The Coalition Government's Proposed Assault on Institutional Autonomy in English Higher Education

In the summer of 2011 the United Kingdom's coalition government announced its intention to engage in a radical reform of the regulatory framework within which higher education institutions operate in England. In June it launched, in a White Paper, a broad statement of its intentions.[1] In August it published, in the form of a 'Technical Consultation,' the ways in which it proposes to implement this radical reform.[2] In this essay I consider these proposals and offer some thoughts on what has really motivated them.

My concern here is exclusively with the regulatory impact, not with the financial implications. In collaboration with my colleague David Palfreyman I have elsewhere considered the coalition government's reform of the fees structure in English higher education.[3] I do not propose to repeat those considerations here. However, it is worth briefly reiterating that the as from 2012 a taxpayer-funded higher education institution (HEI) in England will be able to charge annual tuition fees for first degrees of between £6,000 and £9,000; but if it wishes to charge above £6,000 it will be obliged to seek the approval of the Office of Fair Access (OFFA), which Office will require it to enter into an agreement covering such matters as bursaries for students from less well-off backgrounds and the running of summer-schools and what are termed 'outreach' programmes. More importantly (for my present purpose), the government has abolished that element of the annual block grant from the Higher Education Funding Council for England (HEFCE) that publicly-funded HEIs will in future receive in respect of non-STEM subjects.[4]

For many HEIs, who do not teach in these resource-hungry fields, the withdrawal of this grant element will amount to a very considerable decrease in block-grant income – perhaps (in some cases) by as much as 80 per cent; but this will be balanced (it is argued and hoped) by the income that will in future be made available to them via the tuition fees payable directly by the students they recruit – or rather, by the Student Loans Company (SLC), to which students will be indebted and to which they will have to repay these debts once they graduate and their incomes reach a pre-determined level.

Whether – and if so to what extent – a particular student will in fact be obliged to repay monies advanced by the SLC is a matter of intense public dispute. But that is not my present concern. What is important to note here is that, for many HEIs, HEFCE will in fact cease to be the primary conduit through which taxpayer funding is derived. Since, historically, it has been precisely through such funding that

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1 "Higher Education: Students at the Heart of the System": http://c561635.r35.cf2.rackcdn.com/11-944-WP-students-at-heart.pdf [accessed 20 August 2011]

2 'A New, Fit-For-Purpose Regulatory Framework for the Higher Education Sector': http://c561635.r35.cf2.rackcdn.com/11-1114-new-regulatory-framework-higher-education-consultation.pdf [accessed 20 August 2011]

3 G. Alderman & D. Palfreyman, 'The birth of the marketplace in English Higher Education: A Rough Guide,' *Perspectives: Policy & Practice in Higher Education* (June 2011), 1-5

4 STEM: Science, Technology, Engineering & Mathematics.

governments have controlled the manner in which these HEIs have operated, an overriding concern in Whitehall has been to devise a means by which such control can continue to be exercised in the future.

Both in the White Paper and in the Technical Consultation the government has paid the customary lip-service to institutional autonomy and academic freedom. But we would do well not to attach too much importance to such pleadings. It is no overstatement to suggest that the government's regulatory proposals will, if implemented as published, amount to a revolution in the manner in which higher education is managed and delivered in England. The salient features of this revolution are as follows (the numbers in square brackets refer to the relevant sections of the Technical Consultation):

(a) The HEFCE, whilst remaining a primary funder of HE in England, will also become "the lead regulator" of every HE provider in England, no matter whether that provider is taxpayer or non-taxpayer funded [1.1.1 & 2].

(b) If a private HE provider (for-profit or not-for-profit) wishes its otherwise eligible students to enjoy access to loans via the SLC it will be obliged to enter into a "legally binding agreement" with HEFCE. Should a provider fail to comply with the requirements set out in the agreement, it will be "subject to an intensified engagement with HEFCE and an escalating set of steps will be taken until compliance is achieved. Ultimately, continuing failure may require HEFCE to apply its ability to fine and/or de-designate a provider." [1.2.2; 3.2.7]

(c) The legally binding agreement can be expected to cover such matters as "quality, dispute resolution, information, fair access, financial sustainability and tuition charge levels." [2.1.2]

(d) All "designated providers" will be required to subscribe to the QAA and the Office of the Independent Adjudicator (OIA). [2.2.2 & 4]

(e) "HEFCE will have the ability to require designated providers to provide sufficient and proportionate information to ensure accountability to students and the public on quality, access, value for money and financial regularity and sustainability." [2.2.6]

(f) "HEFCE will have a duty to monitor all designated providers required to comply with tuition charge cap legislation and, if charging above the basic amount, with OFFA requirements around fair access. *This will mean that no provider will be eligible for designation for student support or teaching grant funding if they wish to charge above the maximum tuition charge cap*. It will also mean that all designated providers will be required to have an Access Agreement if they wish to charge over the basic tuition charge cap." [2.2.7] [my emphasis]

(g) "HEFCE will have a continuing duty to assess the financial sustainability of designated providers and will engage with those that

find themselves in financial difficulty. … The aim will be to provide reasonable assurance that all providers in receipt of public subsidy are a going concern, are accountable for the public support they receive indirectly through student loan funding or directly through grant funding, and have sufficient arrangements in place to safeguard the interests of their students in the event of financial instability….In common with previous governments, the Coalition has not guaranteed to underwrite independent HE providers. However we see a continuing role for HEFCE to work with providers at risk of financial difficulties." [2.2.14]

(h) The government will take powers to enable it – where it does not already have such authority – to suspend and, if it thinks fit, ultimately remove the degree-awarding powers of any HE provider currently enjoying British degree-awarding authority. [4.1.2][5]

HE providers currently in the public sector may feel that there is little in this package that need concern them, because HEFCE-funded HEIs are already subject to draconian control, and have customarily carried out many of the obligations which the White Paper and Technical Consultation enumerate – such as subscribing to the OIA and the QAA. That is undoubtedly the case, though we must note that the explicit threat to remove degree-awarding powers from existing not-for-profit HEIs is certainly novel. And in this connection we should also note that the entire tone of both documents suggests a future role for the QAA that is quite subordinate to the HEFCE, resplendent in its new uniform of "lead regulator" for the sector. The White Paper, indeed, tells the QAA what it must do: there is not the slightest suggestion that these new tasks will be for the QAA board of directors (never mind the QAA's subscribing members) to decide.[6]

Beyond that, however, we do need to ask whether it is acceptable that a regulatory body should also be a funding body, and, indeed, whether there is not an inherent and inexorable conflict of interest as between these two roles. For although it will become the "lead regulator," the HEFCE will (it is proposed) continue to be a funder: it will continue to distribute public moneys within a multitude of streams, such as teaching grants within the STEM areas, grants to support endangered subjects, and grants for capital and special projects. No present regulatory body in the UK maintains such a funding responsibility. Besides which, the current constitution of the HEFCE is simply not that of a regulatory agency. HEFCE is – as its "Management Statement"

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[5] "We will also introduce a sanction to suspend or remove degree awarding powers, however granted, where there is clear evidence that quality or academic standards continue to be below the acceptable threshold and efforts to improve the position have proved unsuccessful." [4.2.18]

[6] A straw in the wind here has been the surreptitious manner in which, during the late spring and early summer of 2011, the QAA bowed to government pressure (pressure, to be precise, from the Home Office and the UK Border Agency) and, without any consultation with the sector, introduced an entirely new quality-assurance process ("Educational Oversight") to enable selected private providers of HE to be licensed for the purpose of recruiting students from beyond the European Economic Area. See G. Alderman, 'Inglorious Revolution,' *Times Higher Education,* 26 May 2011, 30

makes clear – wholly a creature of Whitehall.[7] As the recipient and disburser of Treasury grant this might be thought to be wholly appropriate. But as a regulator this cannot be so.[8]

For HE providers not currently in the public sector the proposals offer a stark choice. UK Students enrolled with some of these providers currently enjoy access to the SLC. Clearly, if such a provider wishes its eligible students to continue to enjoy this facility it will be obliged to enter into an agreement with the HEFCE which will, *inter alia*, give HEFCE the authority to interfere in matters over which it currently has no authority (such as the provider's financial management and estates policies). It will also be obliged to agree to supervision by OFFA. And it will have to agree that under no circumstances could it ever charge its eligible students a tuition fee that exceeds the government-mandated 'cap' – currently £9K p.a. If it does not wish to submit to government control in this way, it will have to bring its arrangements with the SLC to an end.[9]

Why is the government proposing to augment HEFCE's authority in this way, and to tie future access to the SLC to close HEFCE supervision? In the Technical Consultation the Department of Business argues that it is simply following best practice where taxpayers' money is concerned – supervising and accounting for its disbursement at every stage of its journey from the tax collector to the ultimate recipient. Formerly a tranche of this money went, via HEFCE, to HEIs: so the HEIs were legitimately subject to government control insofar as the spending of the money was concerned. Now it is proposed to route much of that money another way: to the student as a loan, and thence to the HEI: so the recipient HEI must agree to HEFCE regulation.[10]

This argument strikes me as contrived, and cynical in the extreme. Since those on welfare benefits are in receipt of public funds, why not regulate every shop in which they spend their money? Simply because judges are paid from the public purse, has the government the right to dictate what verdicts they should hand down? It is true that in the USA the ability of a student to access Federal Financial Aid (a mixture of grants and loans) is linked to the willingness of the HEI the student wishes to attend to undergo periodic inspection by a federally-recognised accrediting body. The paradigm here in the UK would be for HEIs wishing to be designated for the purposes of receiving fees via the SLC to be obliged to subscribe to and submit to review by

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[7] http://www.hefce.ac.uk/aboutus/history/manage.pdf [accessed 24 August 2011]

[8] By way of comparison, consider the constitution and functioning of the Financial Services Authority, which regulates the financial services industry in the UK. Like HEFCE the FSA operates under statutory authority; but it is operationally independent of government and (of course) it is not itself a provider (let alone funder) of financial services: http://www.fsa.gov.uk/Pages/About/Who/index.shtml [accessed 24 August 2011]

[9] One alternative would be for it to enter into private partnership arrangements with banks and/or finance houses, to enable its eligible students to access loans at preferential rates.

[10] Or, as the Technical Consultation puts it: "Since the benefits of greater public support will now be available to more providers than when the bulk of this flowed through [teaching] grant, it is reasonable to expect that more providers should be brought within the full regulatory framework than previously." [2.1.6]

the QAA (or similar agency). Such a proposal would be beyond contention. But what is now being proposed goes much further. Why?

To determine the roots of the policy now being proposed we must return to the national furore that obtained in 2010, when the coalition government lifted the tuition fees cap. At the time it was argued that this was necessary because the state of the public finances did not permit further government subsidy of higher education. Universities were desperately short of funds. And since this acknowledged shortfall could not be made good by the Exchequer, and since it was not politic to increase taxes for this purpose, the student would have to pay – albeit in arrears.

The problem with such an argument is precisely that. Students – or rather, graduates – will pay back their loans in arrears, and then only when their relevant income exceeds £21,000. The government concedes (indeed emphasizes) that many students will probably never pay back anything. Meanwhile the fees will still be paid, by the taxpayer via the SLC. The government itself boasts, in the White Paper (at page 5, section 5), that it estimates "there will be a cash increase in funding for higher education of around ten per cent by 2014-15" – though it adds the hope that "more of the expenditure will eventually be recouped from graduates [*sic*] contributions."

To comprehend the true origins of the present regulatory proposals we need to examine – with much more care and attention than was devoted to it by the media at the time – a speech that Business Secretary Vince Cable delivered on 15 November 2010 to the Girl's Schools Association at its annual meeting, in Manchester.[11]

Much of Dr Cable's address was devoted to the plight of taxpayer-funded universities – specifically English taxpayer-funded universities, of which he mentioned by name Oxford, Cambridge, University College London, and the London School of Economics. According to any university league-table you care to choose, these institutions are amongst the very best in the world. The coalition government of which Dr Cable is a member had, earlier in the month, signalled its intention to legislate so as to permit all these universities to raise the maximum undergraduate annual tuition fee to £6,000 or – if they agree to certain conditions – to £9,000. This announcement had of course given rise to nationwide student protests. So Dr Cable decided to devote much of his Manchester speech to explaining why the decision had been taken.

He did not mince his words. "We already [he said] have a lot of universities that are effectively broke. If they were in the private sector they would have been filing for bankruptcy. Various arrangements have been cobbled together to keep them going, and we can't continue to do that." The Treasury, he explained, had no more money to pump into higher education, so other sources of funding must be found. And whilst the government had rejected the centrepiece recommendation of Lord Browne's review, that the 'cap' on undergraduate tuition fees should be removed altogether, it had agreed to the cap being lifted in two stages: a 'soft' cap of £6000 that any university could charge, and a 'hard' cap of between £6,000 and £9000 that could be charged provided certain conditions were adhered to. And then Dr Cable made an astonishing admission: "One of the reasons were are doing this is precisely to head off

[11] The BBC carried a report of this speech, which may be accessed at http://www.bbc.co.uk/news/education-11762430 [accessed 25 August 2011]

Oxford, Cambridge, London School of Economics, University College London and a few others from going private, because if we had not opened up the system in the way we have, they would have had a very strong incentive to do so."

In other words, Dr Cable chose to lay at least some of the blame for the unpalatable decision the coalition government had had to take upon a handful of elite institutions that had – he declared – threatened to "privatise" [his word] if the 'cap' were not removed altogether. Faced with this ultimatum, the government had had to do something, and what it had chosen to do – to raise but not abolish the cap – had made the best of a bad job. Rather than protest – he implied – students and their funding fathers and mothers should be grateful that the government had grasped this nettle, though – he admitted - there could be no guarantee that one or more of these elite academies would not "privatise" at some future date. "Whether we shall head them off [he added ominously], I don't know."

This was a very odd speech for Dr Cable to have made at the annual meeting of the GSA, which is, after all, (as its website proclaims) "the professional association representing the Heads of leading independent girls' schools in the UK." For "independent" here read "private," of course. If the government has no more money to give to the university sector, a decision by a university to go private would – surely – be a blessing for the government, not the curse, the unmitigated evil that Dr Cable insisted it would be.

As a matter of fact all English universities are private. All, without exception. Every university in England – indeed in the UK – is a private corporation, deriving its status and authority either from a Royal Charter (such as Oxford and Cambridge), from a specific, private Act of Parliament (such as the University of London) or from an order made under a more general parliamentary statute (such as the polytechnics raised to university status under the provisions of the Further & Higher Education Act of 1992). All English universities are private. But some are more private than others. The University of Buckingham (established by Royal Charter in 1983) is completely private, because it does not accept one penny of taxpayers' money. In 2008-9 the University of Cambridge derived just 18 per cent of its annual income from direct government grants; at Oxford the proportion was a little higher, at 23 per cent. At the other end of the scale there are universities that rely on government grants – direct grants from the English Funding Council and (if relevant) from the Training & Development Agency for Schools - for very large proportions of their total incoming funds. At the University of Gloucestershire, for instance, the figure is around 46 per cent, and at Leeds Metropolitan around 45 per cent.[12]

'Going private' means that universities, whilst continuing to receive tuition fees (the levels of which they themselves would be completely free to set, as at Buckingham), and while continuing to enjoy such research income and endowments as they could attract, would no longer receive funding-body grants. That is the basic truth behind university 'privatisation.' But it is not the whole truth.

[12] I base these calculations on the annual accounts of these universities, available at their respective websites.

The conditions under which a block grant is made to a university by the Funding Council are set out in a Financial Memorandum – in effect a contract between the two parties. At its website the HEFCE reproduces its current "model" Financial Memorandum. In return for its annual block grant, the HEFCE can (amongst other things) insist that the quality of teaching and learning is "assessed" in a prescribed manner, that the institution in receipt of grant agrees to submit to a periodic HEFCE-driven assessment of its research, that the institution agrees to subscribe to the QAA and to submit to QAA academic audit and – more ominously – to a HEFCE-driven appraisal of the extent to which "value for money" is being achieved. HEFCE-funded institutions must also ensure that their strategic policy objectives mesh with and support those of the Funding Council. They must demonstrate that they are managing their "estate" in a sustainable way, and that they have, and operate, an approved "carbon management plan." HEFCE demands "unrestricted access to information – including all records, assets, personnel and premises – and can require anyone to give any explanation which it considers necessary to fulfil its responsibilities." And it reserves the right to impose special conditions on receipt of grant if it thinks fit.

It is important to remember that all these conditions apply irrespective of how great or how small the quantum of the block grant in any particular year. If so much as £1 of taxpayer's money is made available to an institution by way of grant, all these conditions apply. And they are, of course, in addition to a university's other statutory responsibilities – for example under charity law and equality and health & safety legislation.

In brief, a university in receipt of HEFCE grant has very little institutional autonomy. It does not have a soul to call its own. It must do what HEFCE says, when HEFCE says it. Of particular importance in the context of Dr Cable's Manchester address, and in the context especially of the public criticism then being made of Liberal-Democrat support for the coalition government's fees policy, was the government's insistence that in return for being able to charge higher fees universities would be obliged to enter into "access agreements" with OFFA; if this Office determines that an agreement has been broken, it will have the power to impose a fine, the proceeds of which will be redirected – it is said - to support disadvantaged students.

I am not for one moment saying that students from disadvantaged backgrounds should not be supported. They should. But we need to be clear that it is the present coalition government's obvious intention to impose upon the English publicly-funded institutions of higher education a draconian regime of command-and-control should they wish to charge anything above the 'soft' cap of £6000. This regime could well include compelling institutions to lower their academic standards (in terms of entry requirements) so as to support some new Downing-Street-mandated strategic objective which, however laudable in itself (increasing participation in higher education by students from poorer homes) is not – in my view - one that universities should be compelled to underwrite.

Clearly, that is not Dr Cable's view. Reading between the lines of his address to the Girls' School Association it is clear that his view – and presumably that of the coalition government of which he is a leading member – is that a university that goes "private" puts itself beyond the reach of the Funding Council, and hence beyond the scrutiny and direction of Whitehall. This he and his government view as a disaster to

be avoided at all costs, certainly at the cost of permitting some universities to charge a relatively high undergraduate tuition fee. But the coalition government is clearly determined to make it much harder in future for any HEI to exert the sort of pressure that Dr Cable's alleges was exerted in 2010.

Should the regulatory reforms now being proposed pass into law, no taxpayer-funded university, however prestigious, will be able to 'go private' without automatically blocking access by its eligible students to the SLC. Those who may in future be minded to 'go private' will now have to factor-in that risk.

And that – surely – is why the reforms are being proposed.

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