

Reshaping the University to fit the Market-place in 2020?

In Palfreyman & Tapper (2014) 'Reshaping the University: The Rise of the Regulated Market in Higher Education' (Oxford University Press) we have tried to explain how English HE has reached the present state of massification & marketisation, of commodification & commercialisation, of managerialism & corporatism. We predict that hefty tuition fees, student consumerism, and the market are here to stay, with universities adjusting and reshaping accordingly (or going bust!) – but also with there being an urgent need for a 'Higher Education Act 2016' (or so) to provide more effective regulation of this market and much greater consumer protection for the student. And all this complex process of national change goes on in the swirling context of (inter alia): the increasing globalisation of HE, the branding of elite HEIs via the global rankings and league-tables, the potential threat of disruptive innovation in the form of MOOCs, and the likelihood of the newly-emerging for-profit providers of HE forcing the traditional public HEIs into fierce price-competition (to the ultimate benefit of the student-consumer and also of the taxpayer otherwise left writing-off approaching 50% of the £200b (in 2013 £s) of student debt by the early-2040s!).

Universities have long been far closer to the market-place than they usually like to admit, indeed since their creation in the Middle Ages and right through to their brief post-1945 Golden Age - in fact merely a Golden Interlude - when they were funded (perhaps over-generously?) by the taxpayer, especially from the early-1960s. The Thatcher 1980s cuts heralded the end of this Welfare State party for HE, and universities promptly rediscovered their taste for money-making as they dived into the lucrative market for international students; more recently they have happily exploited the growing market for graduate taught-courses (PGTs), and (for some, successfully) the competitive market for research funding via the RAE/REF. The ending of the taxpayer-funded binge (now happening, belatedly, also across HE in continental Europe as well as in the

USA) occurred more for reasons of a declining economy and the need for austerity in public services than anything as co-ordinated and sinister as the alleged ideological pursuit of a political neo-liberal agenda, as some like to claim in their battle to save the university as an Ivory Tower perched upon the Acropolis rather than sliding downhill into the murky Agora. Very few nations (oil-rich and low-population Norway?) can afford to finance mass HE in the way that 1960s expanded-elite HE was funded (chunky block-grants to HEIs for teaching and research, sizeable student grants, no tuition fees), and the stark choice becomes: taxpayer-retreat and cost-sharing as the student/family picks up (more of, all of) the tab; or Galbraithian over-crowded public squalor as HE systems decline with under-funding. The latter route has been followed by most of the EU nations; the former route has been taken in the USA and also in England – with both countries now facing concerns over the unaffordability of HE for students/families, and in addition the unaffordability of the government-sponsored loan mechanisms to help with fees. Indeed, the critique of US HE is getting rather strident, including some very hard-questioning of the egregiously light teaching load carried by tenured faculty (as opposed to that expected of the low-pay casuals/adjuncts that do much of the heavy-lifting in US HE).

But, despite ‘UK HE plc’ now being a major export industry (and especially as it opens more foreign campuses), applying market principles to universities’ core activity of teaching UK undergraduates seems to be for many pundits a step too far towards marketization compared to universities contentedly cashing-in on overseas students fees and the fees of PGTs. Thus we have the 2012/13 emergence of the Council for the Defence of British Universities (CDBU), seemingly comprising academic Rip Van Winkles suddenly awakening in Oxbridge SCRs and noticing that since 1985 or so UK HE had massified and begun the decline into public squalor. Why is this revulsion against the market now so strong within academe? Perhaps because turning the UK undergraduate into a paying-customer with expectations

concerning value-for-money alarms those inside HE who fear such market/customer accountability and a loss of control over what had become a very cosy producer-oriented environment for academics (and even more so for their egregiously over-paid but depressingly under-performing management). In fact, judging by the recent announcements from some Russells that undergraduate teaching is now to be taken (almost) as seriously as research performance, it would seem that putting the student 'at the heart of the university' as the ambition of the 2011 White Paper (in flagging fees to be increased three-fold to £9000 pa and thereby empowering said student by turning him/her into a rights-conscious consumer) has been, sadly, about the only way to improve the resourcing of teaching and thereby hopefully its quality as well as its quantum. The academic profession en masse has little interest in pedagogy and teaching, nor is the individual academic rewarded for a commitment to teaching given that career-promotion comes almost entirely from research productivity. The QAA is a toothless watchdog carefully conceived and bred by the HE industry so as never to be caught asking the awkward questions about contact hours or work demanded and effort needed to earn a degree. The professional bodies where a degree is the entry-passport to medicine, engineering, surveying, etc, have been some sort of check on dumbing-down, but most degree courses have no such third-party monitor. The external examiner system as a quality-control device has long been a joke, exceeded in its hilarity only by the expensive internal supposed quality-control agents such as 'PVC (Teaching Quality and the Student Learning Experience)'.

No, tuition fees are the main, if not sole, reliable mechanism for avoiding HE being a nirvana for the vested interests and the rent-seeking behaviour of academe, and also for what is now a bloated bureaucracy containing not-a-few excessively over-paid panjandrums. But more consumer protection is clearly needed for the student, as called for in the OFT's March 2014 passing of the buck to its successor – the Competition & Markets Authority (CMA) – while urging it to examine whether the contractual terms for the

student's legal relationship with the university are in some cases 'potentially unfair and/or otherwise unlawful' – and reminding universities that anyway they are responsible for undertaking their own compliance audits to see that they are operating within consumer protection legislation. Nothing at all new here, and all as discussed in Farrington & Palfreyman, 'The Law of Higher Education' (Oxford University Press) in both the 2006 and the 2012 editions, the latter even offering up a 'Model Agreement' as a template for the student/university contract-to-educate. And the OFT language is restrained compared to the December 2013 submission made to the OFT's consultation by 'Which?' as the respected consumer body now usefully taking an interest in the HE market - and that, interestingly, has the ultimate statutory power to make a 'super-complaint' to the CMA requiring the latter to undertake a 'market study' of what some might see as an inefficient HE market lacking sufficient innovation (where are the more intensively taught two-year degrees and the use of MOOCs to enhance productivity?) and price competition (why are so many traditional universities clustered at the £9000 cap while the for-profits are delivering vocational degrees at c£6000 pa?). And before long we will surely see within the University Senior management Team a 'Director of Compliance' in the way that a 'Director of Marketing' has appeared in recent years.

There are, in fact, similar calls for regulatory reform in US HE so as to engender greater competition in delivery, to the benefit (as generally in any and every market) of the consumer - here a student-consumer being faced with ever-increasing tuition fees given the inability of traditional US HEIs to tackle their cost-disease problem and where the student-consumer (as also in English law), and uniquely so among all consumers, is confronted with the university having the ultimate get-out-of-jail-free card in that any challenge to the HEIs service provision that calls into question the quality of teaching and examining is met with 'judicial deference to the exercise of expert academic judgement'. The US or UK court simply will not go there, in the same way that the OIA is by statute barred

from addressing student complaints based on alleged failure by the HEI to deliver teaching and assessment with the 'reasonable care and skill' normally required (under s13 Sale of Goods & Service Act 1982) of the supplier in normal business-to-consumer contracts (B2C).

Thus, HE in the 2010s continues to evolve as it has over recent decades within a context of steady change rather than in a state of crisis, but now with a more explicit policy steer from the state; and where there is increasing differentiation and diversity among HEIs as well as increased stratification and segmentation inside the HE sector. Overall, then, a shift from an essentially public-funded locus within the Public Sphere and an almost exclusively public model of HE delivery towards a state-regulated market with HEIs operating with greater freedom but also at greater risk and in competition with the new for-profit entrants to the Agora; in essence, from operating within the context of the provider-state to that of the regulatory-state, but stopping short of a completely free-market model given the political risk of facing too much market failure. That said, there is no evidence globally of just what is a supposedly alternative neat and perfect balance of public-private provision within HE: it is all simply a policy matter resolved differently across nations by a combination of political struggle among the many groups seeking government largesse and also of pure economic necessity in terms of just what the government/taxpayer can afford, and indeed as resolved differently within any one nation over varying periods depending on whether the economy prospers or not and upon the whether the political clout of HE waxes or wanes. The whole political process will, in addition, be clouded by government flirtation with such concepts as 'new public management', 'accountability', 'transparency', 'productivity gains', and 'marketisation'; and the political pendulum will swing across an arc made up of degrees of centralisation and control, of deregulation and autonomy.

In the England of 2014 the experiment is, at present, with £9000 fees arising from almost total taxpayer-retreat that has shifted the burden substantially if not quite entirely to the student/family. But that £9000 includes in effect a 10% access/widening-participation tax on young undergraduates ('Generation Debt'!) that might otherwise have been carried by general taxation and hence funded by ageing (and rather wealthier!) baby-boomers in the name of social equity. It also includes a potentially considerable 'subsidy' to academic time for research in terms of the apportionment of faculty time between R and T - which may well be fine where the brand of the HEI is high based on its research performance as almost the only aspect of a university's activity that the global rankings care about (and can actually measure with any degree of accuracy). Hence the student hopes for enhanced employability prospects once a graduate of such a 'top uni' (perhaps being willing to put up with neglect of teaching while the academics earn the research points that enhance the global rank of top uni X or Y). But being obliged to pay £9000 where the HEI's academics are much less research-active and hence where the HEI's brand is much weaker does seem like an inefficient market - except for when the service being sold is a Veblen good where almost all the customer has to go on by way of reliable information about the product/service is his/her knowledge or perception of its obviously high-price... Thus, in the HE market-place the student has no real way of properly assessing the credibility of the degree course other than to assume/hope that, as a Veblen good, its high-price duly signals high-quality; the main HE market failure, therefore, is primarily a lack of reliable information for the student-consumer (there may, in fact, be a confusingly large quantum of information available to the applicant but it is information lacking in quality and hence utility).

It is, however, technically not an example of market inefficiency or market failure for a Veblen good to be sold at a daft price to the gullible, and hence the OFT/CMA has no legal duty to step in and regulate in the interest of consumers the price of (say) Chanel perfume, Gucci handbags, Belgravia mansions, or Manchester

United strip. But in the case of HE – where the afore-mentioned OFT recent report notes that the drift towards the cap of £9000 fees may well indeed be because HE is a Veblen good rather than the result of any unconscious tacit collusion among HEIs, still less of any wicked explicit price-fixing - there is surely a wider political, social, and moral duty not to leave 17-year olds making what will be the next most costly ‘Big Ticket’ purchase in their lives after their future purchase of a house/flat (and perhaps of a pension scheme), and doing so on the basis of their relying on high-price supposedly signalling high-quality. There may, however, also still be a legal duty within consumer law if one argues that these purchasers of HE are (in the language of the relevant statute) ‘vulnerable’ consumers because of their youth. And there is probably an economic reason to bring down the cost/price of HE so that spiralling student debt does not become a drag on the economy as is beginning to be the case in the USA as student debt tops \$1 trillion (a position that will be reached proportionately within the much smaller UK economy well before student debt climbs towards the predicted £200b for the early-2040s).

It is, in fact, anyway difficult to explain how the actual quantum of undergraduate teaching over typically less than 25 weeks a year costs anywhere near £9000 pa other than through the already noted heavy leakage of academic staff time (whether productively or not) into research (in-)activity (but HEIs must always allow time, of course, for all academics to remain up-to-date in scholarship terms so as to enhance their teaching) – although increasing expenditure on management and on glitzy infrastructure can (and does) certainly burn money. And surveys such as those undertaken by HEPI and now also by ‘Which?’ are gradually exposing this inconvenient truth about HE: the latter beginning to use its weight to demand that universities reveal teaching data which the industry’s own KISs (Key Information Sets) certainly and very deliberately do not include! That said, critics of US HE recognised decades ago that there is often a dirty deal struck between academe and student (a ‘disengagement pact’): the former is

relieved of marking and freed up to pursue the cash & kudos of research if the latter is not asked to do much but is still awarded a decent grade (and then the latter rates the former highly in student satisfaction surveys!); all of which probably does not matter in most degrees - other than if trying to produce competent doctors and nurses to save lives or engineers to build safe bridges! In fact, the UUK is said to be looking at US-style 9-month contracts for research-inactive academics...

Probably only increased price competition from a significant number of new for-profit entrants will slowly bring down the £9000 (as might also productivity gains by incorporating MOOCs into mainstream undergraduate teaching) - short of radical action by government capping the taxpayer-funded public loan level available for annual fees at (say) a voucher of £5/6000 and then leaving it to hard-nosed commercial lenders to determine whether HEI X's degree courses justify private lending on the basis of the employability and earning-power of its graduates and hence their ability to repay the debt. And such a process could even mean uncapped fees where commercial lenders are keen to lend, as already in the case of the US Ivy League universities and colleges. Thus, in effect the result of such a radical intervention could be that: the government gets its HE research activity partially funded by the tuition fees funded from commercial lenders who sell the graduate debt to pension funds; the nation gets the science and technology intellectual property from HE that probably is really the key contribution HE can make to the economy, as opposed to churning out ever-more graduates; the top-uni student gets the brand and hoped-for enhanced employability, even if neglected by way of teaching; middle-class parents get the pleasure of seeing expensive private school fees paying off when the off-spring win places at the upper end of the Russell gang of allegedly top universities; the truly research-led/focussed HEIs, as a sub-set of the Russells, get more funding so as to try and remain competitive with the elites receiving extra government funds in such as Germany and China or those awash with endowment as at Harvard, Stanford, Yale, MIT; and hopefully

skills & competencies vocational HE is delivered more cheaply, flexibly, and innovatively (and offering better value-for-money for the student-consumer).

It is just possible, however, that the EU (assuming the UK remains a member-state) will declare itself to have ‘competence’ in HE and force the English universities back towards a public, taxpayer-(under-)funded HE system, saving academe and HEI management having to face up to the discipline imposed by functioning within a market made more efficient via appropriate regulation and by the student acting as an informed consumer (and with consumer protection legislation being applied much more effectively after a one-off scrutiny of the HE market by the CMA and routinely by a tough new regulatory regime for what is in effect tertiary education combining HE and FE). The dead-hand of Brussels bureaucracy would, of course, certainly and rapidly kill off the UK’s ability to compete with such as Stanford, MIT, and Princeton in the USA and hence its having a few top-ten global universities: it is hard to see the dynamic creative cluster of Oxford-Cambridge-UCL-ICL-KCL that matches Boston or San Francisco surviving the EU’s ‘harmonisation’ of HE policy! The bulk of HEIs and those working within them may well, however, prefer a secure and certain, albeit desperately mediocre, future (once again, back) safely ensconced within the cosy Public Sphere, over the risks of self-determination by strenuous hussling in the harshness of the Agora. Then again, a new spendthrift government post the 2015 election might offer HE unlimited taxpayer largesse, having decided that what the economy needs is ever-more graduates and that HE is as important as (say) financing schools, hospitals, and care for the elderly...

As we note in the Preface to the (expected) 25 volumes of the comparative series ‘International Studies in Higher Education’ (details at the OxCHEPS website) the global change process in HE is being driven by: rapid expansion of its demand; reduced public funding for its supply; the increased influence of market forces upon and of globalisation upon its development; and the widespread

political desire to integrate HE more closely into the broad needs of society and especially of the economic structure. In short, a series of common pressures triggering fundamental change that shifts the locus of HE from the public sphere to the private sphere, from the acropolis to the agora – and nowhere, at present, as rapidly and as far as in the case of the English policy experiment with almost total taxpayer-retreat from the direct financing of universities and the shifting of the funding burden almost entirely to the student/family.

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