> The rationale for the first survey was explained as follows:<sup>84</sup>

The scope of legal education in the universities has increased enormously; the methods and mental attitudes behind the teaching have changed radically; but no information is available as to what people are thinking and doing in all the different universities concerned.

In recommending the initiation of a comprehensive survey of legal education in 1963 ('the Robbins Report'), the General Committee of the Society of Public Teachers of Law set as its objectives to establish relevant facts, to identify the needs of law schools, and to collect the opinions of law teachers and members of the legal profession on the future of legal education.<sup>85</sup> As already indicated, a close reading of all the surveys published from 1966 to 2004/5 not only presents a compelling tale of the impact government policies and actions have had on UK law schools, but also shows how the differentiated pattern of UK higher education institutions has given rise to lasting ideological as well as operational differences at the academic unit level.<sup>86</sup>

These surveys reveal that in terms of ideology (used here to refer to a system of organising principles or beliefs), the differentiated pattern of higher education institutions in the UK remain an important benchmark, also for law schools. For example, in the 1966, 1975, and 1993 surveys, the law schools and faculties from the established and recognised universities in England, Wales, and Northern Ireland, at the

<sup>81</sup> Williams (n 22) 241; Bird (n 1); Shattock (n 65).

<sup>82</sup> Wilson (n 32); Wilson and Marsh (n 32); Wilson (n 20); Harris and Jones (n 80); Harris and Beinart (n 80).

<sup>83</sup> Wilson (n 32) 5.

<sup>84</sup> Ibid. This rationale essentially remained the same across all the surveys published from 1966 to 2004/5. See also Harris and Jones (n 80); Harris and Beinart (n 80) 300.

<sup>85</sup> Wilson (n 32) 5.

<sup>86</sup> These surveys provide a rich source of information on, for example, the growing number of law schools, student numbers, concerns about funding including funding for research and law libraries, as well as the employment conditions and requirements of academic staff at law schools and faculties: See Wilson (n 32); Wilson and Marsh (n 32); Wilson (n 20); Harris and Jones (n 80); Harris and Beinart (n 80).



time the research for each of these surveys were conducted, were subdivided into groups based on 'the type of university involved', rather than any other distinguish factor, like location or specific strengths or student numbers, or demographic, etc.<sup>87</sup> In the first survey, this subdivision of law schools based on the 'type' of university involved was explained as follows:<sup>88</sup>

Thus the sub-divisions used are Oxford and Cambridge, the London Colleges, the older provincial universities and the new provincial universities. The first two groups are self-explanatory – Oxford and Cambridge falling into the first, and the four London colleges into the second (King's College, London School of Economics, Queen Mary College and University College). It must be noted with reference to the latter group, that there is also a law department at the School of Oriental and African Studies which primarily concentrates on postgraduate studies, although it does provide a number of specialised undergraduate courses for students from the other four colleges. The activities of this School will be fully dealt with in the postgraduate section, but since it is primarily a postgraduate institution it has not been included in the general figures. ... The third group of law schools at the older provincial universities is clearly the largest, and comprises the schools at Birmingham, Bristol, Leeds, Liverpool, Manchester, Newcastle, and Sheffield. To these have been added the Faculties at Aberystwyth and Belfast since these schools exhibit characteristics more common with members of this group than with any other. It must be noted, however, that the courses in Belfast are based on Northern Ireland law and that the LL.B. degree can involve either three or four years of study compared with three elsewhere in the group. The fourth group consists of law schools which have been established since the 1939-45 war at the universities of Exeter, Hull, Nottingham and Southampton.

The categorisation of law schools based on 'the type of university involved', was therefore largely informed by the chronology of higher education institutions having received their Royal Charter and status as university, and was subsequently also applied in the 1975 and 1993 surveys.<sup>89</sup>

Also discussed separately in the 1966 survey was the information and statistics collected from the 275 colleges of further education which existed at that time and which offered a wide range of law and legal studies programmes and courses.<sup>90</sup> Likewise, by 1973, when the research for the second survey was conducted, there were 30 polytechnics and 300 technical colleges offering a wide variety of law and legal studies courses, including degree courses, professional courses, national certificates and diploma courses, a general certificate of education in law, and various short courses, all of which were

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<sup>87</sup> Also discussed separately in the 1966, 1975, and 1993 surveys, was the information and statistics collected on legal education and training at Scottish universities, as Scotland has a hybrid law system which renders its legal education and training necessarily different from that of England, Wales, and Northern Ireland, all of which have common law systems. Wilson (n 32) 8; Wilson and Marsh (n 32) 313-324; Wilson (n 20) 175; Harris and Jones (n 80) 48.

<sup>88</sup> Wilson (n 32) 8.

<sup>89</sup> Wilson and Marsh (n 32) 243; Wilson (n 20) 143.

<sup>90</sup> Wilson (n 32) 58-66.

analysed and discussed separately.<sup>91</sup> And by 1991, when the preparatory work for the third survey commenced, the enactment of the Further and Higher Education Act in 1992 – which gave all higher education institutions the same legal status to that of universities – gave way to the drafting and publication of two separate surveys, one focussing on 'developments in the traditional university sector', and the other focussing on 'developments in the former polytechnic sector'.<sup>92</sup> While the surveys published in 1997 and 2004 made every effort to analyse and present the statistics and information collected from the *pre-1992 universities* and the *post-1992 universities* together, the operational differences between these two 'types of universities involved' rendered this impossible, and a clear demarcation was therefore yet again made in the analysis and presentation of data between *old universities (pre-1992 universities)* and *new universities (post-1992 universities)*.<sup>93</sup>

King explains that this grouping of universities in seemingly homogeneous groups from which generalisations or comparisons can be drawn, is typically done on an intuitive basis and is actually quite arbitrary, as any criterion other than, for example, the complex institutional typology of the UK higher education sector could have been used.<sup>94</sup> For example, other objective criteria by which to group law schools include the size of the law school in terms of student and staff numbers, or the geographical location of the law school, especially in terms of the various devolved nations of the UK and the particularity of their legal systems and corresponding legal education.<sup>95</sup> Curiously, however, it was seemingly the differentiated pattern of institutional types of the UK higher education sector that provided the best framework for comparing and analysing the data collected on UK law schools and legal education at the time these surveys were conducted.<sup>96</sup> This is arguably because UK higher education institutions and their law schools, 'founded at different times, in different circumstances and for different purposes, tend to remain somewhat distinct in their present characteristics'.<sup>97</sup> The question, however, is to what extent the differentiated pattern of higher education institutions imposes a hierarchy also on the various academic units of these higher education institutions, or to what extent already existing systemic differences between higher education institutions and their academic units continue

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<sup>91</sup> Wilson and Marsh (n 32) 245-246.

<sup>92</sup> In this third survey published in 1993, the University of Buckingham was also discussed separately as the first private university founded in 1973, without any access to grants from public funds: Wilson (n 20) 143, 174-175; Harris and Beinart (n 80) 299.

<sup>93</sup> Harris and Jones (n 80); Harris and Beinart (n 80).

<sup>94</sup> John King, 'The Typology of Universities' (1970) 2(3) *Higher Education Review* 52-61, 52.

<sup>95</sup> Croxford and Raffé also emphasise how higher education generally differs in the four devolved nations, in terms of policy, size, socio-economic context, as well as institutional legacy. Croxford and Raffé (n 78) 1635.

<sup>96</sup> King (n 94) 51. Also see P K Dalton and G H Makepeace, 'University Typology: A Contemporary Analysis' (1982) 14(3) *Higher Education Review* 33.

<sup>97</sup> Malcolm Tight, 'University Typologies Re-Examined' 29(1) *Higher Education review* 57, 75; Raffé and Croxford (n 64) 314.

to perpetuate the hierarchy of the differentiated pattern of higher education institutions.

Some of the identified operational differences between law schools and law faculties in *pre-1992 universities* and *post-1992 universities* highlighted in the surveys published from 1966 to 2004/5, included the following: While it was not possible in the 1966, 1975 and 1993 surveys to determine whether *old universities* were more popular amongst prospective applicants, or, put differently, received more first choice applications, the availability of statistics on standard offers published in the UCAS Official Guide<sup>98</sup> made it possible for the authors of the 1997 survey to calculate and conclude that *old universities* were generally able to attract those students with the best secondary school results, while ‘a number (impossible to estimate) of – in particular – *new university* law schools will struggle to fill all their places and will be forced to accept students with lower’ secondary school results than they may have hoped for at first.<sup>99</sup> This trend has continued to date.<sup>100</sup> It therefore seems as though the historical prestige previously associated with an education at the erstwhile *ancient universities* and *red brick universities* compared to the educational offering of the polytechnics and colleges, or the so-called *new universities* today, continues to prevail.<sup>101</sup> A similar division between the *pre-1992 universities* and *post-1992 universities* can also be observed with regard to part-time undergraduate studies in law and vocational programmes; these remained predominantly located in the *new universities*, which originally derived from the various alternative institutions of post-secondary education as described in Part II above, while the *old universities* generally enjoyed a larger cohort of postgraduate and research students.<sup>102</sup> This trend has also prevailed to this day.<sup>103</sup>

In terms of teaching staff employed at law academic units of the erstwhile *ancient universities* and *red brick universities* and the alternative institutions of post-secondary education also offering law

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<sup>98</sup> UCAS is an ‘independent charity providing information, advice, and admissions services to inspire and facilitate educational progression’. The history of this institution dates back to 1961, when UCCA – the Universities Central Council on Admissions – was established as the only centralised admission service for undergraduate admissions to higher education. The primary aim of this organisation was (and still is), to provide assistance to universities in effectively managing student admission applications. For more information see ‘What is UCAS?’ *UCAS* (Web Page) <<https://wwwucas.com/about-us/who-we-are>>.

<sup>99</sup> Harris and Jones (n 80) 61.

<sup>100</sup> More recent statistics are regularly published by UCAS at ‘Data and Analysis’ *UCAS* (Web Page) <<https://wwwucas.com/data-and-analysis>>, and the Higher Education Statistics Agency at ‘Home’ *HESA* (Web Page) <<https://www.hesa.ac.uk>>. Lynn Bosetti and Keith Walker ‘Perspectives of UK Vice-Chancellors on Leading Universities in a Knowledge-Based Economy’ (2010) 64(1) *Higher Education Quarterly* 4, 12; Vikki Boliver, ‘Are there Distinctive Clusters of Higher and Lower Status Universities in the UK?’ (2015) 41(5) *Oxford Review of Education* 608-627; Croxford and Raffae (n 78).

<sup>101</sup> British Council and Quality Assurance Agency for Higher Education (n 14) 39.

<sup>102</sup> Wilson (n 32) 8; Wilson and Marsh (n 32) 261-263; Wilson (n 20) 154; Harris and Jones (n 80) 46; Harris and Beinart (n 80) 305; Bird (n 1) 81; British Council and Quality Assurance Agency for Higher Education (n 14) 39.

<sup>103</sup> Boliver (n 100).

and legal studies programmes/courses, it was noted that initially, at least, there was a marked difference in the overall average teaching load for academic staff at the erstwhile *ancient universities* and *red brick universities* – which were between 8 to 10 hours a week – and the alternative institutions of post-secondary education – which were between fifteen to twenty hours a week.<sup>104</sup> Of law teaching at the colleges of further education as it existed prior to 1992, it was noted as follows:<sup>105</sup>

The two most notable features of law teaching at colleges of further education are, first, the extensive amount of actual instruction provided and, secondly, the wide variety of qualifications for which students are prepared. The larger colleges are tending to concentrate their main resources in the legal field on preparation for external degrees or legal professional qualifications, but elsewhere the main emphasis is on the provision of more elementary courses on the English legal system or commercial law for a variety of non-legal qualifications.

This resulted in academic staff of the alternative institutions of post-secondary education (subsequently *new universities*) having 'little time to keep abreast of changes in the law or to undertake research of their own'.<sup>106</sup> This situation at the erstwhile alternative institutions of post-secondary education was further exacerbated by the general 'lack of library facilities' and the 'lack of specialised staff to supervise many possible fields of research, and the absence of research assistants to enable specific projects to be undertaken'.<sup>107</sup> While the reported average teaching hours for the 1997 and 2005 surveys seemingly presented a more equal distribution of teaching load for teaching staff from both the *old universities* and the *new universities* – on average seven to nine hours per week – the *new universities* typically had higher student numbers, offered a larger range of academic programmes, and endeavoured to offer a higher number of class-contact teaching hours to remain competitive in the higher education market.<sup>108</sup> Moreover, while nearly a quarter of the academic staff in the *pre-1992 universities* were employed part-time by 1998, nearly half of those in the *post-1992 universities* were employed part-time.<sup>109</sup>

The focus of these surveys published from 1966 to 2004/5 was exclusively on law schools and legal education. With regard to research, it can be noted that a similar correlation seemingly exists between institution type in terms of the differentiated pattern of higher education institutions in the UK and research performance. For example, more recent studies analysing the performance of UK higher education institutions participating in the REF<sup>110</sup> reveal that some higher education institutions may benefit from 'a halo effect hovering' over

<sup>104</sup> Wilson (n 32) 32; Wilson and Marsh (n 32) 267-268; Wilson (n 20) 160-161, 175, 178.

<sup>105</sup> Wilson (n 32) 65.

<sup>106</sup> Wilson (n 32) 60; Wilson and Marsh (n 32) 272.

<sup>107</sup> Wilson (n 32) 22; Wilson and Marsh (n 32) 265.

<sup>108</sup> Harris and Jones (n 80) 83-86, 97-99; Harris and Beinart (n 80) 351-317, 344-352.

<sup>109</sup> Williams (n 32) 260.

<sup>110</sup> See (n 54).

those institutions and academic units perceived to have a long-standing record of high quality research, or who are deemed to be ‘research intensive’, or has the brand promise of ‘research excellence’, such as the *Russell Group universities*.<sup>111</sup> In other words, these institutions’ research performance may be evaluated more favourably based on their standing in the UK differentiated pattern of higher education institutions, rather than on their actual research activity and performance. Taylor explains that eliminating such implicit bias in the evaluation of research performance is impossible in the context of REF, as ‘the source of all submitted research output is known’ and ‘the requirement to assess a department’s esteem, alongside its research output, means that halo effects are built into the evaluation criteria’.<sup>112</sup>

As indicated above, no further surveys of legal education or law schools in the UK have been undertaken since the survey of 2004/5, the research of which was conducted during the 2002/3 academic year.<sup>113</sup> This is regrettable as these surveys provide a comprehensive and fascinating source detailing the development and evolution of UK law schools and legal education from approximately 1966 to 2004/5, and remains relevant, especially when supplemented with references to more recent academic literature, such as here in Part III. Although it can generally be accepted that differences – such as those highlighted here in Part III – between the various clusters of universities in terms of teaching load, pedagogical practices, and teaching environments may have diminished in recent years, the empirical evidence of more recent studies seem to suggest that systemic differences along the lines of the differential pattern of higher education institutions in the UK still remain.<sup>114</sup>

Thus, more than three decades after the enactment of the Further and Higher Education Act in 1992, the historically entrenched differentiated pattern of UK higher education institutions not only continues to shape the contours of their hierarchical and relational organisation (institutional level), but seemingly also corresponds with ideological and operational differences at the academic unit level, such as with law schools. This differentiated pattern of higher education institutions both perpetuate, and is perpetuated by these associated ideological and operational differences at the institutional and academic unit level, and is further reinforced through public opinion in terms of

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<sup>111</sup> A Oancea, ‘Research Governance and the Future(s) of Research Assessment Humanities and Social Sciences’ (2019) 5(27) *Communications* 1; Richard E Nisbett and Timothy DeCamp Wilson, ‘The Halo Effect: Evidence for Unconscious Alteration of Judgments’ (1977) 35(4) *Journal of Personality and Social Psychology* 250-256; Jim Taylor ‘The Assessment of Research Quality in UK Universities: Peer Review or Metrics?’ (2011) 22 *British Journal of Management* 202, 204, 209, 211, 214; Marques and Powell (n 5); Andy Thorpe, Russell Craig, Dennis Tourish, Glenn Hadikin and Sasa Batistic, ‘“Environment” Submissions in the UK’s Research Excellence Framework 2014’ (2018) 29 *British Journal of Management* 571.

<sup>112</sup> Taylor (n 111) 204.

<sup>113</sup> Harris and Beinart (n 80) 303.

<sup>114</sup> See, eg, Hannah Clare Ordoyno, ‘Access to Knowledge and the Formation of Lawyer-Identity: A Bernsteinian Comparison of Undergraduate Law Degrees at Two UK Universities of Different Status’ ( PhD Thesis, University of Nottingham, July 2016) <<https://core.ac.uk/download/pdf/42492765.pdf>>; Boliver (n 100).

which quality and excellence seem to be associated only with certain types of universities.<sup>115</sup> For example, with regard to the so-called 'university mission groups' described in Part II above, it has been said that:<sup>116</sup>

[i]n the UK, [higher education institutions] project desirable images by promoting their membership of university "mission groups." The Russell Group, for example, has positioned itself in the public psyche as encompassing the research elite in the UK by claiming to represent 24 "research intensive world-class universities" ... This gives its members considerable reputational cachet'.

#### IV LAW SCHOOLS EFFECTING CHANGE FROM WITHIN THE DIFFERENTIATED PATTERN OF THE HIGHER EDUCATION INSTITUTIONS IN THE UNITED KINGDOM

UK law schools are not autonomous bodies and are inevitably entangled and embedded in a complex institutional typology that circumscribes their identity and standing as well as their ability to flourish and develop, especially outside the contours of the hierarchical and relational organisation of their respective institutions. From a theoretical perspective, this apparent enduring nature and constraining impact of the differentiated pattern of the UK higher education sector can best be explained in terms of *new institutionalism*,<sup>117</sup> which suggests that a community of organisations, such as higher education institutions 'that partakes of a common meaning system and whose participants interact more frequently and fate-fully with one another than with actors outside the field', constitute a recognised area of institutional life that is known as an *organisational field*.<sup>118</sup> DiMaggio

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<sup>115</sup> Watson (n 75) 101, 103.

<sup>116</sup> Thorpe, Craig, Tourish, Hadikin and Batistic (n 111) 573.

<sup>117</sup> New institutionalism derives from institutional theory which is an explanatory tool for analysing a variety of organisational phenomena. Old institutional theory (1940/50s) posited an organisation as an institutionalised social organism decisively affected by its context, while new institutionalism (1970/80s) introduces a new analytical focus; shifting the attention from an organisation's functioning to the relationship between organisations and their environments. Three schools of thought are generally associated with new institutionalism: Historical (comparative) institutionalism, rational choice institutionalism or economic institutionalism, and sociological or organisational institutionalism. The argument presented in this article is primarily based on new institutionalism and incorporates elements of each of these three schools. Yuzhou Cai, and Yohannes Mehari, 'The Use of Institutional Theory in Higher Education Research' in Jeroen Huisman and Malcolm Tight (eds) *Theory and Method in Higher Education Research* (Emerald Group Publishing Ltd, 2015) 2-3; Sara Diogo, Teresa Carvalho and Alberto Amaral 'Institutionalism and Organisational Change' in Jeroen Huisman, Harry de Boer, David Dill, and Manuel Souto-Otero (eds), *The Palgrave International Handbook of Higher Education Policy and Governance* (Palgrave MacMillan, 2015) 117-118.

<sup>118</sup> It is important not to confuse the use of the concepts *organisation* and *institution* here; while the two concepts are often used interchangeably, they have distinct meanings in the context of institutional theory: Richard W Scott *Institutions and Organizations for Organizational Science* (SAGE Publications, 1995) 56; Melissa Wooten and Andrew J Hoffman, 'Organizational Fields: Past, Present and Future' in Royston Greenwood, Christine Oliver, Thomas B Lawrence, and Renate E Meyer

and Powell explain that '[o]nce an organisational field has become institutionalised, whatever change occurs will lead towards greater conformity, facilitated by three isomorphic processes, namely coercive, mimetic and normative'.<sup>119</sup> This much was certainly evident from the discussion and analysis in the preceding parts of this article.

A unified UK higher education sector as an institutional or organisational field was achieved to some extent – at least in form – subsequent the enactment of the Further and Higher Education Act of 1992, and by way of these three types of institutional isomorphisms: Political pressure and governmental decree conditioned access to public funding, serving as a coercive measure in driving all universities to explore knowledge impact and industrial partnerships in their research and teaching activities. Likewise, the increasing importance placed on research excellence prompted all higher education institutions – especially the *post-1992 universities* who may not previously have been particularly research-focussed – to mimic the *ancient universities* in what was once regarded as their pre-eminent domain.<sup>120</sup> And elements of normative isomorphism, such as the professionalisation, socialisation, and common measures for the evaluation of the so-called 'professional' academia, have conditioned a set of normative expectations and deliverables from all academic members of staff, irrespective of the 'type' of institution where they are employed. Yet, and as was also evident from the discussion in Parts 2 and 3 above, the differentiated pattern of UK higher education institutions – specifically the *pre-1992 universities*, the *post-1992 universities* and the *Russell Group universities* – have also become entrenched and institutionalised as organisational fields in their own right, and these organisational fields continue to shape the contours of the hierarchical and relational organisation of higher education institutions in the UK, and ultimately also impact on the ideology and operations at the academic unit level.<sup>121</sup>

Some of the *organising principles* of these institutional typologies were considered in Part III of this article in terms of the ideological differences (symbolic constructions) and operational differences (material practices) of students, staff, government, and the society at large. It was shown that these organising principles continue to reinforce the existing organisational fields and thereby sustain the differentiated pattern of institutions in the UK higher education sector. For example, it was suggested in Part III above, that the perceived prestige of certain types of universities, compared with the status of the erstwhile alternative institutions for post-secondary education (polytechnics and colleges), still drives the divide between *pre-1992*

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(eds), *The SAGE Handbook of Organisational Institutionalism* (SAGE Publications, 2<sup>nd</sup> ed, 2017) 55; Cai and Mehari (n 127) 3; Paul J DiMaggio and Walter W Powell, 'The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields' (1983) 48(2) *American Sociological Review* 147, 148.

<sup>119</sup> DiMaggio and Powell (n 118) 150; Cai and Mehari (n 117) 3; Diogo, Carvalho and Amaral (n 117) 121.

<sup>120</sup> Bosetti and Walker (n 100) 12.

<sup>121</sup> Ian Austin and Glen A Jones, *Governance of Higher Education: Global Perspectives, Theories, and Practices* (Routledge Taylor & Francis Group, 2016) 6-7; Croxford and Raffe (n 79) 1637; Watson (n 75) 100; Raffe and Croxford (n 64).

*universities* and *post-1992 universities* today. Such symbolic constructions, and also material practices in terms of, for example, differing governance structures, are the *institutional logics* that inform and sustain the organisational fields,<sup>122</sup> and in the case of the UK higher education sector, have developed into *convergent institutional logics* that has legitimacy amongst multiple actors within the organisational fields, to the extent that it has become a dominant principle, idea, or approach in higher education decision-making.<sup>123</sup> Bastedo describes the power of convergent institutional logics as follows:<sup>124</sup>

They embody the concept of an archetype, which is 'a set of structures and systems that consistently embodies a single interpretive scheme' [...] An archetype is a representation of a contested whole, the result of a process where advantaged individuals and groups have consolidated their political position and gained control over organisational resources'.

Having identified the organisational fields and the institutional logics that are keeping these organisational fields intact, it not only becomes clear how institutional typologies both enable and constrain UK higher education institutions in their capacity to flourish, it also informs our understanding of the normative and cognitive dimensions necessary to ultimately bring about change.<sup>125</sup> Change is not impossible, but is notoriously hard to achieve once organisational fields – such as the stratified institutional environment of the UK higher education sector – have become institutionalised, and convergent institutional logics – such as perceptions about prestige, quality and value – have taken hold and work to continuously reinforce and legitimise the existing organisational fields.<sup>126</sup> Moreover, those institutions and organisational fields that are most advantaged by the working of institutional logics, will obviously work hard at sustaining the associated organisational fields, while those institutions most disadvantaged by the prevailing institutional logics and organisational fields, will often concede to exogenously perceived properties of, or internalised values, beliefs, and traditions about, their identity and place in these organisational fields.<sup>127</sup>

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<sup>122</sup> Thornton and Ocasio defined institutional logics as 'the socially constructed, historical patterns of material practices, assumptions, values, beliefs, and rules by which individuals produce and reproduce their material subsistence, organise time and space, and provide meaning to their social reality': Patricia H Thornton and William Ocasio, 'Institutional Logics and the Historical Contingency of Power in Organisations: Executive Succession in the Higher Education Publishing Industry, 1958-1990' (1999) 105(3) *American Journal of Sociology* 801, 804. See also Yuzhou Cai and Nicola Mountford, 'Institutional Logics Analysis in Higher Education Research' (2022) 47(8) *Studies in Higher Education* 1627.

<sup>123</sup> Michael N Bastedo 'Convergent Institutional Logics in Public Higher Education: State Policymaking and Governing Board Activism' (2009) 32(2) *The Review of Higher Education* 209, 211.

<sup>124</sup> Bastedo (n 123) 211; Royston Greenwood and C R Hinings, 'Understanding Strategic Change: The Contribution of Archetypes' (1993) 36(5) *The Academy of Management Journal* 1052, 1053.

<sup>125</sup> Cai and Mehari (n 117) 6.

<sup>126</sup> Bosetti and Walker (n 100); Croxford and Raffe (n 78) 1638.

<sup>127</sup> Diogo, Carvalho and Amaral (n 117) 118-119.



What is needed to pierce this complex of institutional typologies is what DiMaggio referred to as *institutional entrepreneurship*.<sup>128</sup> *Institutional entrepreneurship* refers to 'the activities of actors who have an interest in particular institutional arrangements and who leverage resources to create new institutions or to transform existing ones'.<sup>129</sup> Although this article is not so much concerned with change at the institutional level but rather focusses on the impact of the differentiated pattern of UK higher education institutions on the capability of law schools to flourish, the two strategies for change at the law school level outlined below are not that far removed from DiMaggio's *institutional entrepreneur* approach, as they also emphasise the agency of individual and micro-level (academic unit level) actors to bring about change, ultimately also at the meso and macro levels.<sup>130</sup>

### A *Hierarchical Change from the Inside Out*

The first proposed strategy for law schools to reclaim their capacity to flourish, is to achieve hierarchical change from the inside out, by acquiring more independence and power within their own institution. This can be achieved when law schools are formally recognised as independent academic units in the organisational structure of their universities. The importance of such independence was observed in the first, second, and third surveys published in 1966, 1975, and 1993 respectively and considered in Part III above.<sup>131</sup> In these surveys, special mention was made of the status of some law schools and faculties within their respective institutions. For example, it was noted that the academic units responsible for law and legal studies at the universities of Scotland and Northern Ireland have the status of independent law faculties within their universities, and are unique in having sub-divided the respective faculties into separate subject departments.<sup>132</sup> In England and Wales, on the other hand, it was reported that the older, more established universities – the *ancient universities* and the *red brick universities* – also had independent law faculties for legal education and training, while the *newer universities* were more prone to having a law department as part of a multi-department faculty.<sup>133</sup> This difference in the organisational structure of

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<sup>128</sup> DiMaggio and Powell (n 118).

<sup>129</sup> Cynthia Hardy and Steve Maguire 'Institutional Entrepreneurship and Change in Fields' in Royston Greenwood, Christine Oliver, Thomas Lawrence, and Renate E Meyer (eds), *The SAGE Handbook of Organisational Institutionalism* (SAGE Publications, 2<sup>nd</sup> ed, 2017) 261, 261.

<sup>130</sup> Croxford and Raffé also suggest that differences at the academic unit level (subject level) may be an important source of pluralism in social mobility and social reproduction, and ultimately also in disrupting the enduring status hierarchy within the United Kingdom higher education sector: Croxford and Raffé (n 78) 1638.

<sup>131</sup> Wilson (n 32); Wilson and Marsh (n 32); Wilson (n 20).

<sup>132</sup> Wilson (n 32) 15-16.

<sup>133</sup> It is interesting to note that from early on the University of Nottingham had a law department as part of its Faculty of Law and Social Sciences, and the University of Hull had a law department as part of its Faculty of Social Sciences and Law, while

the *older universities* compared to that of the *newer universities*, and specifically with regard to the status of law schools, can be ascribed to the history of the complex of institutional typologies that have come to present the UK higher education sector.

For example, legal education and training at the *ancient universities* have a long and rich history dating back to 1096, when the first of the *ancient universities* were established, while the individual academic units responsible for legal education and training at the erstwhile alternative institutions for post-secondary education did not, at first, have the power to confer law degrees themselves, and tended to focus more on vocational legal studies for the local county, rather than preparing students for entry to the legal profession. From an internal governance and organisational perspective, it may therefore have made more sense, also financially, for these law academic units of the erstwhile alternative institutions for post-secondary education to be housed with other related schools and departments within a larger college or faculty. This difference in the organisational status of law schools in their respective institutions (universities) may also have been further exacerbated by the distinct constitutional machinery and internal university governance models which developed in harmony with the institutional typologies as it has been described in Part II of this article.<sup>134</sup>

It is indeed so that the formal organisational structure in which law schools are embedded at the institutional level, may have 'little practical effect on law degree courses,' as every law school, irrespective of the organisational structure in which they are embedded, usually have complete control over its own law and legal studies courses and programmes.<sup>135</sup> Also, no evidence exists that certain 'types of law schools' – whether independent, or those forming part of a faculty or college of social sciences as opposed to a faculty or school of business, for example – are more popular than others, nor is it possible to discern or quantify variations in student and employer interests and preferences in this regard.<sup>136</sup> Yet, the advantages of an independent law school or faculty, are immediately apparent, and already in the second survey of legal education published in 1975, was it observed that most of the law schools from the *newer universities*, quickly sought to achieve an independent status once it had established its own degree scheme.<sup>137</sup> This is because an independent law school – as opposed to a law school or department within a larger faculty of college or school – will enjoy a higher status with more decision-making and participatory powers in the internal governance structures of a university, and will also be able to participate more directly in the external governance structures of the

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the University of Wales had a law school at Aberystwyth which formed part of its Faculty of Arts and Social Sciences: Wilson (n 32) 15-16; Wilson and Marsh (n 32) 247.

<sup>134</sup> John W Meyer and Brian Rowan, 'Institutionalised Organisations: Formal Structure as Myth and Ceremony' (1977) 83(2) *American Journal of Sociology* 340.

<sup>135</sup> Wilson (n 32) 15-16; Wilson and Marsh (n 32) 247-248.

<sup>136</sup> Wilson (n 32) 18-19; Wilson and Marsh (n 32) 252.

<sup>137</sup> Wilson and Marsh (n 32) 247.

UK higher education sector, specifically also in the competition for public funds (see Part II above).

Moreover, and as indicated in the introduction to this article, legal education is a *sui generis* species of higher education and training and an inevitable, direct, and reciprocal relationship exists between the nature of a legal system and its mode of legal education and training. Law therefore stands in a 'privileged institutional position within the "reason of state"' and this suggested hierarchical change from the inside out will not only empower law schools to flourish and help universities to disrupt the existing institutional logics and organisational fields, but may also empower law schools to play a more prominent role in the market for legal services specifically.<sup>138</sup> This is because a change or variation in the internal structure of a university has the potential to influence organisational fields and specifically also the 'cultural content carried and transmitted by higher education institutions'.<sup>139</sup> Thus, in addition to independent law schools enjoying a higher status with more participatory powers both at the internal and external governance levels of higher education, the inauguration of an independent law school can also communicate prestige, status, value, and power to challenge the entrenched perceptions (institutional logics) of existing organisational fields. Closer scrutiny of the contexts or institutional structures within which legal and extra-legal knowledge are produced and imparted, will also allow for law schools to reflect more critically on their purpose and possible future role, which also feeds into the second proposed strategy for change.

## B

### *Relational Change from the Inside Out*

As was evident in Part III of this article, the neo-liberal and consumerist UK higher education market has not been able to bring about much change in the existing institutional logics and organisational fields. With regard to law and legal studies specifically, it is noteworthy that:<sup>140</sup>

[I]aw students, typically value the study of law not for its own sake but for the employment prospects that come with the successful completion of a degree. ... With consumer sovereignty what will thus matter ... is not the intellectual quality of the education offered, but its perceived economic value to the students.

The idea behind a neo-liberal higher education market is therefore that students as consumers will make informed and value-based decisions about their law programme, and also their law school and university of choice. Yet, and as was evident from the discussion and analysis in Part

<sup>138</sup> For a comprehensive exposition on the current and also the future potential role of UK law schools in the legal services market, see le Roux-Kemp (n 8); Robert van Krieken, 'Legal Reasoning as a Field of Knowledge Production: Luhmann, Bourdieu and Law's Autonomy' (May 2004), 1 <<http://hdl.handle.net/2123/967>>.

<sup>139</sup> Diogo, Carvalho and Amaral (n 117) 120.

<sup>140</sup> Bradney (n 11) 61. A similar observation has been made with regard to the typology of secondary schools in England, see Steven J Courtney, 'Mapping School Types in England' (2015) 41(6) *Oxford Review of Education* 799.

III above, the same institutional logics that inform and reinforce the organisational fields of the differentiated pattern of higher education institutions in the UK, also inform and reinforce the entrenched perceptions students and employers have about different law schools and the quality and/or value of their law degrees/graduates.<sup>141</sup> Moreover, universities and their law schools have, to a large extent, also remained indifferent to the government's efforts to create a true, competitive higher education financial market where the price and value of tuition (degrees) inform consumer choice; law schools do not only continue to charge full-cost fees (highest fee permissible), but have also remained relatively passive in terms of revolutionising their law and legal studies programmes and courses in an effort to distinguish themselves from competitors.<sup>142</sup>

The second proposed strategy for law schools to reclaim their capacity to flourish, is to disrupt organisational fields and institutional logics through the forging of new alliances outside the higher education sector, and not exclusively with local or regional partners only, as the strengthening of a local or regional identity has been observed to sometimes weaken academic units and their institutions' hierarchical ordering in established higher education organisational fields.<sup>143</sup> The organisational alliances so forged, need furthermore not only be with the legal profession specifically. Law degrees are generally 'perceived as being one of the most useful degrees to have when seeking employment',<sup>144</sup> and law schools should therefore be encouraged to think creatively and critically about their potential role in and contribution to a wider range of markets, industries, and institutions, where legal education and law graduates will make a valuable contribution. Through the establishment of such new organisational alliances, law schools will be able to develop distinct new identities in the higher education marketplace, that are independent from the organisational fields and institutional logics that sustain the differentiated pattern of the UK higher education sector.<sup>145</sup> For example, such new organisational alliances will stimulate more competition, diversity, and innovation at the pedagogical level, in terms of research, and also knowledge transfer. It is submitted that the alliances so fostered, and the distinct new identities law schools will

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<sup>141</sup> Croxford and Raffé explain that '[e]ducational markets tend to reinforce academic hierarchies; rather than encourage institutions to compete on the quality and relevance of their programmes, markets simply strengthen the position of institutions with existing reputational advantage': Croxford and Raffé (n 78) 1626. See also Raffé and Croxford (n 64); Bosetti and Walker (n 100) 12; Frank, Gowar and Naef (n 51).

<sup>142</sup> Tight suggests that the importance of 'market niche' for the development of UK higher education institutions is particularly important. Malcolm Tight, 'University Typologies Re-Examined' 29(1) *Higher Education Review* 57, 76. See also Bradney (n 11) 63, 66; Andra le Roux-Kemp, 'The Fourth Industrial Revolution and a New Policy Agenda for Undergraduate Legal Education and Training in England and Wales' (2021) 2(1) *Journal of Law, Technology & Trust* 1.

<sup>143</sup> Croxford and Raffé (n 78) 1638.

<sup>144</sup> Bradney (n 11) 68-69.

<sup>145</sup> Mary Ann Glynn and Rikki Abzug, 'Institutionalising Identity: Symbolic Isomorphism and Organizational Names' (2002) 45(1) *The Academy of Management Journal* 267; Marques and Powell (n 5) 833.

develop, will not only empower law schools to flourish, but can inevitably also help universities to disrupt the existing institutional logics and organisational fields of the differentiated pattern of UK higher education institutions.

The second strategy for change is therefore to value a liberal legal education that goes beyond vocational training in the practical skills of law, and for UK law schools to also ‘expand their present role and to move to a more self-conscious multi-functional model that serves a more varied clientele,’ whilst maintaining a fair ‘balance between educational, scholarly, and social objectives’.<sup>146</sup> This strategy for change is arguably of acute importance to UK law schools in this present climate of austerity in which the ‘value’ of a law degree is being questioned and the employability of graduates are of increasing concern for government and employers alike.<sup>147</sup> Yet, few UK law schools have seemingly critically considered the fact that they are ‘operating within a “red ocean” market, namely one in which a vast and increasing number of suppliers claim to offer products or services of near identical (and not merely equivalent) value.’<sup>148</sup> Nicholson therefore rightly warns that for UK law schools to survive and thrive – even to flourish as described in the introduction to this article – they will have to reflect more critically on their purpose, the existing, and also the potential new value of their educational and research offering.<sup>149</sup>

## V CONCLUSION

This article considered the complex pattern of institutional types of the UK higher education sector that is not only highly stratified, but seemingly also enduring. It was shown that the differentiated pattern of higher education institutions in the UK has a long history originating in the medieval period with the so-called *ancient universities* and was further developed and expanded upon through a series of government decisions and actions, primarily in reaction to financial pressures and concerns for expanding access to higher education. By the early 1990s, with the enactment of the Further and Higher Education Act of 1992, the so-called *ancient universities*, *red brick universities*, and *plate glass universities*, were joined by thirty-four *new universities* and thirty-nine *recently created universities*. One of the objectives of this legislation was to establish a unified higher education sector from the binary of higher education providers which existed at that time, with the existing universities on the one hand, and various alternative institutions of post-secondary education (ie, polytechnics and colleges) offering higher

<sup>146</sup> Bradney (n 11) 61–62. See also le Roux-Kemp (n 8).

<sup>147</sup> See generally Alex Nicholson, ‘The Value of a Law Degree’ (2020) 54(2) *The Law Teacher* 194.

<sup>148</sup> Alex Nicholson, ‘The Value of a Law Degree Part 2: A Perspective from UK Providers’ (2021) 55(2) *The Law Teacher* 241, 244. See also Alex Nicholson, ‘The Value of a Law Degree Part 3: A Student Perspective’ (2021) 55(4) *The Law Teacher* 431; Alex Nicholson, ‘The Value of a Law Degree Part 4: A Perspective from Employers’ (2022) 56(2) *The Law Teacher* 171.

<sup>149</sup> Nicholson (n 147) 208.

qualifications through an external examination system of universities, on the other. Yet, the relics of two separate and previously competing sectors of higher education, forged together through legislation, have seemingly remained.

To this day, the so-called 'old' or *pre-1992 universities* have retained a homogenous character different from that of the so-called 'new' or *post-1992 universities*, and various ideological and operational differences can also be observed. The differentiated pattern of higher education institutions in the UK has therefore remained and has been further exacerbated in recent years with the establishment of various 'university mission groups', presenting voluntary associations of universities on the basis of self-categorisation and common interests. Of these voluntary associations, the *Russell Group universities* have arguably had the most success in using its brand promise of 'excellence', 'high standards', and being 'world-class', to distinguish its member institutions from other 'types' of universities in the UK.<sup>150</sup>

Having traced and described this evolution of the differentiated pattern of UK higher education institutions, it was shown in Parts II and III that the stratified institutional environment not only remains 'culturally, ideologically, historically, organisationally, [and] legally meaningful',<sup>151</sup> but that it also shapes the contours of the hierarchical and relational organisation of higher education institutions (institutional level), and creates ideological and operational differences at the academic unit level. The focus of this article was on UK law schools specifically, and the primary source material relied upon in Part III are periodic general surveys of law schools and legal education in the UK dating from 1966 to 2004/5. The information and data from these surveys were further supplemented with more recent academic literature on the endurance and impact of the UK's complex pattern of higher education institution types. This focus on the impact of the differentiated pattern of higher education institutions in the UK at the academic unit level is important, as '[f]ar less attention has been devoted [in academic literature] to understanding [the] consequences [of the United Kingdom complex pattern of institutional types] for disciplines and schools or other university subunits'.<sup>152</sup> The discussion and analysis in Part III revealed that the differentiated pattern of higher education institutions remain an important benchmark also for law schools, who are inevitably entangled and embedded in this complex institutional typology that circumscribes their identity and standing, as well as their ability to flourish and develop, especially outside the contours of the hierarchical and relational organisation of their respective institutions.<sup>153</sup>

With reference to the theory of new institutionalism, and with due regard to how institutional logics work to sustain organisational fields

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<sup>150</sup> Croxford and Raffè (n 78) 1637.

<sup>151</sup> Courtney (n 140).

<sup>152</sup> Marques and Powell (n 5) 830.

<sup>153</sup> Ibid 829.

through normalisation and internalisation of boundaries and control,<sup>154</sup> the article concluded in Part IV with some recommendations for how UK law schools can possibly work to disrupt the constraints of this stratified institutional environment. The first strategy proposed is for law schools to acquire more independence and power within their own organisation (university), as an independent academic unit in the institutional organisational structure rather than a school or department belonging together with others to a larger faculty or school. It is submitted that such a hierarchical change will not only empower law schools to flourish but can also help universities in disrupting the existing institutional logics and organisational fields. The second strategy is for law schools to capitalise on the generally perceived value and utility of law degrees and a legal education, and to explore organisational alliances with a wider range of markets, industries, and institutions. This second strategy has at aim to purposefully disrupt existing organisational fields and institutional logics through the forging of new organisational alliances that will also allow law schools to develop distinct new identities in the higher education marketplace.

It is submitted that the observations and conclusions drawn here with regard to how stratification in national higher education markets impedes the capacity of universities and their individual academic units to flourish, may also find application in the higher education sectors of other countries and jurisdictions. This is because both national and international ratings and rankings of higher education markets have rendered all university sectors, not only that of the UK, stratified and differentiated. The extent to which the institutional typologies so established incapacitate or at least weaken universities and their academic units such as law schools from “flourishing”, is deserving of more research, especially as the existence – whether implicitly or explicitly – and the impact of national or local university ranking systems, remain under-researched and under-represented in academic literature.<sup>155</sup>

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<sup>154</sup> Michael Sauder and Wendy Nelson Espeland, ‘The Discipline of Rankings: Tight Coupling and Organisational Change’ (2009) 74(1) *American Sociological Review* 63.

<sup>155</sup> See, eg, David D Dill and Maarja Soo ‘Academic Quality, League Tables, and Public Policy: A Cross-National Analysis of University Ranking Systems (2005) 49 *Higher Education* 495; Murat Perit Çakir, Oğuzhan Alaşehir, Canan Çilingir and Cengiz Acarturk, ‘A Comparative Analysis of Global and National University Ranking Systems’ (2015) 103(3) *Scientometrics* 813.