

## **“Setting the Scene”**

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The views presented in this working paper are those of the authors and do not represent the policy or views of any other persons or organisations.

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### **Abstract:**

The Roundtable programme covers a range of topics around the theme of “US and UK HE 2025 – Market-driven or State-driven, Private-benefit or Public-good focused”. The angles of approach to the topic vary, the focus on law and policy vary, and for all there is the ever-present reality of politics behind policy creating a tension that is perhaps heightening in the US as November approaches. In this paper we tackle a broad range of topics and throw out a number of challenges. The paper is segmented in to three tranches:

- (1) The broad overview (ruminating on the papers that are to follow),
- (2) The legal contexts and the scope of legal competence in the U.S, the U.K. (focused on England) and the European Higher Education Area (with a reference to the European Union). The sections on England and the EHEA are short with the main focus being on the US.
- (3) Some conclusions

### **The broad overview**

What are we here to look at, analyse, debate and dispute? What are the issues that will be raised in subsequent sessions? There is a need to paint a picture of where higher education might be viewed as being, how it got here and where it might be going. What is the state of higher education – as seen by varied stakeholders?

In terms of higher education do we mean English higher education? U.K. higher education? European higher education (EU or Bologna)? U.S. higher education? Differing state, funded, belief, mission, Carnegie classified, historical background U.S. higher education? Australian, New Zealand, China, India, Singapore etc. etc. higher education?

We use terms and with some we have, or think we have, a shared and common understanding of what they mean (see Kaplin & Lee 4<sup>th</sup> edition page xxviii, Farrington & Palfreyman chapter 1) – with others we do not and even confuse each other and ourselves with a term that we think we understand and share, for example – “assessment”, “quality”, “accreditation”, “faculty”, “tenure”, “admissions”, “fees”, “governance”, “federal”, “diverse” and “diversity”, “paperless”, etc.

We are hitting on words and concepts that these upcoming sessions are going to deal with, and, already, we suggest, we have identified the lack of a common vocabulary, lexicon and common understanding. We are often close, but not always close enough. Are we “on all fours” with the terms. We shall see. We suggest that care be taken – questions asked, comments made.

Also of course we need to think about law and policy, policy and law - horse and cart, or cart and horse? Informed by or the informer of? Analysis of the state of higher education – analysed by whom and for what purpose?

In terms of law we have a variety of jurisdictions represented, each with its own traditions, history and idiosyncratic parts. Likewise with policy. We will discover more as we go along our way.

Are we in calm waters? We suggest that is not the case, because of a variety of factors extraneous to higher education impacting upon the context within which higher education operates and upon how higher education will react and adjust (if at all) to these changed circumstances. So, what do we have? The following:

- (1) Financial meltdown – toxic debt, banking crises, unemployment, reduced incomes.  
Do these things affect higher education? We say “Yes”. Is this a temporary change in circumstances or will it have lasting effects? We say “No”, not temporary, “Yes”, lasting effects.

In the US debt associated with higher education is claimed by some to be the next “sub-prime mortgage crisis” (this goes back, of course, so in 2010 CBS did: “Price of Admission: Americas college debt crisis”) – costs are rising on average at twice the rate of inflation, student loans now in excess of \$1 trillion, average debt in excess of \$25,000 (which may seem low when many current students are leaving with loans in excess of \$120,000). The 2007 College Cost Reduction and Access Act cost reduction measures

were extended for a year (June 29<sup>th</sup> 2012) but even with this subsidised interest rate the debt continues to increase.

In England the increase in tuition fees (to a maximum of £9,000 per year) has, UCAS now states (10<sup>th</sup> July 2012) led to a 10% reduction in applicants (with some interesting aspects to the data when scrutinised, for example the drop for males at 8.6% is higher than that for females at 7.1%). Here we have a tension between policies – access, widening participation and attaining a higher percentage of persons with degrees falling by the wayside with cost cutting, focus on “high performers” (the AAB crowd) and “back door changes” prevalent. The White Paper sank, no new legislation and yet significant changes in policy (funding, student numbers, curriculum, academic oversight etc).

In Australia The Australian (April 12th 2012) reported:

“Falling international student numbers have prompted universities to embrace the removal of quotas on domestic students and enrolments have risen dramatically, particularly among low-scoring school leavers.”

Costs, numbers, quality, policy etc.

(2) Quality. What is it? Do we mean the reputation an institution has? Is Law best studied at Princeton? Obviously not as it does not have a Law School (no JD, LLM etc) but came top of a poll on “Best Law Schools”. Do we mean the physical infrastructure (and perhaps sports/athletics/football programmes and scholarships)? Do we mean a well governed, financially sound, mission achieving institution PLUS one with good scholarship, learning, completion, access (in fact equity of entry, learning and completion)?

What do our systems of quality assurance tell us? The Quality Assurance Agency (QAA<sup>1</sup>) in the UK, there was the AUQA (Australian Universities Quality Agency) whose operations transferred to the Tertiary Education Quality and Standards Agency (TEQSA) in July 2011 but which states in its Standards that:

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<sup>1</sup> See: [www.qaa.ac.uk](http://www.qaa.ac.uk) – Accessed 20 July 2012

“The Qualification Standards<sup>2</sup> set out the requirements to ensure that awards issued are quality assured, protected against fraudulent use and provide pathways for lifelong learning.”

and in the USA there is accreditation with the 6 “Regionals”, the faith based, specialist career based and the program groups<sup>3</sup>

The European Quality Assurance Forum<sup>4</sup> (November 2012) will look at:

“This year, the event will specifically explore the impact of external and internal QA on higher education policies and institutional realities. In this context, the sessions will aim to address issues such as external evaluation and institutional follow-up; the relationship between QA, pedagogical approaches and student learning; QA supporting institutional aims and profiles; QA supporting informed decision-making and the role of QA in globalised higher education.”

So, it is not a shock to find that each jurisdiction makes claims about its objectivity, peer review process, total “wonderfulness” of all that it does; unique nature of the educational provision over which it has oversight etc etc.

But – is all as good as it seems? There have been the two 2012 reports on accreditation in the USA from the American Council on Education (ACE) and the National Advisory Committee on Institutional Quality and Integrity (NACIQI). The latter seems to suggest that the federal government will probably not be content to leave issues of educational quality to the accreditation agencies alone and the former suggests that all is indeed well, but the report, *Assuring Academic Quality in the 21st Century: Self-Regulation in a New Era*, considers the central characteristics of accreditation and outlines common criticisms of the process. It then offers six major recommendations for steps colleges, universities and regional accreditors can and should take to ensure accreditation meets its public accountability responsibilities given the enormous diversity of American higher education.

The recommendations are:

1. Increase the transparency of accreditation and clearly communicate its results.
2. Increase the centrality of evidence about student success and educational quality.
3. Take prompt, strong and public action against substandard institutions.
4. Adopt a more "risk-sensitive" approach to regional accreditation.
5. Seek common terminology, promote cooperation and expand participation.
6. Enhance the cost-effectiveness of accreditation.

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<sup>2</sup> TEQSA “Draft Qualification Standards” July 2011

<sup>3</sup> Eaton J “Overview of US Accreditation” CHEA May 2009

<sup>4</sup> See EQA Newsletter 14 - 06 July 2012.

In the UK the QAA states:

“The new UK Quality Code for Higher Education (launched December 2011) draws on the core guidance formerly known as the Academic Infrastructure (to be phased out from 2012) and has three main sections, on standards, quality and public information.

At a time of rapid change, we aim to be at the heart of the debate about quality, standards and enhancement. Both in the UK and internationally we lead or participate in discussions and consultations with a wide range of interested parties, including institutions, funding councils and students' union representatives. We also advise the government on decisions about institutions newly applying for the power to award degrees and bear the title 'university'.

Our strategy states our aims for 2011-14. They are to:

- meet students' needs and be valued by them
  - safeguard standards in an increasingly diverse UK and international context
  - drive improvements in UK higher education
  - improve public understanding of higher education standards and quality.
- “

Different contexts but similar challenges – a quality learning experience for all students irrespective of the type of institution they attend and the form their learning takes.

The Chronicle 11 July 2012 about Mountain State University: “Without accreditation, the institution would lose eligibility to receive federal student aid.” The list of recent accreditation stories is long.

The links between accreditation and financial survival.

### (3) Students! Or learners?

Who they are, where they come from, what experiences have led them to be “college ready”, how they finance their studies, what they expect from their “provider”, what happens if things go wrong, what should their learning experience be and who should determine that?

Are these people customers? Money changes hands one way or another and so let's say “Yes” to customers (for a wide range of services and goods). Are they consumers? Well, is that a passive term? Can they be customers without being consumers? Here let's say “Yes”, the terms can be differentiated (certainly in the higher education context).

Should the learners have a say in what they learn, how they learn, how they are assessed, what grades and credit they get and what qualification/credential they are awarded? Well, let's say "Yes" to this too.

- (4) Academic freedom. Is this context driven? Do you need to have tenure to have academic freedom? No tenure in the UK. Does the core law that we know and love fit in to the 21<sup>st</sup> century reality of academic life? Is there a "corporate corruption" of higher education<sup>5</sup> through the demands of funding for research? How do we differentiate free speech from academic freedom? Do we need to?

In the EU the recent Recommendation CM/Rec(2012)7 of the Committee of Ministers<sup>6</sup> to member States on the responsibility of public authorities for academic freedom and institutional autonomy (*Adopted by the Committee of Ministers on 20 June 2012*) it is stated (*inter alia*) that:

“ 4. Academic freedom and institutional autonomy are essential values of higher education, and they serve the common good of democratic societies. They are, nevertheless, not absolute, and rely on a balance which can only be provided through deliberation and consultations involving public authorities, higher education institutions, the academic community of staff and students and all other stakeholders.

5. Academic freedom should guarantee the right of both institutions and individuals to be protected against undue outside interference, by public authorities or others. It is an essential condition for the search for truth, by both academic staff and students, and should be applied throughout Europe. University staff and/or students should be free to teach, learn and research without the fear of disciplinary action, dismissal or any other form of retribution.

6. Institutional autonomy, in its full scope, encompasses the autonomy of teaching and research as well as financial, organisational and staffing autonomy. Institutional autonomy should be a dynamic concept evolving in the light of good practice.”

Thus laying the framework and principles (and referencing the context for the need for such a statement).

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<sup>5</sup> Washburn J “University, Inc.: The Corporate Corruption of Higher Education”, Basic Books, 2005

<sup>6</sup> See:

<https://wcd.coe.int/ViewDoc.jsp?id=1954741&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383> – Accessed 20 July 2012.

- (5) Types of institution. Are we caught in the headlights of our own pasts in terms of full time, campus based education started straight from high school as fresh faced 18 year olds? The vast majority of learners will not have that experience – cannot afford it, do not want it. So do we need to change our focus – so many reports, discussions, conference papers focus on the campus elite, let alone The Elite.

What happens as the higher education landscape changes? For profit companies getting in to the process (market), buying accredited institutions (certainly in the US and the UK). How do the accreditors react? How do founders spin in their graves if their charitable status institution changes status to become a for profit institution (assets, mission, etc).

These are some of the issues and some of the questions. We have to overlay this with the law. What is the legal competence of our various legislators? Does the historical background count for anything in this day and age? Is there federal overreach in the US? How does the UK government change circumstances in England (not the UK) without legislating? What impact does the European Higher Education Area have on the various parts of the U.K. and around the globe?

The McKiernan and Birtwistle paper then looked at the legal contexts and varied competency of governments for higher education and how that was used and had evolved in the United States, England and the European Union (that paper will be published in the future).

The pre-conclusions (those the authors had arrived at prior to the presentation of all the papers) are:

### **CONCLUSIONS:**

1. The landscape of higher education is undergoing change around the world and a return to the pre-crisis world is not going to take place.
2. The elite institutions will most probably continue in much the same way as they have done to date but 98% of learners do not attend these and yet they (the mass) are, by most analysts predictions needed and demanding access to higher education.

3. With the advent of MOOCs it has been predicted that in 50 years there will be 10 universities in the world (The Chronicle August 14<sup>th</sup> 2012), this seems unlikely. However, open learning resources will require new ways to validate student learning and mastery.
4. In the US the federal government has intervened at times of social, structural or economic stress and legislated effectively in the past. Will there be the political will to do this again? If not, how will the higher education communities react themselves and take a leadership role in driving for change?
5. In England change is taking place without legislation. The EHEA has no executive or legislative authority and yet as a change agent it has been effective.
6. Across the world quality is an issue – qualification frameworks, learning outcomes, lifelong learning, have been and are being used to seek to ensure access, completion and quality.
7. Is the for profit sector providing an alternative effective quality alternative? Recent reports from the US indicate that this is not the case. What lessons will be learnt? With the development of qualification frameworks, can the academy agree upon what degrees represent in terms of learning so that innovative models irrespective of provider can infuse the market place to meet student demand and at the same time provide an assurance of quality?