

The Legal Impact of Bologna Implementation – Exploring Criticisms and Critiques of the Bologna Process

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1. This Paper reviews some of the critical assessments of the Bologna Process (hereafter ‘BP’), notably by Neave & Amaral (2008) and Teichler (2007). Other secondary material referred to includes: Reinalda & Kulesza (2006), Corbett (2005), and Greatrix (2005). It is arguable that the BP is part of the generally over-bureaucratic and very costly context of EU continent-wide activity, except one that (perhaps depressingly) involves a much larger range of nations than those which are formally members of the EU. I do here need to declare an interest in that I am what, in the UK, we call a ‘Euro-sceptic’, perceiving the EU to be a grotesquely expensive, fraudulent and sclerotic entity that is in grave danger of its major original advantage (probably avoiding a third European civil war during the second half of the last century) being significantly outweighed by its growing disadvantage as now an over-interventionist and over-ambitious and under-competent example of ‘Big Government’.
2. The BP adherents are, of course, hugely positive: for example, the main BP cheer-leader in the UK, Roderick Floud, is quoted in the *Times Higher* (30/10/08, pp 16/17) as declaring that ‘a Europe-wide higher education system with Britain at the helm has the potential to be stronger than that of the US... [seeing the BP and the European Higher Education Area – hereafter ‘EHEA’ as] arguably the biggest and strongest education and research area in the world’. Similarly, Anne Corbett, another fan of the BP policy juggernaut, in the same edition of the *THE* (p 25) sees the UK as already ‘almost completely Bologna-compatible’, lagging only with respect to the ECTS; but she also complains of the UK being unenthusiastic over and disengaged from the BP (UK attitudes being ‘so inward-looking as to be destructive... a strategy that has veered from complacency to defensiveness’), leaving it open to challenges from other BP countries over, say, its comparatively short 1-year Stage 2 PGTs and its fairly brief PhDs. Finally, a *Leader* (p 30) in that same issue of the *THE* acknowledges that the UK may be seen by the BP aficionados as ‘aloof’, but a long article on the BP in its 2/10/08 (pp 30-37) issue has an interviewee quite pointedly commenting: ‘Clearly, for some European countries the Bologna Process is a much bigger deal. It is being used by governments to pester universities to do things the governments have wanted them to do for years.’ (Paul Temple, Institute of Higher Education, University of London). So, if the UK is at best unengaged and at worst aloof and if the larger countries of mainland Europe and the ones with a proud history of HE are perhaps unenthusiastic about the BP, the keener supporters may be the nations of the former Soviet block who see the BP as part of their progress from Communism – but, in fact, much of the reform of HE began as early as the start of the 1990s and hence is not actually the result of the BP that really got going only in the early-2000s (and, as we shall see, is making slow progress).

3. Surely Temple's comment identifies the essence of the BP: it is a philosophical fig-leaf to cover the much-needed practical process of reforming a bloated and an inefficient HE system in most European countries, pushing them towards the lean-and-mean UK HE model (or rather the 3-year u/g English model, the Scots having a 4-year u/g Stage 1 cycle – which they are now talking of cutting back to three years in order to save taxpayer money). In fact, as may be known beyond the UK, there is even talk of 2-year Foundation Degrees as a way of pushing even-more students at ever-lower cost through an increasingly under-resourced HE system where the question of just what any longer is higher about vocational and now 'employer-led' HE comes steadily into sharper focus (see the discussion of liberal education in Chapter 1 of Palfreyman, 2008, and, more broadly, of elite universities within mass HE systems in Palfreyman & Tapper, 2009 – see also OxCHEPS, 2008, on elite HEIs). Given we are a continent with an aging demographic, and given the start of a recession (even a slump), it is, of course, entirely proper in public policy terms that the cost of HE provision should be questioned in terms of its efficiency and value-for-money for the taxpayer, especially compared to more important spending on schools and health. The danger is that the BP, under the guise of fancy words and elaborate phrases, is in reality a crude cost-cutting exercise that will lead to the 'harmonisation' of European-wide HE on a 'McDonaldisation' basis (Ritzer, 2008), to the destruction of individual university autonomy in the name of and while pursuing the Holy Grail of 'standardisation' and 'audit'/'verification' (Power, 1997), to the creation of a stifling top-down bureaucratic moribund EHEA. It is depressing that other, non-Europe countries, are seeking to join the BP – the world needs variety, not a dominant BP model as a global-model spreading its strangling tentacles world-wide!

4. Yet, it is perhaps heartening that, as we digest Bologna-speak and its Euro-spin, the reality at the chalkface in the lecture-theatres and seminar-rooms of universities shows the BP in practical terms to be making painfully slow progress, and not only in the UK. Here is a comment on Germany from the University World News site (Issue 0047, 6/10/08): 'German students are still complaining about having their performance in courses abroad recognised at home. Credit transfer is a key aspect of the Bologna process, aimed at making European higher education systems more compatible. Nevertheless, reports of seemingly arbitrary recognition of credits from abroad appear to be discouraging many students from enrolling in foreign courses'. One is also struck by another commentator (Moodie, 2008) on the gap between the rhetoric and the reality of the BP: '...one may reasonably argue that Bologna is concerned with reforming continental European higher education on a somewhat mythical Anglo-US model of commercialised or at least marketised higher education... the European attempt to specify qualifications and units as outcomes will take a very long time to achieve, if it succeeds at all. It also seems highly improbable that the European credit system will be implemented irrespective of whether the learning context is non-formal, informal or different kinds of formal training programme...'

5. It is this ministerial rhetoric and institutional reality gap that is explored by Neave & Amaral (2008) who comment that ‘the boundless confidence in the progress achieved at system level has now given way to a new sobriety when attention to progress is translated to institutional level’. They see the BP periodic progress reports as more about where the BP ‘ought to be’ rather than where it ‘is at’, as a process of talking-up the policy in the absence of progress in practice, as a matter of ‘leveraging reform’, and (as already noted) as a way of using the BP big agenda as ‘a heaven-sent opportunity’ to achieve local reform of HE systems no longer fit-for-purpose: ‘Bologna furnishes national authorities with a new justification to reopen issues previously impervious to the best-laid plans of ministry and civil servants’. Hence, they assert, the ludicrously impossible date of 2010 for the completion of the EHEA was set, pretending there was progress when ‘the evidence presented to support advance was far from being solid’: ‘...the image manufactured often bore a tenuous connection with what policy analysts are wont to call ‘grounded reality’ or in this particular instance, reality pre-processed by the various authors of the national reports and summaries’ (the Ministers were, conveniently and comfortingly, told only what they wanted to hear). Image mattered more than reality (as usual in politics) so that, locally, Ministers could demand reform to keep up with the fictional progress of the BP continent-wide: the BP as a political scam where rhetoric trumps reality, where presentation is a triumph over substance. Neave & Amaral pepper their refreshingly rigorous paper with phrases like ‘sheer surrealism’ and invoke not only the Pelion and Ossa classical analogy, but also that of England’s Dr Pangloss – ‘All is for the best in the best of all possible worlds’: ‘the Bologna strategy created its own obscurities’! There is, however, some hint of honesty creeping into the BP (what they term as ‘virtue resuscitated’) and hence more recent progress reports have admitted just how patchy progress has been – especially in relation to the ECTS, as noted by Moodie (2008) and cited in para. 4 above. Hence, Neave & Amaral conclude with a question as to whether the BP is, at last, reaching the end of instant fictional success and coming to terms with ‘the rise of a new sobriety’ as the BP faces up to the reality of limited progress at institutional level where the real position can no longer be disguised ‘by recourse to facile legislative and legalistic criteria’: here the BP bumps up against nominal take-up or tokenism as opposed to change being fully grounded in the institutional reality of all 4000 or so HEIs within the BP nations. Thus, ‘a self-induced euphoria’ from the first decade of the BP is giving way to this new sobriety and now ‘Bologna’s earlier battle honours are beginning to look a little tattered’. (The Paper gives references to detailed work on Italy, France, Germany, and elsewhere; and also notes the forthcoming Amaral et al – similarly, in Palfreyman & Tapper (2009) Vabo & Aamodt consider ‘Nordic Higher Education in Transition’ (Chapter 4), commenting that in the case of Norway: ‘For the educational authorities, the Bologna process represented a legitimate opportunity to abolish the old study structure and replace it with a degree system more efficient at dealing with the needs of a mass system of higher education.’ (p 61). On the other hand, for some of the Nordic countries the implementation of the BP has been ‘no more than cosmetic in character’ (p 62) – they cite Finland and Denmark.)

6. On the specific issue of quality in HE, see the powerful critique of the UK approach (the QAA) in Greatrix (2005), which is pertinent because the QAA model seems, sadly, to be of wider BP interest... He argues that this 'industrial approach to quality' serves to undermine 'the fundamental purpose and role of universities'; and encourages a counter-productive 'Soviet-style pathology of 'creative compliance' when auditable performance becomes an end in itself'. Indeed, Greatrix asserts: 'The QAA is undermining quality and standards in HE' given its 'excessive faith in the virtue of centralisation and in the power of bureaucracy' ('a Fordist model in a post-Fordist world'!). He concludes that the expensive QAA model (which may yet be copied across to the BP collective of nations) fails to recognise that 'the remedy may cause more damage than the imagined malady'. (See also OxCHEPS, 2008 – Paper 25.) Now we turn back to broader critiques of the BP, and in fact also of the EHEA and of the related Lisbon Strategy (the bizarre idea that the EU Commission can make Europe entrepreneurial), in Corbett (2005), Reinalda & Kulesza (2006), and Teichler (2007)...

7. Reinalda & Kulesza see the BP as a 'policy response' in terms of the EHEA promoting a human capital theory of the value and purpose of HE and in terms of how 'European HE plc' can acquire an appropriate market share of global HE by having 'a common approach' across the 4000 HEIs. They also pose 'critical questions' over the BP: a) 'whether it is clear what this EHEA actually is and how effective it might be?' (answer: 'there are no obvious indications that the education systems in the European countries will be substantially more consistent by 2010'); b) how strong is the BP 'machinery or regime' (answer: not very, since, so far, 'progress is not consistent across all participating countries'); and c) is the BP 'an adequate answer to the global commercial development of trade in educational services?' (answer: 'efforts by the BP to gain a more adequate market share in the worldwide education market have remained weak in comparison to its pretensions... no specific strategies have been developed... a lack of elaboration with regard to Europe's opportunities on the worldwide education market'). So, if the BP is about European HE in the global market-place (as opposed to the reform of national HE systems so as to save taxpayer money, as already discussed above and especially with reference to Neave & Amarel), the BP is again a failed project – on the role of the market in HE see OxCHEPS (2008) and note the WTO notion of a GATS applying to HE.

8. Corbett (2005) offers up the terrible prospect of BP 'soft' law becoming EU 'hard' law by tracing the history of EU policy-making in the HE policy sector since the 1950s (recurring 'EU aspirations for a Europe of Knowledge'): the rich diversity of European universities is harmonised down to the dullness of the McDonald 'EU-Uni', perhaps along with the creation of the 'Euro-sausage' or 'Euro-beer'! Thus, Corbett chronicles increased, and ever-increasing, intervention of the EU Commission in the BP, and not least via the development of the ENQA (see Greatrix as referred to above). She concludes, one may feel depressingly, that the BP, 'taking place as it does in the shadow of the EU has much life in it for the coming years'... She also, however, acknowledges the Neave & Amarel thesis that Ministers liked the idea of taxpayer savings: 'They argued for the two-cycle structure which, they

recognised privately, offered them significant economies.’ On the soft-law/hard-law issue see Garben (2008), as discussed in the Appendix to this Paper: and note Garben not only argues that the Commission could readily turn BP soft-law into EU hard-law, but that the EU Member States acting within the BP are already doing so illegally under EU Law!

9. Finally, Teichler (2007) for our last critical assessment of the BP and of the EHEA... He worries about the creation of dull homogeneity across European HE: ‘it seems only a matter of time that European higher education will have lost the divergent features of its system and will have conformist views that are in line with presumed world-wide trends’. Teichler asks, in relation to the BP, the EHEA, and the LS, ‘what are the intentions, the officially declared ones or the less visible ones?’. He is clear that there is ‘no public love of the joint European political machinery’, that the Eurosceptics are not confined to the UK. The driver of the BP, he asserts, is the increasing of the competitive position of European HE to recruit fee-paying international students; but the ‘basic assumptions’ underlying the BP are ‘not well founded’, and the objectives are ‘not a coherent set’. He sees a danger in the BP of a ‘convergence’, albeit that implementation ‘is not a rapid process’ and also is ‘not a highly co-ordinated process’; in fact, the BP is ‘ambivalent or even contradictory’ – there may be, indeed, ‘a decrease of student mobility’ as an unintended consequence of the hyper-complexity of the BP! The 2010 EHEA target will not be reached: national systems will continue to dominate the HE scene, which is probably a good thing for, in fact, ‘a further increase of diversity serves the students as well as the needs of economy and society better than moves towards standardisation’. Teichler warns of ‘Bologna-euphoria’ and of ‘Bologna-dogmatism’; where ‘Bologna-compliance is beautiful’ and ‘any other solution is old-fashioned, deviant, and dangerous’, where ‘the classifiers and streamliners are already [too] active’, where one man’s keenness for ‘diversity’ of HE provision is another man’s complaint over the ‘confusion’ of HE activity on offer. Progress with the BP has been very mixed, leaving behind ‘vagueness and unsolved problems’, including whether the proposed and desired degree of convergence is something that really is good for Euro-HE. That said, Teichler also is concerned about ‘over-diversification’, where there is too much variety within the HE system and too much stratification of the system: ‘the prevailing ‘Zeitgeist’ of ‘competition and stratification’. See also Ruiza & Teichler (2007), who note that, with respect to the BP prime objective of increasing cross-border student activity, ‘information is shaky’ and does not confirm consistent growth, and conclude that both the BP and the globalisation of HE ‘seem to support student mobility in some respects but to set new barriers in other respects’.
10. So, bearing in mind that the BP is a political process (it is not a legal process, it is not enforceable, it has no status in EU law or under any law on international treaties)...
 - If the BP is really about making European HE competitive globally as a business (Reinalda & Kulesza, 2006; Ruiza & Teichler, 2007), then the BP is a failure for the global international student market essentially remains in the hands of the UK, Australia, New Zealand and the USA (the last also operating an increasing number of overseas campuses and being best placed, in the event

of WTO progress with GATS, to provide commercial, for-profit HE via such businesses as Phoenix and Kaplan).

- If it is really about creating an EHEA to serve the human capital needs of the EU and beyond (Corbett, 2005), again it has failed for we are well short of implementing BP objectives across the EU nations and their share of the BP's 4000 HEIs.
 - If it is in fact indirectly about achieving structural reforms within resistant and inefficient national HE systems to save taxpayer money (Neave & Amarel, 2008), the BP has perhaps been moderately successful.
 - If it is about achieving in a 'soft' way a long-standing EU Commission policy (Corbett, 2005), the BP is not making much progress (Moodie, 2008; Ruiza & Teichler, 2007) and hence the great fear must be that the Commission attempts to step in with its usual over-bureaucratic and market-stifling EU 'hard' law approach (Garben, 2008) leaving the EHEA (including the at present globally successful UK HE model) in a state of harmonised dull mediocrity (Teichler, 2007; Ritzer, 2008) and saddled with inappropriate mechanisms allegedly aimed at quality-control (Greatrix, 2005).
 - If, however, the BP is about an over-regulated, control-freak, cloying standardisation (Power, 1997), then, sadly, it is on the way, via the ECTS and the ENQA, to partly achieving that unfortunate objective... And all at a time when many countries are trying to nurture the concept of elite HEIs within their national systems - something that the BP is silent on (Palfreyman & Tapper, 2009; OxCHEPS, 2008). In fact, in the half-dozen chapters within Palfreyman & Tapper which cover about a dozen nations that are BP members (as opposed to the chapters concerned with, say, the USA, Japan, China, India or Latin America) there is very little mention of the BP as a factor in the policy process with respect to whether the national HE system can, could or should incorporate and finance an elite and globally-competitive element.
11. Indeed it is arguable that the reason the USA (with its 3000 or more HEIs) has most of the world's best universities, and indeed some of the worst, is that the USA does not have an HE system: instead, it has some 50 State systems and also a tolerance of a public-private mix (with a few State universities still able to compete with the best of the private institutions). Given this recipe for relative success; it would seem bizarre for Europe to be seeking, via the BP, conformity, convergence and harmonisation across some 30-40 national systems, all in the name of easier cross-border movement of students and better recruitment of international students, of enhanced quality-control, and of an improved relevance of HE to the economy, when the lesson must be that monolithic, public sector HE systems are inefficient, under-productive and over-expensive: the BP activists might more usefully consider how to introduce more of a market for HE and more private sector competition into the delivery of HE across Europe as a means of challenging a public sector monopoly (OxCHEPS, 2008, Papers 24 & 29). It is, of course, equally bizarre that the US seems to be toying with the idea that the BP has something to offer to US HE.

12. And, ultimately, nor does the BP do anything to preserve what is meaningfully ‘higher’ about higher education, and that is valuable both for Society/Culture and (indirectly) the Economy (Palfreyman, 2008). True higher education is not about delivering narrowly-focused skills and competencies for employers; that is tertiary or adult or further education, and hence the EHEA could be retitled ETEA. Finally, what of the future? Will the soft-law BP be overwhelmed by an EU hard-law putsch? Might the BP become redundant in the context of a global implementation by the WTO of a GATS that massively liberalises, marketises, and deregulates what is currently generally a public sector dominated HE provision? Or will the BP meander on inconsequentially as a rich gravy train of acronyms for bureaucrats to board and spend a few days in pleasant cities across Europe (Paris, Bologna, Prague, Berlin, Bergen, London, Leuven...)? And will the issue of standards in HE be overtaken by its ‘commodification’, ‘contractualisation’ and ‘consumerisation’ in the context of the introduction of tuition fees in most and eventually all nations so that quality-control in HE becomes a matter not for the lumbering bureaucracy of the BP’s ENQA, ECTS, or whatever, but one for consumer law?!

APPENDIX

- a) Garben (2008) explores whether the BP soft-law could readily become EU hard-law, despite the common assumption that one of the few areas of life untouched by creeping EU bureaucracy is education since that is deemed to be a national competency rather than an EU (in)competency. Garben is clear that the EU could legally, and indeed should politically, take over the BP, enacting it directly as ‘a Community measure’. In fact, it is argued that the EU nations within the BP are acting ‘illegally’ in avoiding ‘the institutional framework of the EU with its built-in checks and balances’; they have ‘obstructed the Community’ in side-stepping it: ‘The Bologna Process resembles a deal done in a smoke-filled room...’. Moreover, the BP is anyway incompetent: ‘its voluntary charter combined with a lack of coordination prevents its effective implementation’. Garben asserts that the EU’s legal ‘competency’ in such policy areas as the labour market and professional qualifications means it *can* implement most of the BP objectives without triggering the issue of whether the EU has crossed the boundary of the alleged legal constraint on harmonising in education (as opposed to what it can do in the name of harmonising internal markets in labour mobility). HE, Garben claims, is where ‘education links with labour market entry’, seeing HE merely as a tool for achieving economic progress; and as opposed to elementary schooling where the EC ‘has to steer clear’ and also secondary schooling which ‘would most probably be deemed off-limits in its entirety’.
- b) In short, Garben sees the EU Commission as being supported by the ECJ if it entered the BP territory and was challenged by, say, the UK Government anxious to protect its globally successful elite universities from being ‘harmonised’ into blandness and mediocrity, or if such elites themselves got together to challenge the Directive in the English courts if the UK Government failed to protect their interests (note that in English Law universities are private bodies, not public bodies in the way that in other EU countries the HE system is part of the public sector and hence the UK does not have, say, an over-arching ‘Higher Education Law’ as in other civil code ‘statist’ EU nations: see Farrington & Palfreyman, 2008). Thus, Garben raises the terrible prospect of the BP soft-law really (and readily) becoming EU hard-law, while raising the intriguing question of whether the BP is indeed already illegal in terms of the EU Member States within the BP trespassing on the EU’s area of competency (labour markets and hence also HE if HE is viewed through a vocational skills prism). Garben sees the BP as representing the ‘dangers of subsidiary action by Member States’, not least because, it is claimed, the EU would do it ‘better’ in terms of implementing BP objectives.
- c) Garben is very critical of soft-law processes, and not least because in the case of the BP it has in practice been done in ‘a top-down manner’ that is ‘not transparent, nor efficient’: the BP is undemocratic (‘deals done between governmental officials are largely distracted from parliamentary scrutiny’), merely a ‘smokescreen for governments to agree on unpopular reforms’ (back to the Neave & Amarel, Teichler and Corbett interpretation already discussed). Thus, the Garben paper is indeed grist to the mill of the Eurosceptic since it so

naively signs up for the idea that the EU Parliament is a splendidly democratic and competent thing, and that ‘some kind of binding supervision or enforcement’ within the BP would be better than the present ‘hodgepodge’ and ‘inconsistencies’. In fact, even Garben manages to recognise the harsh reality in speculating on why the Member States may have consciously decided to follow the BP route and hence exclude the EU: ‘It is often explained by the fear of the Member States that giving the Community one inch, it will lead to it taking a whole yard’ (yes!), since they are ‘mistrustful of the Community, and the European Commission in particular’ (twice yes!), and to some ‘the EU resembles Frankenstein’s monster, with competence creep and spill-over left and right’ (thrice yes!). Hence, the conspiracy-theorist might see the BP as a cynical attempt by national politicians to achieve change in their HE systems that would be blocked if attempted through a more democratic EU process that gave the chance for the vested interest of HE providers to lobby for such EU-wide reform proposals to be dropped. Those, on the other hand, who view most political processes as an example of the cock-up theory of history or policy-making will assume that the BP is just the sort of conceptual nonsense and bureaucratic mess that emerges when a few over-ambitious ministers and their under-informed civil servants are got together in one place for long enough!

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