

After Dark and Out in the Cold: part-time law students and the myth of “equivalency”*

I think sometimes we feel that the full-time course is dragging the part-time course along with it. I think it needs to be seen as a separate entity and treated as a separate entity (7B)

Introduction

Part-time higher education achieved rare prominence with the publication of Universities UK’s *Part-time students in higher education – supporting higher-level skills and lifelong learning*.¹ This argues that while part-time students represent a significant percentage within higher education, they remain substantially ignored by researchers and policy makers. While some research has explored part-time students in general,² there is scant analysis of part-time *law* students.³ This group requires closer attention for a number of reasons. Consideration of part-time law students would shed light on how providers of ‘elite’ degree programmes, like the LLB,

* We are indebted to the reviewers, from whose thoughtful comments this paper has benefitted. Our thanks also to Hilary Sommerlad who read, and made valuable suggestions about, an earlier draft.

¹ Universities UK, *Policy Briefing: Part-time students in higher education – supporting higher-level skills and lifelong learning* (2006) <<http://bookshop.universitiesuk.ac.uk/downloads/policybriefing0.pdf>>.

² T. Bourner et al., *Part-time students and their experience of Higher Education* (1991); M. Tight, *Higher Education: a part-time perspective* (1991) and; D. Smith and M. Saunders, *Other Routes: part-time higher educational policy* (1991).

³ A. Francis and I. McDonald, ‘Part-time Law Students: The Forgotten Cohort’ (2005) 39(3) *The Law Teacher* 277.

contribute to policies of lifelong learning and widening participation,⁴ particularly since the provision of part-time law degrees predates the contemporary widening participation agenda. In addition, closer attention to part-time law students should reveal how law schools respond to a socially and educationally diverse range of students – an issue also of increasing relevance to providers of full-time legal education.

The relationship of legal higher education to the legal profession provides a further imperative for research.⁵ The non-traditional profile of those studying for part-time law degrees means they represent an important yardstick with which to measure the profession's claims to equal access.⁶ More broadly, Sharpe, drawing on Bauman, suggests that a society defines itself against 'outsiders'.⁷ Thus, in analysing part-time law students' experiences, we may add to an understanding of the groups around which legal education appears to construct its ideal types.

⁴ HMSO, *The Learning Age: a Renaissance for a new Britain* (1998).

⁵ D. Manderson and S. Turner, 'Coffee House: *Habitus* and Performance Among Law Students' (2006) 31 *Law and Social Inquiry* 649, at 666.

⁶ M. Larson, *The Rise of Professionalism: a sociological analysis* (1977) 51; Law Society, *The Law Society Equality and Diversity Policy and Strategy* (2005), <http://www.lawsociety.org.uk/documents/downloads/Equality%20and%20Diversity%20Framework%20for%20Ac-tion.pdf>.

⁷ A. Sharpe, 'Structured Like a Monster: Understanding Human Difference Through a Legal Category' (2007) 18 *Law and Critique* 207, at 209.

This paper presents the findings of the first major study of part-time law students in England and Wales.⁸ We argue that many part-time law students face multiple disadvantages which constitute them as a distinctive and complex cohort with specific needs and concerns largely unrecognised by universities. Arguably, the overarching context for this failure to accommodate part-time law students is a discourse of *equivalency* in respect of part-time and full-time legal education. Rather than providing an educational experience which is sensitive to part-time law students' needs, too frequently equivalency subsumes part-time law students' distinctiveness within the undergraduate cohort. Thus, many part-time law students find themselves on the margins of the law school, which not only impacts directly upon their studies but also upon their future opportunities within the legal labour market. The paradox of part-time legal education is that although it represents an opportunity to broaden access to legal practice from non-traditional entrants, the nature of the route inhibits their chances of success and entrenches their difference in the eyes of the profession. Bourdieu and Passeron ask whether 'those who have escaped elimination [from entry to HE] have completely escaped, once and for all, the effects of disadvantaging factors?'⁹ Drawing on the concepts of cultural capital and habitus that Bourdieu developed in this and subsequent studies, the answer, in relation to part-time law students, often appears to be 'no'. Subjects with the appropriate habitus for a particular social field experience the 'ease of a comfortable situation ensuring an easy life'¹⁰ This paper argues that part-time law

⁸ We are hugely grateful to the students and institutions that participated in this study for their valuable time and co-operation and the Nuffield Foundation, whose funding support made this project possible: Nuffield Foundation Grant Reference SGS/00932/G.

⁹ P. Bourdieu and J-C. Passeron, *Les étudiants et leurs études* (1964) 13, in D. Robbins, 'The origins, early development and status of Bourdieu's concept of cultural capital' (2005) 56 *British Journal of Sociology* 13, at 24.

¹⁰ P. Bourdieu, *Distinction* (1984) 254-256.

students enjoy anything but an easy life. Admittedly, this is not just their habitus, but the practical realities of their complex lives. However, in drawing on Bourdieu's framework, the problematic engagements of part-time law students with educational and professional fields can be contrasted with those who are more likely to be 'objectively compatible' with the conditions of those fields.¹¹ Thus, the shared experience of studying part-time produces a collective habitus, signifying an 'inauthentic student identity'¹² which shapes the 'improbable and unthinkable' of their post-degree aspirations.¹³

Methodology and Definitions

Part-time LLB programmes are offered by forty-five universities in England and Wales, of which thirty-eight are, *critically*, located in the post-92 university sector. In March 2003, all providers of part-time law degrees in England and Wales were asked for detailed numbers on their programmes and invited to participate in a further study.¹⁴ Thirteen institutions agreed to participate in this stage, three from the pre-1992 university sector and ten from the post-1992 universities. In December 2003 questionnaires were sent to the participating institutions and two

¹¹ P. Bourdieu. *The Logic of Practice* (1990) 54.

¹² B. Read et al., 'Challenging Cultures: student conceptions of 'belonging' and power at a post-92 university' (2003) 28 *Studies in Higher Education* 261.

¹³ Bourdieu, *op. cit.*, n.11.

¹⁴ Distance learning LLB programmes, such as those offered by the Open University and the University of London External LLB programmes, were excluded from this study because of their distinctive learning environment, which would make comparisons with more traditional programmes, delivering face to face teaching to full and part-time students, difficult.

focus groups of approximately twenty students each were conducted in institutions in June and November the following year.¹⁵

There are approximately 5000 students registered on part-time law degrees in England and Wales¹⁶ and the initial quantitative stage generated two hundred and fifty-five responses.¹⁷ Therefore this sample represents 5.1% of all part-time law students. Moreover, this is representative of the national picture, in that a proportionate number of institutions were in London, most respondents were in the 1st year, most institutions were in the post-92 sector and the demographic statistics (outlined below) are also in line with other sources.

The questionnaires used different question formats to generate a fuller picture of preferences and problems (for example, Likert scale, multiple choice, ranking, true/false, 'free text' etc.).

Budgetary limitations necessitated that questionnaires were distributed, collected and returned to us by the participating institutions. However, this limited our control over how the questionnaire was introduced to the students and how much time was allocated for its completion. The semi-structured focus groups were designed to clarify themes emerging from the questionnaire data.

Although these participants' responses cannot be directly triangulated with identifiable questionnaires, their contributions nevertheless provide a rich (and often moving) insight into the

¹⁵ To preserve anonymity, we identify these institutions only as A and B. They are both post-92 universities, one of which is in London.

¹⁶ P. Harris and S. Beinart, 'A Survey of Law Schools 2004' (2005) 39 *The Law Teacher* 299, at 323 record 3429 part-time students from 31 institutions. The estimated figure is achieved through averaging this figure over the remaining providers, excluding the Open University.

¹⁷ This represents a response rate of 18% of students from participating institutions.

reality of the part-time law student experience to be read alongside the detailed quantitative material.¹⁸

The purpose of this study is to identify the background, views and experiences of part-time law students, although clearly other non-traditional students may share some of the problems set out in this paper. Financial constraints precluded direct comparison of the full-time experiences within the participating institutions. Moreover, future work in this area would do well to take greater account of staff perspectives than the aim of this study required.¹⁹ Notwithstanding the triangulation that these additional sources of data would provide and caution as to the value of student evaluations of teaching,²⁰ student perceptions of their experiences are increasingly important within higher education.²¹ Moreover, part-time law students represent a ‘forgotten cohort’ in legal education, undervalued by a paucity of research which takes account of their experiences.²² Our finding that part-time law students studying alongside full-time students reported a greater satisfaction with their experience adds weight to the idea that the law school ‘after dark’ is a distinctive context faced by part-time law students.

¹⁸ D. Silverman, *Interpreting Qualitative Data: Methods for Analysing Talk, Text and Interaction* (1993) at 144-170 and 196-211.

¹⁹ The only major study of legal academics (F. Cownie, *Legal Academics* (2004)) makes little mention of part-time legal education.

²⁰ R. Johnson ‘The Authority of the Student Evaluation Questionnaire’ (2000) 5(4) *Teaching in Higher Education* 419.

²¹ <<http://www.unistats.com>>

²² Francis and McDonald, *op. cit.*, n.3.

Defining the part-time law student

HESA defines part-time students as any student not registered on a full-time basis.²³ However, because of our interest in the ability of part-time law students to enter the legal professions, we adopt the narrower definition of those students *registered* on part-time law degree schemes and exclude those studying, for example, on short and continuing education courses. Part-time law students on CPE/GDL courses are also excluded since they are much more likely to be studying alongside full-time students during the day and, thus, still experience the law school from ‘within’. Moreover, their graduate status provides them with valuable capital in the legal labour market,²⁴ whilst simultaneously distinguishing them from the students registered on part-time law degrees; often identified as ‘messy’ or ‘troublesome’.²⁵

There have been objections to the term ‘part-time’. Curtis and Shani argue that the increasing number of students working longer hours to support themselves during their studies means that ‘[f]ull-time students can now only be described as such on a nominal basis, the majority being now part-time students and part-time workers.’²⁶ While this exposes the realities of higher

²³ HESA On-line Statistics *Definitions*

http://www.hesa.ac.uk/index.php/component/option.com_datatables/task.show_file/defs.1/Itemid.121/catdex.3/dis_p,subject0506.htm/dld,subject0506.xls/yrStr,2005+to+2006/dfile,studefs0506.htm/area,subject/mx,0/.

²⁴ E. Duff et al., *Entry into the Legal Professions – the Law Student cohort Study, Year 6* (2000).

²⁵ P. Davies, ‘Half Full, Not Half Empty: A Positive Look at Part-time Education’ (1999) 53 *Higher Education Quarterly* 141.

²⁶ S. Curtis and N. Shani, ‘The Effect of taking Paid Employment during Term-time on Students’ Academic Performance’ (2002) 26 *Journal of Further and Higher Education* 129, at 129.

education for students registered on *full-time* degree courses, it subsumes the materially different experience of part-time students. In contrast, we argue that while the formal distinction exists, there is a need to *insist* upon the terminology of ‘part-time’ students in order to understand their distinctive experiences. Moreover, such objections overlook the discursive effects of the descriptor, ‘part-time’, which can be an important signifier of an inauthentic identity, denoting likely attendance at a new university and a deviation from the normal routes into higher education.²⁷

Demographic Details

While, unsurprisingly, we found that there is no archetypal part-time law student, the questionnaire sample exhibited the following general demographic characteristics. 61.2% of the sample was female and 38.8% male (surprisingly identical to full-time undergraduates). In respect of known ethnicity, 58.3% of respondents reported they were UK (or Irish) White and 32.3% indicated that they were part of an ethnic minority group or mixed race. Of the non-white ethnicities, the largest groups within the sample were African British at 9.4% and Pakistani British at 5.4%. The questionnaire grouped respondents’ ages into the categories 18-21, 22-30, 31-40 and 41-65. The smallest category was the 18-21 year olds (4.9%). The vast majority of respondents fell within the next two age groups; with 39.8% of respondents aged between 22-30 and 37.6% of the sample between 31-40 years of age. Those in the 41-65 range comprised

²⁷ L. Archer, ‘Diversity, equality and higher education: a critical reflection on the ab/uses of equity discourse within widening participation’ (2007) 12 *Teaching in Higher Education* 635.

17.7% of the sample.²⁸ In broad terms, there appears to be far greater concentration of part-time law students in the key career development/building age range of 22-40, indicative of the vocationalism strongly apparent elsewhere in the data. There was little sense that students were simply studying ‘out of interest’ or to ‘progress within an existing career’ such as those within the UUK study, which produced a far greater age range.²⁹ The emergence of a specific legal vocationalism amongst part-time law students is one of the key findings of this study. In contrast to Marsh’s study of CNAALaw degree students in 1983, which found that only 19.8% of part-time students intended to work within the profession,³⁰ today’s part-time law students seem focussed on a career in law, raising important questions as to how legal education and the profession are able to meet this demand.

In respect of their social circumstances, only 41.7% of the sample was ‘parents with dependent children’, of which thirty-eight were women and twenty-nine men. The educational qualifications of the respondents exhibited a diversity typical of part-time students, who are more likely to come from non-traditional educational backgrounds.³¹ Respondents were asked to identify their *highest* educational qualification and of those who completed the question, only 14.7% had an undergraduate degree, while A-levels were indicated by 36.7% and, more significantly, GCSEs were indicated by 20.7%.³²

²⁸ This encompasses too broad a range. A post-coded ‘free-text’ response would have been preferable.

²⁹ UUK, op. cit., n. 1, p. 3.

³⁰ S. Marsh, ‘The CNAALaw Degree’ (1983) 17 *The Law Teacher* 73, 104.

³¹ UUK, op. cit., n. 1, p. 4.

³² 18.3% indicated their highest qualifications to be ‘Other’. Some of these include professional qualifications. This makes it difficult to assess what more traditional educational qualifications they possess.

The distribution of students across year groups is in line with the March 2003 survey with the largest group being first years at 39.4%. Of the other years, 22.6% were in their second year, 18.6% were in their third year and 18.1% in their fourth year. As later sections will explain, this is not a result of a burgeoning market, but is more likely to be attributable to the high attrition rate of part-time law students.³³

The Part-time Experience: the problem of ‘equivalency’

While equality remains an instinctive starting point for lawyers,³⁴ an insistence upon *formal* equality can mask substantive differences between groups.³⁵ We argue that broad assumptions of *formal* equality and equivalence between full and part-time legal education belie fundamental differences between these pathways and the students who follow them – indeed the myth of equivalency undermines the need to accommodate the distinctive problems faced by part-time law students.

QAA benchmark statements set out a series of learning outcomes, which represent the minimum threshold to be achieved by *all* law graduates.³⁶ The Joint Statement of the Solicitors Regulation Authority/ Bar Standards Board plays a similar role in determining the core subjects of legal

³³ This congruence strengthens our assertion that the sample profile is representative of the larger population.

³⁴ P. Bourdieu, ‘The Force of Law: Toward a Sociology of the Juridical Field’ (1987) 38 *Hastings Law J.* 805, at 820.

³⁵ S. Fredman, *Discrimination Law* (2002) 3.

³⁶ <<http://www.qaa.ac.uk/academicInfrastructure/benchmark/honours/law.asp>>

knowledge required to secure a qualifying law degree. These formal outcomes, which can be externally validated, are designed to ensure an equivalence and transparency of qualifications across different law graduates, whether part-time or full-time. Yet this ‘equivalence’ of qualification only addresses a small part of the possible outcomes of higher education. First, QAA benchmarks represent the standards that students should achieve at the *end* of their studies. By definition, they assume that notwithstanding the diversity of student learning experiences, an ‘equivalent’ endpoint *can* be identified. Thus, any diversity in learning experiences (including the problems that some students may face in reaching the endpoint) is not explicitly captured by such outcomes.³⁷ Moreover, these ‘equivalent’ outcomes represent only minimum benchmarks.³⁸ Particularly in the legal marketplace, a 2(i) has effectively become mandatory. Our data (below) highlights the obstacles that part-time law students face in exceeding these outcomes.

Secondly, these formal outcomes do not capture the broader ways in which a law degree may be evaluated by the profession.³⁹ Not only may attendance at particular institutions accord the

³⁷ The QAA has other measures to evaluate the learning experience. For example, Institutional Audit seeks to ‘enable students and other stakeholders to have confidence in the proper management of the quality of learning opportunities’ <<http://www.qaa.ac.uk/reviews/institutionalAudit/handbook2006/Handbook2006.pdf>>. Although Audit can play an important role in demonstrating accountability to external stakeholders, the data from this research suggests that there are nevertheless real problems in the learning experiences of part-time law students.

³⁸ The SRA, for example, hopes that ‘all institutions will set their standards above the Benchmark’ <<http://www.sra.org.uk/documents/students/academic-stage/academicjointstate.pdf>>

³⁹ J. Webb, ‘Post-Fordism and the Reformation of Liberal Legal Education’ in F. Cownie (ed.) *The Law School – Global Issues, Local Questions* (1999) 228, 237.

graduate differential levels of cultural capital,⁴⁰ but their time in higher education may also enable the student to engage in a range of other activities which can generate further social and cultural capital and contribute to their employability.⁴¹ Particularly in the legal context, recruiters emphasise the high status of credentials, alongside more ‘charismatic’ (personality-based) criteria.⁴² Such additional (and more nebulous) benefits would be nigh on impossible to quality assure to an equivalent benchmark.

Notwithstanding the diverse ways in which students experience higher education and its ‘outcomes’, what is striking in respect of part-time legal education is the emphasis in promotional material that both routes lead to a qualifying law degree,⁴³ assured as equivalent by the QAA and SRA/BSB. There is little engagement with the *different* challenges that part-time law students face.

The underlying explanation for this emphasis is perhaps linked to the external perceptions of institutions providing part-time law degrees.⁴⁴ It was the providers of CNAA degrees who, in

⁴⁰ Id., p.232.

⁴¹ L. Morley, ‘The X factor: employability, elitism and equity in graduate recruitment’ (2007) 2(2) *21st Century Society*, 191.

⁴² Webb, op. cit., n.39, pp.250-1. Some ‘social gifts’ contributing to the ‘package’ may, of course, predate attendance at university and may be classed, raced or gendered.

⁴³ The assumed equivalency between part-time and full-time degrees is seen in Law School prospectuses that either neglect to mention the part-time programme beyond ‘other routes available,’ or those that stress that the ‘part-time structure is *similar to* that of the full-time’ or ‘patterns of modules studied and the methods of assessment are *the same as* for the full-time degree’. Emphasis added; websites on file.

⁴⁴ Marsh, op. cit., n.30, pp.89 and 109.

keeping with that sector's commitment to broader community engagement,⁴⁵ first reached out to those wishing to study law part-time. However, the suspicion with which these new providers were viewed by the legal establishment saw part-time legal education denoted as a second-class option from the outset.⁴⁶ Equally, the significance of the current distribution of part-time routes should not be under-estimated. Part-time legal education remains rooted in the post-1992 university sector. Of the forty-five universities offering part-time LLB programmes in England and Wales, thirty-eight of these are post- 92 institutions.⁴⁷ Only two Russell Group law schools offer a part-time law degree programme.

Although the new university sector continues to play a vital role in enabling students to study part-time for a qualifying law degree, this equality of opportunity must be understood in light of the stratification of higher education, by which new universities are rendered 'inauthentic spaces'⁴⁸ at the bottom of the 'largely unspoken prestige structure' which continues to permeate higher legal education.⁴⁹ In this context, the focus on the formal measurable outcomes of a *qualifying law degree* may be explained by a need for such 'bronze' institutions to resist the ascription of negative capital by stressing the few measurable outcomes which *are* equivalent.

⁴⁵ P. Leighton, 'New Wine in Old Bottles or New Wine in New Bottles?' (1998) 25 *J. of Law and Soc.* 85.

⁴⁶ Marsh, *op. cit.*, n.30, p.89.

⁴⁷ <<http://www.sra.org.uk/students/academic-stage.page#sections-nav>>.

⁴⁸ Archer, *op.cit.*, n. 27, p. 641. See also Law Society and the Bar Council, *The Academic Stage of Training for Entry to the Legal Profession: Standards, Content and related issues* (2002), 10.

⁴⁹ Webb, *op. cit.*, n.39, p.232.

For the students too, perhaps already battling against cultural conceptions of ‘part-time’ as ‘less than’,⁵⁰ equivalence is an important statement of the value of their qualification.

Notwithstanding the reasons why it may have been necessary for institutions to highlight the ways in which their degree programmes are *formally* equivalent, this creates real difficulties in fully recognising the differences of part-time law students. Crucially, any illusion of choice between providers of law degree is shattered for part-time law students, whose family and work commitments restrict their choices to one locality. Outside London, this in effect, deprives students of any choice at all (if their preference is for traditional face-to-face teaching delivery). Moreover, despite the new university sector’s history of innovation in teaching and learning,⁵¹ drawing on the experiences of those part-time law students in this study, we argue that the narrow focus on formally equivalent outcomes (in the student facing recruitment literature, Programme Handbooks etc) appears to have resulted in an environment whereby the potential differences between the learning needs of part-time law students are not satisfactorily appreciated or seen as central to the delivery of their education.⁵² Moreover, it appears that the other benefits of a degree; reputational capital and the opportunities to develop crucial social and cultural capital to access future employment, may be differentially available to part-time law students, many of whom may not even be aware of the significance of such resources. The focus

⁵⁰ C. Fuchs-Epstein et al., *The Part-time Paradox: Time Norms, Professional Life, Family and Gender* (1999).

⁵¹ Leighton, *op. cit.*, n.45.

⁵² There are some notable exceptions to this. See, for example, K. Cook and E. Higgins, ‘Supporting part-time law students’ *Conference Proceedings of ‘Supporting Student Success at MMU: the Challenge’* (2007) who identify that a key part of their strategy would be to build a ‘distinction between full and part-time provision’

<<http://www.celt.mmu.ac.uk/retention/conf/posters/images/higgins.pdf>>.

on an endpoint, validated as equivalent without distinction between pathways, silences the real differences that these students may face in achieving these formal outcomes, let alone any consideration as to whether their formal qualification carries social and cultural capital 'equivalent' to that generally held by full-time law students.

We do not argue that there has been an explicit policy stressing such equivalence – rather in the absence of policies responding to the *differences* of part-time law, the message of *equivalence* becomes the only one to be heard. In particular, the part-time law students' accounts (or non-accounts) of their legal education and the broader cultural opportunities it potentially offered,⁵³ indicate that these processes assume they are addressing (like the QAA benchmarks) a 'normalized notion of the student'⁵⁴ which makes 'no distinction' for the contextual specificity of the pathway chosen.⁵⁵ We argue that those students with the appropriate habitus, those pre-adapted to the normalised demands of the field,⁵⁶ will be much more comfortable in negotiating Law School. In contrast, part-time law students appear ill-equipped and unsure how to respond to the demands of legal education, and, without appropriate institutional support, may struggle to manage the different aspects of their life and potentially withdraw.

Despite the work of new universities in providing access for part-time study, the equivalency of these programmes remains essentially 'less of the same' because of an *institutional failure* to appreciate the profoundly different ways in which part-time law students experience legal

⁵³ D. Schleef, *Managing Elites: Professional Socialization in Law and Business Schools* (2006) 112.

⁵⁴ R. Maynard 'Are Mature Students a Problem?' (1992) 17(2) *J. of Access Studies* 106.

⁵⁵ <<http://www.qaa.ac.uk/academicInfrastructure/benchmark/honours/law.asp>>

⁵⁶ Bourdieu, op. cit., n.11.

education – in terms of dramatically different withdrawal rates; their legal education being one of management of competing emotional demands and commitments, and; more uncomfortable issues around professional and personal identity than many full-time undergraduates are typically likely to face.

Retention within part-time legal education

Tight suggests that withdrawal from part-time study is ‘commonplace’,⁵⁷ and Smith and Saunders found that the mean rate of non-completion for part-time *law* students was 57% - more than double the average for the other twelve subject areas examined.⁵⁸ Our research found that 32% of respondents had considered leaving their course. The significance of this figure is increased by the results of our institutional survey, which confirmed a substantial drop in numbers occurring after the first year. This level of attrition was strikingly apparent to the students themselves:

We were about 100 when we started this course two or three years [ago], and now look at us: there are only about fifteen. (1A)

There used to be lots of us in the 1st year [everyone agrees]. We’ve had a huge drop out.

(9B)

Yorke found that poor quality student experience was the strongest reason given for withdrawing from study by part-time students.⁵⁹ While part-time students often cite personal or external

⁵⁷ Tight, *op. cit.*, n. 2, pp. 105-6; Bourner et al., *op. cit.*, n. 2, pp. 105-9.

⁵⁸ Smith and Saunders, *op. cit.*, n. 2, pp. 33-34.

⁵⁹ M. Yorke, *Leaving Early: Undergraduate non-completion in higher education* (1999).

reasons for withdrawal, such as family, financial or employment pressures,⁶⁰ it is important to recognise that a lack of institutional responsiveness or flexibility may compound the impact of these difficulties on their ability to continue studying.⁶¹ Throughout our contact with part-time law students, there has been a recurring self-perception that they are second class citizens. Access to information, staff and facilities is frequently difficult⁶² and, critically, students do not feel there is sufficient institutional recognition of the conflicting demands that they struggle to manage. As such, the higher attrition rate amongst part-time law students is not simply a marker of their difference from their full-time counterparts - it is also the *result* of their distinctive experiences of part-time legal education. In contrast to Tinto's focus on relatively straightforward issues of integration to improve student retention,⁶³ we argue, in the next two sections that the institutional failures are indicative of a more complex process of marginalisation.⁶⁴

Managing Lives; Managing Education

⁶⁰ 'Never enough time to study' was by far the most important reason given for considering withdrawal (34.5%).

⁶¹ V. McGivney, 'Understanding Persistence in Adult Learning' (2004) 19(1) *Open Learning* 33, 37-42.

⁶² 'Evening only' students were much more likely to record that access to the departmental office was less than good – 51.8% against 0% of those studying during the day-time.

⁶³ V. Tinto, *Leaving College: Rethinking the Causes and Cures of Student Attrition* (1990, 2nd ed.)

⁶⁴ B. Longden, 'Interpreting student early departure from Higher Education through the lens of cultural capital' (2004) 10 *Tertiary Education and Management* 121.

The key reason for part-time law students' choice of pathway and the problems that they experience is work.⁶⁵ Over 70% of respondents were in full-time employment and another 14.3% in part-time employment. Crucially therefore, the major advantages to studying part-time were the ability to accommodate their work (43.8%), and in generally being flexible (27.5%). The route's part-time nature is one of the primary reasons why these students are able to even contemplate achieving a law degree:

I don't see that many people could afford to give up work [general agreement]. When you've been working for so many years ..., you can't go without that money. We all have other commitments, whether it be family or children, mortgages and the rest. (5B)

Yet, it is precisely this opportunity to study part-time that also creates a degree of complexity in their lives which may threaten their aspirations:

Costs: The punishing schedule of working full-time and studying part-time, whilst still commuting to work and juggling family/home commitments.

Benefits: The wonderful opportunity of studying law at a good university while working full-time. [001]

It is this *juggling* of different pressures that is the main cost of studying for a part-time law student.⁶⁶ The punishing extent of these demands is also demonstrated by the following comments:

⁶⁵ Callender, drawing on the UUK data, found that 82% chose a part-time route because they could not afford to give up work, and 64% because they wanted to work full-time (C. Callendar, *Part-Time Students: The Forgotten Hundreds And Thousands* (2007) <<http://www.bbk.ac.uk/benefits/news/callender>>).

⁶⁶ See also, UUK, op. cit., n.1., p.9 confirming that a lack of time and competing demands both at work (83%) and at home (77%) are the principal barriers to full participation.

Too much pressure and work load left me being sick and taking time off work. (176)

I finish at 9, catch the bus, with assignments hanging over you, all the stress, it's sometimes too much to bear. (9A)

Not only may the emotional costs⁶⁷ of part-time study threaten the ultimate completion of the degree, more broadly they point to the discomfort and marginalisation these students experience within legal education.

The financial costs of higher education are well-known.⁶⁸ What has received less attention is that part-time law students do not receive the same support in terms of deferred fees etc. under the Higher Education Act 2004.⁶⁹ Universities UK have argued that the distinction between full-time and part-time higher education should be removed when the implications of variable fees are reviewed,⁷⁰ and it is a plea we support. 'Financial pressures' were the second largest factor identified as having a significant impact on studying part-time (20.3%). Interestingly, 66% of respondents were wholly self-financing, compared with 42% of all part-timers⁷¹ underlining that, for most, the burden of part-time study lies squarely on the students' (and their families')

⁶⁷ E. Gerrard and R. Roberts, 'Student parents, hardship and debt: qualitative study' (2006) 30 *J. of Further and Higher Education* 393, highlight the distress experienced by student parents spending time on studying, rather than with their children.

⁶⁸ C. Callender and D. Wilkinson, *Student's income, expenditure and debt in 2002/03 and changes since 1998/99: Student income and expenditure survey* (2003).

⁶⁹ Education and Skills Select Committee, *The future sustainability of the higher education sector: International aspects (Eighth Report of Session 2006-2007)*, HC (2006-7) 285-1 (5th August 2007), pp. 14-15.

⁷⁰ UUK, *op. cit.*, n. 1, p.10.

⁷¹ A. Woodley, *Earning, Learning and Paying: the Results from a National Survey of the Costs and Financing of Part-Time Students in Higher Education* (RR600) (2004) 3.

shoulders. However, alongside the problem of upfront fees, the following responses highlight the significant impact of the *everyday* costs of buying books (because of poor library access⁷²), travel and additional childcare required by many part-time law students:

My entire monthly wage is 6 months fees so always struggling. (156)

I'm a lone parent with a school age child. As I am on benefits, the amount of books that I'm expected to buy is unrealistic and often the books are not as useful as we are led to believe by tutors. (85)

I am fortunate my wife has a well paid job. If this was not the case I would not be able to work part-time [as an HGV driver]... and consequently be unable to study on the course. (141)

The problems of managing both work and higher education are intensified for many part-time students by their embeddedness in family and social relationships which would typically have been sustained in the private time now dedicated to their legal studies.⁷³ 21.1% of the sample identified family/caring pressures as the most important external factor impacting upon their studies and a further 14.3% saw family/friend encouragement as the most important external factor. Family pressures were the most frequently identified cost in the free-text section of the questionnaire and comprised approximately half of all focus group contributions. The rawness of their experiences is clear:

⁷² 40.2% of 'evening only' students recorded that access to library facilities was 'less than good' in contrast to 0% of 'day-time only' students – 63.6% of whom felt access was 'excellent'.

⁷³ See D. Reay, 'A Risky Business? Mature Working Class Women Students and Access to Higher Education' (2003) 15 *Gender and Education* 301, 308-9.

A combination of work and part-time evening study leads to virtually non-existent social life (I know that's my problem and not yours). (16)

Wife divorced me. She did not like [me] to continue the course. No cooperation from friends to help with the course. (127)

Partner is worried about time spent away from herself and our son. (147)

Not enough recreational time, not enough time for young son when he finishes school. (152)

On one level, these problems in managing lives are simply practical ones – the product of the complicated circumstances of part-time law students, which may contribute to poorer assessments, contemplation of withdrawal etc.⁷⁴ However the following section argues that these demands on their private time are matched by institutional indifference to the problems they face. The discomfort that students described experiencing when confronted with these demands raises the question as to whether they, in Bourdieu's terms, lack the habitus to negotiate legal education comfortably. Do they simply run out of hours in the day, or do their backgrounds and histories mean that they fail to instinctively grasp what is required? Can they play the game?⁷⁵ The general discomfort described by these students, the nagging feeling that Law School is 'not for the likes of us',⁷⁶ indicate some value in this approach, at least in trying to understand the way in which inequalities are maintained within particular social fields.

⁷⁴ D. Kember, 'Integrating Part-Time Study with Family, Work and Social Obligations' (1999) 24 *Studies In Higher Education* 109, 117.

⁷⁵ B. Fowler, *Pierre Bourdieu and Cultural Theory: Critical Investigations* (1997) 18.

⁷⁶ Bourdieu, op. cit., n.11, p.56.

Part-time law students' perceptions of their place in the law school: second class citizens

The complex problems faced by this cohort are compounded, in the eyes of many of these students, by institutional neglect. 55% of part-timers studying the 'evening only' route stated that the provision within their institution was better for full-time students, with 29.3%, for example, stating that they did not have a personal tutor, and nearly 40% of 'evening only' students reporting having to rely on 'other students' as their most significant source of pastoral care. Students believe that they were denied the 'opportunities that full-timers receive' (9) or more explicitly, full-timers were seen as having 'longer hours and more revision' (151) or 'more handouts and support' (153), leading many to feel 'like a second class citizen' (135) or a 'forgotten population within the university' (253). In the words of one focus group participant:

There just seems to be a bit of an attitude or a mind-set that we're secondary, that we come after the full-time students. (7A)

While the vast majority of students surveyed were receiving their tuition in the evenings, a small number of respondents studied alongside full-time undergraduates, and all but one of these was at a pre-1992 institution. Unsurprisingly, nearly all of these students thought there was no difference between the quality of provision for part-time and full-time students. This division supports our basic hypothesis that the law school at night is a very different educational setting from the one experienced by most full-time law students.

Structural constraints will always prevent part-time and full-time law programmes from being identical. However, it appears that in terms of how legal knowledge is imparted to these students, their failure to fit law student norms remains unaddressed. Similarly, 'working class,

female, mature and/or minority ethnic students, in particular, feel alienated and othered within the dominant academic culture – even when located within institutions with “diverse” student populations’.⁷⁷ The type and timing of assessments were a recurrent concern for respondents. Formal equivalency requires that part-time law students must be assessed on identical terms to their full-time counterparts to ensure fairness to all students. However, in reality, such an approach is most likely to disadvantage part-time law students. What is striking from the students’ responses is just how little ‘accommodation’ was involved in their ‘equivalent experience’:

Late notification of timetable etc. makes life very difficult to arrange around work ...

Lecturers failing to show up for lectures have greater impact on part-time students who can ill afford to waste time. (044)

Admin staff unavailable to part-timers unless part-timers take time off work to get things done. (134)

Lecturers rarely take into account P/T’s work in the day and expect too much. (141)

While these problems reflect an institutional failure to appreciate the competing commitments in these students’ lives, the subsumption of part-time students’ backgrounds within the paradigmatic full-time student model may compound the difficulties they face.

The convenience of evening study and the flexible entry requirements of many part-time law degrees attract many adult learners who have not undertaken prolonged study for many years or who possess non-traditional educational backgrounds – indeed this is a key feature of part-time law programmes’ recruitment material. Whereas the majority of full-time undergraduates

⁷⁷ Archer, *op. cit.*, n. 27, p. 646.

conform to the characteristics of the paradigmatic law undergraduate and possess A-levels of approximately similar grades, part-time law undergraduates will possess a greater range of educational experience and needs.⁷⁸ While not all part-time students will fit into the ‘difficult student’ categories, many institutions and, it would seem, staff, appear to deliver their teaching in an essentially identical, if compacted, form which elides the complexities of teaching such a diverse body of students.⁷⁹ The failure to integrate students with the institutional aims of the university may significantly impact upon the confidence, motivation and, ultimately, the retention of already vulnerable students.⁸⁰

Although part-time law students believe that they are accorded second class status within their law schools, it is interesting to note that many resisted this marginalisation through exercising their own agency. For example, of the 32% who considered withdrawing but ultimately continued, 75% attributed this decision to personal characteristics such as their own motivation/determination, rather than support from family, friends, work colleagues or the institution.

... this is the 3rd year, there is one more year to go. I’ll have a higher salary and the prospect of LLB behind your title when I give them my card. We’ve started. It’s not easy, but we motivate ourselves and it’s just a matter of time. (9A)

⁷⁸ M. Prosser and K. Trigwell, *Understanding Learning and Teaching: The Experience of Higher Education* (1999) 116-118.

⁷⁹ H. Sommerlad, “‘What are you doing here? You should be working in a hair salon or something’: outsider status and professional socialization in the solicitors’ profession’ [2008] 2 *Web J. of Current Legal Issues* <<http://webjcli.ncl.ac.uk/2008/issue2/sommerlad2.html>>.

⁸⁰ Tight, *op. cit.*, n. 2, p. 51.

I think you've got to be really self-motivated in order to get anywhere. To be honest, I think you've got to push yourself and say 'I want this'. Sometimes when lecturers don't turn up, you've got to say 'this isn't acceptable'... (6B)

Gratifyingly, some students saw their personal motivation and confidence enhanced by their study and by the reaction from others, reporting a real 'confidence boost' (017), 'increasing esteem' (080), or of the 'personal satisfaction of achieving a long-term goal' (083).

We argue that the problems faced by part-time law students are not simply a failure to integrate effectively,⁸¹ but are, more fundamentally, concerned with their inability to demonstrate the appropriate habitus for the field of law.⁸² The properties of legal education (and, ultimately, the legal profession) are more readily intelligible to those who are instinctively more comfortable in this environment⁸³ (younger, capable of 'commitment' to study and the law and benefitting from the assumed inevitability of participation in higher education and the legal profession); and in this sense, the demands of the field of legal education can be said to share something of the time-greedy nature of legal professionalism.⁸⁴ While many from 'outsider' groups struggle to

⁸¹ V. Tinto, 'Classrooms as Communities: Exploring the Educational Character of Student Persistence' (1997) 68 *Journal of Higher Education* 559.

⁸² Bourdieu, *op. cit.*, n. 34, p. 811.

⁸³ See, for example, D. Kennedy, 'Legal Education as Training for Hierarchy' in D. Kairys (ed.), *The Politics of Law: A Progressive Critique* (1990) 38 on 'political' students' horror when first exposed to the training for the hierarchy and generally Sommerlad, *op. cit.*, n.79 on the uncomfortable experiences of 'outsiders'.

⁸⁴ C. Seron and K. Ferris, 'Negotiating Professionalism: The Gendered Social Capital of Flexible Time' (1995) 22 *Work and Occupations* 22.

negotiate the field of legal education,⁸⁵ those within the part-time cohort are arguably least able to demonstrate the appropriate habitus, given their educational histories and multiple role responsibilities. As part-time law students may possess a more limited range of practices, behaviours and expectations,⁸⁶ their habitus can limit their possibility to develop a recognisable professional identity acceptable to the legal profession.⁸⁷

Development of (Legal) Professional Identity and Access to the profession

I feel very proud for being able to study successfully. However, my biggest fear is that the ‘real world’ won’t recognise those achievements or will see them as inferior to those in full-time education. (231)

In response to the question, ‘What was the main vocational reason for doing a law degree?’ only 11.3% of the sample said that they were studying to get on in their present job,⁸⁸ whilst 54.4% were studying with the specific aim of entering the legal professions. 60% of respondents indicated that they intended to progress to the LPC or BVC upon graduation. Moreover, 68.5% of the entire sample intended to seek entry to one or other of the branches of the legal profession.

⁸⁵ H. Sommerlad, ‘Researching and Theorizing the Processes of Identity Formation’ (2007) 34 *J. of Law and Society* 190; Manderson and Turner, *op. cit.*, n. 5, p. 665.

⁸⁶ D. Reay, ‘“It’s all becoming habitus”: beyond the habitual use of habitus in educational research’ (2004) 25 *British J. of Sociology of Education* 431, 433; Archer, *op. cit.*, n. 27, p. 647.

⁸⁷ However, as we see below, such restrictions appear less likely to apply to the 12% of our sample who are already ‘known’ to the profession through ‘legal’ employment. This adds an important nuance to our analysis.

⁸⁸ When asked ‘what will you do next after graduating?’ only 1.6% said they would continue in their present job and 4.7% indicated that they would seek promotion within their current field of employment.

Admittedly, their instrumentalism does not distinguish part-time law students from the full-time cohort,⁸⁹ but it is a major shift from Marsh's findings.⁹⁰

Social Mobility and Identity

Entry into the legal profession is for many part-time law students a project of social mobility, anticipating, 'the chance of second career' (001) and more generally, 'wider job potential, greater earning power' (80). In contrast to Woodley,⁹¹ we found 66% of part-time law students were paying for their tuition alone. They were paying for their studies, not 'out of interest', but for a career change and one which was for most, without the support of their employer, something of a subversive enterprise:

... you ring to say 'you're off sick', when you're in the library. You've got to be careful when you go to library not to catch the same train as your manager. (2A)

Responses such as these illustrate how such social mobility projects can generate tensions and dissonance with pre-existing family and workplace identities.⁹² The qualitative comments provide stark evidence of the lack of support provided by those who perceive themselves as being left behind, whether they are employers, co-workers, or even family and friends:

⁸⁹ J. Pitcher and K. Purcell, 'Diverse expectations and access opportunities: is there a graduate labour market?' (1996) 52 *Higher Educational Q.* 179.

⁹⁰ Marsh, *op. cit.*, n.30, p.104.

⁹¹ Woodley, *op. cit.*, n. 71.

⁹² Sommerlad, *op. cit.*, n. 85.

Manager thinks I'm not dedicated to my present job and has got the hump – making me work Christmas Day this year. (162)

[S]ome think it's pointless, beyond me. (129)

[They] couldn't imagine a character such as myself practising law. (070)⁹³

Such tensions operate not only as another barrier to be overcome, but as further confirmation of their 'outsider' status in legal education.⁹⁴ The 'full-time law student' typically belongs to a broad tribe of students who have moved, relatively unproblematically, from A-levels through to degree-level study – they share 'a feeling of inevitability'.⁹⁵ Legal education and the profession recognise these students. Part-time law students embark on legal education with a greater complexity of past experiences and histories already shaping their identities, which neither appear to lead 'inevitably' to participating within higher education nor assume entry to the legal profession. What is *expected* in the field of legal education and how that may structure the choices of those actors within the field is neatly summarised by the following respondent:

⁹³ Read et al., *op. cit.*, n. 12, p. 265, notes similar concerns from older entrants to HE.

⁹⁴ C. Costello, *Professional Identity Crisis: Race, Class, Gender and Success at Professional Schools* (2005).

⁹⁵ D. Schleef, "That's a Good Question!" Exploring Motivations for Law and Business School Choice' (2000) 73 *Sociology of Education* 155, 171. Of course, such an ideal type fails to recognise the complex hierarchies within HE, of which the part-time/full-time divide is but one (Archer, *op. cit.*, n. 27). As Sommerlad highlights, many 'outsider' groups will also experience identity dissonance in this social mobility project (*op. cit.*, n. 85, p. 199). However their trajectory still fits more comfortably within the paradigm model than it would for most part-time law students.

[Provision is better for Full-timers because] assumption of going further in the legal profession.

[Part-timers treated differently because] assumption that unable to progress to legal profession. (190)

While it is by no means certain that all full-time law students *will* enter the legal profession, the wider range of permissible choices⁹⁶ and the shared sense of natural progression engenders a much more comfortable learning experience enhancing such students' chances of success.⁹⁷

Acquiring Habitus/Developing Cultural Capital

Legal education is a key arena within which students can begin to acquire those habitual, pre-reflexive ways of understanding and enacting the legal field, which constitute the necessary habitus for legal practice.⁹⁸ Thus, while the past histories of the part-time law students shape the ease with which they negotiate their legal education, their collective experience of part-time legal education becomes another way in which their improbability as lawyers is reinforced.⁹⁹

⁹⁶ Reay, op. cit., n. 73, p. 433.

⁹⁷ See Bourdieu, op. cit., n.10, pp.255-6 on the 'easy life' for those with appropriate habitus for a field.

⁹⁸ Sommerlad, op. cit., n. 85, p. 194.

⁹⁹ Manderson and Turner, op. cit., n. 5, p. 653.

Law school provides not just legal knowledge, but an opportunity to develop valued social and cultural capital.¹⁰⁰ Whether through Law Societies, mootings, Inns of Court dining, careers advice or contact with the legal profession, such engagements ‘provide an opportunity for students to practice, develop and get used to exercising all those skills of social capital that Bourdieu tells us will be essential components in their future career.’¹⁰¹ However, whereas the full-time law degree provides a wide variety of ways in which to learn how to *behave* like a lawyer, part-time law students are much less likely to be afforded such opportunities. Nearly 66% had not participated in any extra-curricular activities, with women less likely than men to have taken part - 70% of women rather than 58 % of men not participating. The fact that respondents also appeared to have had relatively little exposure to careers advice in general compounds the problems, particularly for those without the instinctive understanding of what is required.¹⁰²

¹⁰⁰ H. Sommerlad, ‘The Gendering of the Professional Subject: Commitment, Choice and Social Closure in the Legal Profession’ in C. McGlynn (ed.), *Legal Feminisms: Theory and Practice* (1998) 11.

¹⁰¹ Manderson and Turner, *op. cit.*, n. 5, p. 653.

¹⁰² 42.5% thought access to Careers Services was ‘OK’, with 30% thinking less than OK. One student was angry about the absence of such support: ‘This careers information should be available to us from the very start. Why aren’t we being told? ... The University could do a heck of a lot more to say “look there are these huge walls and barriers, but we’re going to give you a stepladder”’. (9B)

Despite the fact that it has become increasingly common for training contracts to be obtained as a result of work experience placements,¹⁰³ over half the respondents had never undertaken such activities.¹⁰⁴

The main reasons why most part-time law students had not arranged legal work experience were ‘Couldn’t afford to volunteer’ (30.6%) and ‘Didn’t have time’ (27.8%). The possibility of access to the legal profession offered by flexible part-time programmes is of reduced value to students whose existing responsibilities mean that they are unable to demonstrate their ‘commitment’ to the profession by volunteering their time to work on a placement.

They have got all these books on mini-pupillages but if you have got a full-time job, how the hell are you going to be able to get that experience, to be able to put it on your CV? ... they are going to look at your CV and say ‘they haven’t done this, they haven’t done that, they haven’t done the other’. (5B)

One of barriers is when you are working full-time. You are encouraged as a law student to do summer placements at the end of your 2nd year and all that kind of thing. I can’t do that. I don’t have that opportunity. (4A)

The opportunity to spend time in a firm affords these ‘outsiders’ the chance to begin to develop the durable ways of ‘speaking, walking and thereby of feeling and thinking’ required to enact the

¹⁰³ Duff et al., *op. cit.*, n. 24 and H. Rolfe and T. Anderson, ‘A Firm Choice: Law Firms’ Preferences in the Recruitment of Trainee Solicitors’ (2003) 10 *International J. of the Legal Profession* 315.

¹⁰⁴ This number is likely to be even higher, given that 52.6% of those who felt that they *had* legal work experience gained it in typically more tangential ways, for example through work as a security guard in Court or appearing as a witness as a social worker.

field.¹⁰⁵ However, structural factors preclude part-time law students from gaining access to these, and other, arenas, whether they be evening drinks receptions, mooted competitions judged by firms or legal work experience. Such opportunities are now as central to the success of a law graduate in the marketplace as the achievement of 2(i). Emphasising the formal equivalence of the qualification over charismatic and experience-related aspects of recruitment arguably masks their importance, particularly for a non-traditional cohort with little experience of the legal profession.

Entry to the Profession

The biographical characteristics of the part-time law students, while varied, point towards the problems they are likely to experience in the legal marketplace. For large law firms, the ideal recruit is frequently represented as part of a group of smiling, attractive twenty-somethings, bent intently over a computer.¹⁰⁶ Successive research studies suggest that a graduate's chances of becoming a solicitor (and it seems fair to assume that the Bar is similar) are significantly related to their A-level score, the institution they attended, their degree class mark, the school they attended at fourteen, their ethnicity, their work experience and whether they had relatives in the profession.¹⁰⁷

¹⁰⁵ Bourdieu, op. cit., n.11, p.70.

¹⁰⁶ R. Collier, "'Be Smart, Be Successful, Be Yourself'?: Representations of the Training Contract and the Trainee Solicitor in Advertising by Large Law Firms' (2005) 12 *International J. of the Legal Profession* 51.

¹⁰⁷ See Duff et al., op. cit., n. 24; Rolfe and Anderson, op. cit., n. 103; Lee, *Firm Views: Work in and Work of the Largest Law Firms – Research Study No. 35* (1999), p. 35; T. Goriely and T. Williams, *The Impact of the New Training Scheme – Report on a Qualitative Study* (1996).

In contrast, part-time law students are likely to find themselves at the intersection of *multiple disadvantages*. To recap; while the average age at entry to the solicitors' roll by direct entry is just twenty-eight,¹⁰⁸ the majority of our sample was over thirty, with 38% of our respondents aged between 31-40, and a further 18% over 41. Part-time students are more likely to be from an ethnic minority background; a third in our sample compared with a quarter of all law graduates in 2003.¹⁰⁹ They are also much more likely to have attended a new university and to have had a broken educational background, and over 80% of our sample did not have relatives in the profession. However, it is important to note that not all part-time law students will fall into one of these disadvantaging categories and, as discussed below, those working in the legal sphere¹¹⁰ related far more positive experiences than those working elsewhere. We have also set out the huge difficulties that all part-time law students experience during their legal education. While this can lead to retention problems it is also likely to have an impact on the ultimate degree. Harris and Beinart report that 54% of full-time law students achieved 2(i) degrees compared to just 37% of part-timers. Perhaps unsurprisingly the biggest differences were in the post-92 part-time sector – 'after dark and out in the cold'.¹¹¹

¹⁰⁸ B. Cole, *Trends in the Solicitors' Profession: Annual Statistical Report 2007* (2008) 48.

¹⁰⁹ B. Cole, *Trends in the Solicitors' Profession: Annual Statistical Report 2003* (2004) 34. Cole, id., p. 30, suggests that ethnic minority participation in FT legal higher education has risen to 34%. At this stage, it is not possible to assess the impact on part-time law degrees.

¹¹⁰ Here we refer to a broad range of roles, legal secretary, administrative assistant, paralegal, etc.

¹¹¹ Harris and Beinart, op. cit., n. 16, p. 333. 9% of part-time law students at new universities failed to secure a third class degree, compared with just over 1% full-time students at old universities.

Many of the anxieties highlighted in the quantitative data came through much more clearly in the qualitative aspects of this study. Students were particularly concerned about age, gender, family and the intersection of these various issues.

... a *hope* rather than an *anticipation* is paid employment at the age of 50 in an area of Law. (083)

I would be very worried. If I'm going up for a job interview with a 21 or 22 year old, that 22 year old is probably single, hasn't got children or isn't even thinking about children for a long time. So they might potentially see me as someone who's about to have children or run off if my children are sick. (5B)

You hear that when you get a job at a law firm, you'd be expected to do 70 hours a week ...I've been there and I've done that and I'm not interested in doing it anymore. You know, is there a job out there for me do a normal [week's work]? You know because I have a life outside the job now. [All: murmurs of agreement]... (4A)

As previously mentioned, part-timers have a limited choice from which to select the institution at which they will study because of pre-existing work and family commitments. This is likely to have significant consequences when they apply for training contracts/pupillage. For example, traineeships are overwhelmingly registered in London and the South-East, with 26.2% in one square mile of the City.¹¹² Unless part-time law students make further sacrifices in their family life and relocate to wherever jobs are available their choices will be inevitably curtailed.¹¹³

¹¹² Cole, op. cit., n. 108, p. 39.

¹¹³ Archer, op. cit., n. 27, p. 638.

Nevertheless, nineteen of the respondents had secured training contracts. However, all of them, with one exception, were already working within a law firm in an administrative/fee-earning capacity, but typically as legal secretaries. Thus, 30% of those working in a legal sphere had offers of training contracts, in contrast to just 5.2% of those in non-legal spheres. Given the academic and policy criticism of the gendered hierarchies within the legal profession it is interesting to note that 72.2% of those with training contracts were women. However, it appears that it is their existing legal employment that is significant here rather than their gender; there are generally more women working within these subordinate positions within legal practice than men (in this study 83.3% of those in legal employment were women). These individuals (mainly younger¹¹⁴ women) appear to have received support and encouragement to progress – and then have been offered training contracts within the firm. Their employer is not going to lose them, as would be the case in another profession. Thus, it was also far more likely that their employer would pay their fees if in a legal rather than a non-legal sphere (23.8% v. 7.2%). Those working in the legal sector found their employer to be very supportive of their part-time legal education:

[My law firm are] brilliant. They pay my fees and give me time off. I am just about able to take it on, manage everything, my work and have a social life. (6B Female)

I work, at the moment, one day a week and they're going to offer me a training contract when I finish... they're treating me really well. (3A Female)

¹¹⁴ 56.7% of those in legal employment were aged between 22-30.

35.7% of those working in the legal sector, compared to 16.7% of the others, said their employer was 'very supportive'. By way of contrast, those who worked in the non-legal sector had far less support from their employers.

Employers expect me to focus more on the job, don't make any time available and even try to put more work on in the evening. (242, Male)

I think it's difficult. Your employer becomes very suspicious of everything that you do and your motivations behind everything. (4A, Female)

The dramatic differences in support offered by those known to the profession and those who are engaged in a career change demonstrate just how difficult it can be for these students to acquire the habitus and cultural capital valued by legal employers. Part-time law students with personal experience of the legal profession have a much greater likelihood of achieving access to the profession. It appears to confirm that the profession remains more open to those who it actually knows or recognises as one of its own.¹¹⁵

Designing Equivalence: Next steps and lessons

We have argued throughout this paper that the habitus of part-time law students, in terms of their individual histories and collective experience of Law School shapes their capacity to respond

¹¹⁵ It would, however, be interesting to trace the career trajectories of those moving from a subordinate role in legal practice (A. Francis, "'I'm Not One Of Those Women's Libber Type People But ...': Gender, Class And Professional Power Within The Third Branch Of The English Legal Profession' (2006) 15 *Social and Legal Studies* 475, 488).

adequately to the demands of the fields of legal education and the legal profession. This is neither to pathologise nor argue that they are in any way lacking, but merely to illustrate the powerful ways in which social inequalities can be perpetuated in the educational and professional fields.

However, despite the structuring properties of the habitus, it is ‘durable, but not eternal’.¹¹⁶ For many of our respondents, both embarking on and persisting with a part-time law degree are themselves acts of individual agency which challenge the predispositions of their habitus – confronting the expectations of work colleagues, family and friends etc. (see above). Yet the experiences of part-time law students set out in this article also reveals the constraints within which such agency is ultimately exercised.¹¹⁷ Given this, we should retain some scepticism about the degree to which the conditions of the field or even the habitus of the students may be changed. Long-standing social structures are not necessarily easily amenable to reform.¹¹⁸ Perhaps most fundamentally, is it possible to ensure that part-time law students benefit from a genuinely equivalent experience of legal education?

Despite the fact that our data demonstrates that students did not believe that their institutions were doing enough to respond to their differences, when asked explicitly in the questionnaire, two-thirds of our respondents believed that they *should not* be treated differently from full-time students. This may not be surprising given the prevalent message of the equivalence of part-time

¹¹⁶ P. Bourdieu and L. Wacquant, *An Invitation to Reflexive Sociology* (Cambridge, Polity Press, 1992), 133.

¹¹⁷ Reay, *op. cit.*, n.86, p.433.

¹¹⁸ Sommerlad, *op. cit.*, n.85.

and full-time degrees, and an attendant reluctance to be identified or to self-identify as a group in need of ‘special treatment’.¹¹⁹ However, during the focus groups, in addition to pointing out how their differences were not being accommodated, there were some suggestions that they *should* be:

[We should not] necessarily be treated differently. I think they kind of just need to give us a little bit more leeway, in the sense that we do work full-time. You can’t always meet deadlines. (5A)

Imagine the effect that [working full-time] has on us, especially with children and everything that we’ve got in our lives. And there needs to be some recognition of that somewhere. And they need to be creative about how they recognise that. (7B)

But how can this be achieved? There are a number of simple actions which could address part-time law students’ marginality within law schools and assist them in reaching/exceeding the outcomes of the QAA and SRA/BSB. The complex and competing obligations of part-time students are most profoundly manifested in their lack of ‘free’ time and the failure of law schools to respond effectively to this problem lies at the heart of many students’ sense of exclusion. The timing of examinations and the arrangements for the submission and collection of assessments could be easily changed to respond more sensitively to part-timers’ availability. Furthermore, improved levels of access to administrative staff and study materials would also go far in

¹¹⁹ C. Bacchi, ‘Policy and Discourse: Challenging the Construction of Affirmative Action as Preferential Treatment’ (2004) 11 *J. of European Public Policy* 128, 129.

demonstrating to these students that they are more than a mere ‘afterthought’ in the life of the law school.

In terms of the broader educational and cultural activities to which full-time law students enjoy far greater access than part-time law students, it may be possible to embed these activities more fully within the curriculum for both pathways. This could have pedagogic merit and generate assessable learning outcomes which would be formally equivalent. However, we argue that, notwithstanding the skills that students may develop through activities such as mooting, running clinics, client interviewing and meeting law firms, a significant dimension of social and cultural capital acquired through such engagements, is derived from the very ‘additionality’ of these activities, by enabling participants to demonstrate the commitment demanded by the legal profession. Arguably therefore, a solution for Law Schools may be to create space (in an admittedly busy timetable) to enable students to participate in non-credit carrying activities, and crucially to stress to those students hopeful of entering the legal profession, the role and importance of such engagements.¹²⁰ This, *combined* with a more embedded skills approach for both pathways, may go some way towards improving the situation. Engagement with the profession through either means may also help the recruiters see that many part-time law students are, through their combination of multiple role and determination to succeed in law, already demonstrating precisely the sort of ‘additionality’ they claim to look for,

¹²⁰ Access to careers advice emerged as a particular problem for part-time law students in this research. Sommerlad, *op. cit.*, n.79 also stresses the importance of personal development planning in creating the conditions for success amongst non-traditional students.

Therefore, insofar as these proposals respond to the strong vocational ambitions of part-time law students identified in this research, the role that the profession has to play in increasing the diversity of its intake must not be forgotten. The reputational capital attached to particular law schools is supported, in part, by the continuing production of middle-class graduates who do little to disrupt existing socio-economic hierarchies within the profession.¹²¹ While the middle-classes have long proved adept at securing access for their children to such institutions, in contrast, most part-time law students have little choice in where to study. Although there have been frequent attempts to increase diversity within the profession, there remains disquiet about the extent to which such schemes broaden entrenched views of suitability for the profession. Unless the profession moves collectively to challenge such shorthand notions of ‘merit’ and engages more directly with a broader range of law schools, any efforts by providers of part-time legal education to improve the employability of their students may be simply overlooked.¹²²

How universities and the profession respond to the needs of part-time law students is an important marker of their commitment to widening participation, lifelong learning and a fairer distribution of opportunities within both higher education and the legal professions. The urgency of responding to the diversity of part-time law students’ backgrounds and the pressures they face in realising the vocational aspirations, into which they have invested so much, is only increased by the present economic conditions.¹²³ However, a thorough rethinking of how generalised

¹²¹ Webb, *op. cit.*, n.39.

¹²² A. Francis and I. McDonald ‘Preferential Treatment, Social Justice, and the Part-time Law Student – The Case for the Value-added Part-time Law Degree’ (2006) 33 *J. of Law and Society* 92.

¹²³ See, ‘Middle Class Grip on Professions Must End’ *The Observer*, 11th Jan. 2009,

<<http://www.guardian.co.uk/politics/2009/jan/11/labour-government-education-social-mobility>>.

notions of equivalence sustain the marginalisation of certain groups may provide broader lessons for legal education as a whole by underlining the importance of creative and flexible models of legal education which are fully responsive to all students' experiences.

Conclusion

What is striking from this research is that what, on the surface, might appear to be relatively minor concerns - release of results at the same time as full-time undergraduates, general communication issues during options selection etc - which could be resolved with relatively little disruption to the institution, take on a much greater significance in the eyes of the part-time law students. Students feel 'discriminated against', or 'second class'. An example can be seen from this focus group participant:

Our assignments had been marked and were ready to be handed back. Our lecturer said 'I can't give them back to you now. I can't even give you your marks because I haven't given them to the full-timers yet'. At that point, I just wondered 'Why? Why do the full-timers have to know first and us have to know second?' ... There just seems to be a bit of an attitude or a mindset that we're secondary; that we come after the full-time students.

(7A)

While, as academics familiar with the organisation of legal education, we can understand the lecturer's comments as referring to a policy whereby *all* students received marks at the *same* time, Read et al's observation that 'significant numbers of students expressed feelings of confusion and bewilderment at some "accepted" university practices', offers an outsider's

perspective on this student's reaction.¹²⁴ Such issues may seem trifling, compared to debt, marriage breakdown, limited opportunity to secure work placements and the other 'costs' of part-time law study. However, for part-time students, these problems are perhaps better seen as the 'last straw'. The habitus of part-time law students offers little to sustain them in an uncomfortable environment. Their experience of the law school is frequently as a marginalised outsider and the stakes in studying part-time are high. Their aspirations of social mobility through a career change are continually undermined by doubt, both within themselves and from the institutions through which they must move. In such a context, the smallest slight or unthinking policy designed around the needs of the paradigmatic full-time undergraduate student can take on a disproportionate significance.

We have argued throughout this paper that being a part-time law student is a deeply uncomfortable experience conducted at the margins of legal education – 'after dark and out in the cold'. The difficulties that these students experience highlight how both legal education and the profession struggle to accommodate those who depart from the paradigmatic conceptions of the law student/future lawyer. At the outset, we suggested that in looking more closely at the experiences of an 'outsider' group, like part-time law students, we might learn more about the core assumptions of the field from which they experience marginalisation. Thus, what is possible for part-time law students is not simply a product of their individual histories but, given that they are all 'products of the same conditioning'¹²⁵ within legal education, is also shaped by

¹²⁴ Read et al., *op. cit.*, n. 12, p.270. This also relates to the important methodological caveats discussed above in relation to the advantages/disadvantages of our focus on student perception.

¹²⁵ Bourdieu, *op. cit.*, n.11, p.59.

their experiences of marginalisation within Law School. Legal education appears to assume a time-rich full-time student enjoying seamless progression from A-levels to university with relatively unproblematic assumptions of entry to the profession. Those without such habitus appear to experience a far less comfortable and ultimately unsuccessful time. For example, just as Sommerlad highlights the marginalisation of other ‘outsiders’,¹²⁶ and women have been shown to have a differential experience of legal education,¹²⁷ female respondents in this study were more likely than men to believe that full-time provision was better. Perhaps, fundamentally, what these anxieties underline is the value of listening to *all* students when trying to articulate a role and purpose for legal education which is as inclusive and as responsive to the learning needs and career aspirations of as many students as possible.

The instinctive (and understandable) idea of the equivalence of part-time law students fails to capture the reality of these students’ struggle for their degree and hopes of access to the legal profession. As discussed above, the provision of part-time law degrees predates more recent drives towards widening participation and life-long learning. However it is now part of this agenda.¹²⁸ Despite this, the predominant focus on ‘equivalency’ of formal educational outcomes saps the potential of law schools to widen participation effectively by delivering a legal education capable of responding to the distinctive contextual requirements of part-time law students. As new and old university Law Schools have begun to explore innovative strategies for

¹²⁶ Sommerlad, *op. cit.*, n. 85.

¹²⁷ M. Thornton, *Dissonance and Distrust: Women in the Legal Profession* (1996).

¹²⁸ UUK, *op. cit.*, n.1.

widening participation amongst full-time non-traditional law students,¹²⁹ why has part-time legal education seemingly failed to keep pace? Is there a sense that the mere provision of part-time legal education is enough,¹³⁰ or is the traditional model of part-time legal education now structurally unfit for purpose? On a more optimistic note, it has never been our intention to lose sight of the important fact that without the existing programmes for part-time study, many of the students who participated in this research would not have had the opportunity to study at all. Moreover, in identifying institutional policies as a key concern, this research also found evidence of high levels of commitment amongst individual staff members to their students. If the characteristics of part-time law students that we have identified (supreme time management, an incredible commitment to law, skills and experience gained in other fields etc.) can be celebrated, rather than simply accommodated, then the legal profession may also be encouraged to take a closer look at what those graduating through a part-time route can bring to legal practice.

However, more pessimistically as Bourdieu notes, ‘only in imaginary experience (in the fairytale, for example) which neutralizes the sense of social realities does the social world take

¹²⁹ L. Bibbings, ‘Widening Participation and Higher Education’ (2006) 33 *J. of Law and Soc.* 74.; H. Carr and E. Tunnah (2004) ‘Preparing Black Caribbean students for the legal profession’ <<http://www.ukcle.ac.uk/research/projects/tunnah.html>>.

¹³⁰ It is worth noting that the Consortium for Access to Legal Education (CALE) was founded in 1999 with 20 members specifically to draw attention to part-time legal education. However, only one year later it expanded its focus to access to legal education more generally, thus subsuming the distinctiveness of part-time law students’ needs. It now has only 10 institutions, and never appears to have hosted a conference addressing part-time legal education <www.ukcle.ac.uk/resources/temp/cale.html>.

the form of a universe of possibles equally possible for any possible subject.’¹³¹ The social realities of the current economic climate may see the legal profession fall back on existing patterns of cultural reproduction rather than look to diversify a reduced intake. Although ‘equivalence’ holds progressive potential, questions of how and where part-time legal education is delivered must be addressed before these students can be brought in from the cold and into mainstream legal education.

¹³¹ Bourdieu, *op. cit.*, n.11, p.68.