

THE GREAT HIGHER EDUCATION SCAM?

It is a challenge keeping up with the prolific flow of books from the Johns Hopkins University Press on universities and higher education. Surely the JHUP is now second only to Routledge in this area? - interest declared: Routledge has so far published 21 of the projected 25 edited volumes in the comparative 'International Studies in Higher Education' series – series editors, Palfreyman/Scott/Tapper. Here I want to consider two of the latest from the JHUP, each of topical interest as the Government is now seemingly turning its November 2015 Green Paper on HE into an HE Bill for 16/17.

The legislation will probably seek, inter alia, to make HEPs (via a TEF matching the REF) re-focus on undergraduate teaching of a quality to be value-for-money for the student-consumer now paying £9000 annual tuition fees; and will also try to engender market efficiency by introducing many more for-profit competitors to the traditional producer-oriented quasi-public sector universities through reducing entry-barriers to new commercial players able (it is hoped) to introduce pedagogical innovation and price competition (and in addition by requiring 'exit-regimes' to be established in anticipation of an HEP going bust, so as to protect the student-consumer). In essence, the challenge is how to use this legislative opportunity to regulate in the interests of the student the inevitably imperfect HE market – all as called for in Palfreyman & Tapper, 'Reshaping the University: The Rise of the Regulated Market in Higher Education' (Oxford University Press, 2014).

And it is not only a complex challenge in terms of drafting legislation but also a chunky political challenge, on which stances are already being taken: for example, the former universities minister Lord Willetts recently urged that the future expansion of HE globally will require much greater delivery by the for-profits, while in the 'Financial Times' as the voice of capitalism and markets its veteran commentator Martin Wolf declared that the

market model just does not apply to the university. The Bill, if indeed one emerges, is set for a rocky ride through Parliament, and especially in the Lords where the incumbent vested interests of the universities sector are well represented – expect much rhetoric on the Idea/Ideal and the Purpose of The University and on the crucial importance of Academic Freedom, roughly along the simplistic lines of ‘[quasi-]public good’ and ‘private bad’.

So, first up from the JHUP stable: A.J. Angulo, 2016, ‘Diploma Mills: How For-Profit Colleges Stuffed Students, Taxpayers, and the American Dream’. The author is an American liberal arts academic at Winthrop University and he is very angry with the FPCUs (for-profit colleges and universities). Chapter 1 sets out their evolution from nineteenth-century proprietary commercial and trade schools (as indeed attended by Carnegie, Rockefeller, and Firestone as rather successful alumni); and then through difficult times in the early decades of the twentieth-century (Chapter 2) as new public provision competed for their customers (for instance, the creation of the community colleges network as the US version of our further education, and the growth of the US graduate law school - whose dodgy modern manipulation of performance metrics to lure in buyers of its excessively priced service is vividly chronicled in Tamanaha (2012, University of Chicago Press) ‘Failing Law Schools’, neatly illustrating that the for-profits do not have a monopoly in misleading if not fraudulent recruitment-practices and in cheating the student-consumer).

Post-War decades saw greater regulatory control of the FPCUs as new for-profit operators piled into the huge expansion of the HE industry (the GI Bill era) and as Government saw the need to protect the student-consumer from the less scrupulous among them (Chapter 3 – the drafters of the afore-mentioned HE Bill might perhaps read this Chapter on how the legislators tried to keep ahead of normal commercial practices and indeed widespread fraudulent ones). The next phase (Chapter 4) was the throwing of a financial lifeline to the FPCUs as their students gained access to the new and very generous Federal loans and grants schemes; by

the late-1980s the tales of fraud were amassing and Federal investigations began (in essence, into the failure of the regulatory regimes established in previous decades; again helpful reading for the BIS bods...).

In Chapter 5 Angulo brings us up-to-date: political lobbying by and the ‘financialization’ of the bigger FPCU players takes off; Wall Street and private equity enter the game; the likes of Phoenix, DeVry, Laureate, and Strayer expand rapidly (indeed the owner of Phoenix, the Apollo Group, buys the UK based BPP College for \$600m and turns it into BPP University; similarly the UK charitable College of Law is snapped up by a Montague Capital for £200m and converted into the for-profit University of Law, and MC has now flipped the UofL on to another PE business; while elsewhere Laureate expands into Latin America). Predictably it all begins to end in tears as disappointed ex-students launch class-actions, as whistle-blowers expose alleged fraud, as government agencies and regulators investigate... The Conclusion details the Senate HELP (Harkin) Committee 2010/12 investigation of the FPCUs and subsequent Federal consumer protection actions against some of them. Such bad-press has, it appears, rather popped the FPCU bubble – for now. As Angulo notes, ‘much of what has appeared new and scandalous in the [FPCU] sector is, in reality, old wine in new bottles’ – the regulator periodically has to catch up with the bad marketing practices and poor academic delivery engendered at a time of profitable easy expansion, but, says angry Angulo, ‘it’s likely that the vast majority of criminal FPCU behaviour has gone undetected’: ‘Regulations won’t do [the job]’.

He concludes, like Wolf as noted above, that the profit motive and ‘the core historical mission of higher education’ just do not go together – citing the 2009 \$42m pay of Strayer’s CEO as exceeding the combined salaries of 36 of ‘the country’s best and brightest leaders in non-profit postsecondary education’ (including the Presidents of Yale, Columbia, NYU, Swarthmore, and Vanderbilt all struggling by on about \$1.5m each while Johns Hopkins pays its top-bod almost \$4m – presumably the profits from the JHUP help

make that jackpot affordable!). Angulo assumes that this payment of \$42m is not meant as a reward for ensuring Strayer is ‘adhering to student-centred practices or following just, ethical, and lawful business strategies’ (noting that Strayer spends \$1329 per student on instruction while almost \$7000 goes on marketing and is taken as profits).

His book highlights the broad and massive problem for Government in trying to regulate the delivery of services and protect their users/consumers from either producer-capture where a public sector entity is involved and ends up being run for the convenience and rent-seeking behaviour of its employees (as, arguably, with HE generally in most nations), or from the excessive profit-making created via misleading advertising and cutting corners where the private sector is used (as it seems with the US FPCUs). In England progressively since the £1000 tuition fee of the early-2000s to the £9000 of 2012 we have moved UK/EU undergraduate activity into the market-place to sit alongside the lucrative markets universities have over recent decades very happily operated in international student fees and in postgraduate taught courses (notably in their business schools). Doing that has been one public-policy solution to funding mass higher education; the other would have been to operate a free but impoverished mediocre crumbling HE system as many countries do. There is, obviously, no perfect prescribed solution for the magical balance of private v public funding of HE. One route not explored anywhere, however, is to radically re-engineer how HE is delivered and thereby to make it less costly; and that is the subject of the next JHUP book...

A US university manager, Jon McGee, in ‘Breakpoint: The Changing Marketplace for Higher Education’ (2015) refreshingly asks awkward questions about the HE industry – refreshingly because so much stuff on universities is just a repetitive whinge from humanities faculty about how they should be given more taxpayer funding as in the Halcyon Days and not be expected to tediously account for how it is spent, to alter their working practices, blah blah, etc etc (there is a long list of such books in Palfreyman & Tapper (as updated at

the OxCHEPS website), to which can now be added a recent JHUP output by way of yet another Corbyn-style naïve demand for free well-funded mass HE in an age of adverse national demographics and global fiscal austerity: Ferrara, 2015, 'Palace of Ashes: China and the Decline of American Higher Education').

McGee scopes out a 'New Landscape for Higher Education' centred on the need for the HE industry to adjust painfully to five changing key dimensions re: Accessibility, Affordability, Accountability, Sustainability, and Differentiation. He maps out the pressure upon HEPs (in terms of their mission, management, market) to balance the expectations of students/families (their ability and willingness to pay) with public policy (concerned with value, affordability, and price). He traces 'the perceptual transformation' of US HE: pre-War as a luxury good; immediate post-War as an earned privilege; 1965-1990 as its commodification; and now as a necessity good.

And he recognises legitimate demands from the consumer for 'new providers, new ways of obtaining degrees, new degrees, calls for shorter times to degree' as 'a new reality that many traditional institutions find uncomfortable'. These are, in short, the formidable 'Forces of Disruption' ('demographic disruption, economic disruption, and values disruption') as also addressed by many other commentators on HE (such as Clayton M. Christensen ('The Innovative University') also listed in the 'Reshaping...' book), all concerned that universities are organisational ostriches with heads buried in the sand. McGee calls for the head to be lifted out of the sand, for 'disruptive adaptation' – 'market adaptation', 'management adaptation', 'learning adaptation'. As if responding to the Ferraras of the genre and to the UK Council for the Defence of Universities (seemingly sunk sans trace after a hyped launch a year or so back?), he concludes: 'Extraordinary pressure to reduce or more effectively manage both the price and cost of college will define the foreseeable future. No amount of wishful thinking about economic growth and a return to halcyon days gone by will change that basic reality for most institutions. How much should a quality education

cost? How should it be priced? Are the relationships of price, cost, and value clear or even partly clear?'

In terms of our parish-pump on this side of the Pond, probably any redesign of HE delivery to cut costs and hence fees must involve slaughtering a herd of sacred cows – for instance, the supposed magical link between effective teaching and active research (hard to argue for when most academics in most universities are not RAE/REF active; and, where they are, they are probably relieved of undergraduate teaching so as to maximise their research value, their teaching being handed to cheap casual adjunct lowly minders); or the pattern of undergraduate teaching based on the Middle Ages that leaves infrastructure grossly under-used for 4-6 months a year (and anyway just what does a research-inactive academic do during July and August and on into September if not updating his/her lecture notes? – perhaps now teaching on profitable new taught-masters courses?); or the need for automatic sabbatical leave when some taking it seem not to be delivering corresponding research output (unless updating lectures really takes up a whole year in seven?). But, of course, it is not just chalk-face academic delivery where cost restructuring is required – there is scope to axe 10-20% from administration/management costs in the way that the private sector and parts of the public sector have done, starting with excessive remuneration packages for the Senior Management Team and dealing with 'Administrative Bloat'.

Yet will this foretold supposed pressure for change ever really apply with crushing force? Perhaps only if the student-consumers wise up to the depressing answer to the question of 'Will College Pay Off?' – the title of, for once, a book not emanating from JHUP: Cappelli, a Professor of Management at The Wharton School (Public Affairs, 2015). It is aimed at the young American trying to decide whether to incur c\$50-150k of debt in the US HE system (it is c£50k or c\$75k in English HE): hence the sub-title of 'A Guide to the Most Important Financial Decision You Will Ever Make'. Cappelli notes the massive growth in US HE – 1970 to 2010, a four-fold increase in Associate Degrees (often from FPCUs), a doubling of BAs, a trebling of MAs,

and PhDs up two and a half times; and also the appallingly low graduation rates in the US HE industry, even allowing for the growth of remedial activity, as well as just how little students actually study and learn or are prepared for employment.

He asks in this context whether and why the cost of and the student's investment in going to college can ever really pay off, especially if he/she is one of the many drop-outs or given the profoundly changing jobs market that simply does not provide enough proper graduate careers even if he/she eventually emerges from college with a degree. Moreover, frustratingly for the student, the more he/she might focus on supposedly vocational employment-related courses the less is the preparation for the constantly changing world of work - compared to, ironically, following a traditional major in the liberal arts.

So, the graduate-premium (about which universities make claims that in the financial services industry would lead to persons being 'arrested'!) is eroding fast as the over-production of graduates continues – in many countries (he cites South Korea, China, Italy) the result is graduate unemployment; in the USA 'the college grads take [low-paid] jobs that otherwise would have gone to high school grads'. If the punters cotton on ('There are colleges where attending them will do nothing for your future earnings...') and start to question the economic sense of flocking into HE, the industry may have to rejig its business model in the radical way predicted by McGee et al – reducing supply so that graduates are not over-produced and/or reducing cost/price so that the investment equation balances as the graduate debt burden falls (now mainly at 7% interest rates), a burden at present topping \$1 trillion in the USA and 'holding back growth of the economy' as perhaps the next trigger for a sub-prime style bust and also featuring in the current presidential election debates. Cappelli provides the reader with details of websites that help calculate whether HE pays off at college X for degree Y – data that in the UK will soon also be available, and probably an unwelcome development for the HE industry.

In short, US HE is too costly in relation to graduates' prospects in the US labour market – its fees have increased more than even US health-care costs, let alone way ahead of general inflation and average family income; and the subsequent fading employment prospects do not make HE for many students a sensible investment at that level of cost/debt (and even in the vocational degrees which supposedly fit labour market demands). Moreover, if the student/family then have to enhance the graduate's employment prospects by, say, funding the new concept of fee-based 'brokered internships' to gain experience of work or by adding on one of the growing number of practical certificated on-line courses now being offered along with work-experience boot-camps, the overall investment can look even less attractive: 'Both students and their families are often taking on considerable financial risk now to pay for college... These are big financial bets for students and their families, and there is a lot of risk in them now... the payoff from many college programs – as much as one in four - is actually negative [, adding] nothing to the market value of the students.'

Cappelli concludes: 'A college education is a huge financial decision for many families, and the rhetoric that college is the only path to a good job will push many of them off a financial cliff... We wouldn't be allowed to give that kind of financial advice if we were in the investment business, and we shouldn't give it here... Suggesting that everyone should go to college without thinking how they are going to pay for it is reckless. Consumer protection for students and their families is worth considering...'. So, does all this amount to 'The Great Higher Education Scam'? – one operated not just by the US FPCUs and by the non-profit American Law Schools, but by the entire US HE industry? As Cappelli says: 'don't count on the college for accurate advice'.

How can this happen, that the young applicant is unable to trust even the non-profit HEP? An older book – Martin (2011), 'The College Cost Disease: Higher Cost and Lower Quality' (Edward Elgar) – carefully explains the economics of the HE industry, whether for-profit or non-profit, in delivering an 'experience good' where 'quality

cheating by providers is always an issue'. The 'network of incentives within the academy... [is] not properly aligned with the public interest... This misalignment of incentives leads to extravagant increases in cost per student and a secular decline in quality.'. The under-informed, ill-informed, and (deliberately, perhaps even fraudulently?) mis-informed punter mistakenly assumes price is a proxy for quality ('The Chivas Regal Anomaly'). Here, then, is indeed a market in dire need of effective regulation and consumer protection, one where 'quality cheating is a constant problem' as 'the incentive balance between teaching and research creates one-dimensional faculty members who are too intensively focussed on research... The neglect of teaching leads to a secular decline in quality.'. Moreover, US HE 'has the worst cost-control record of any sector in the economy'. Martin calls, inter alia, for much better information to be supplied by HEPs to students/families, information which 'should be audited and carry sanctions for misrepresentation'; and for the agency problem in universities to be addressed by more effective governance control both of management and of faculty rent-seeking behaviour.

And thus, over here in England as English HE follows the US model (with indeed proportionately higher tuition fees against the US average), the BIS is absolutely right in its Green Paper and (one hopes) in its follow-up HE Bill to go for a TEF as a much-needed and belated balance to the unintended distortion caused by the RAE/REF and by the global rankings stressing exclusively research output. It has a clear duty to provide a much more efficient regulatory framework as Government retreats from the direct taxpayer-funding of HE and exposes vulnerable young student-consumers to the embedded 'quality cheating' of universities and their reluctance to adjust their business model so as to offer cheaper and quicker routes to graduation (the Coventry University 'Coventry College' spin-off being the honourable exception). That duty extends to trying to introduce greater organisational and price competition from new entrants, for-profit or otherwise, for the monolithic and moribund incumbent institutions.

Yet, in trying to introduce via legislation greater consumer protection for the student (the 2015 urgings of the CMA for universities to respect the application of the new Consumer Rights Act seemingly having been largely ignored within HEIs, along with the views of 'Which?' as the Consumer Association), BIS and the drafters of the HE Bill should consider legislating to end the current immunity of universities against challenges to the quality (but not any promised quantum) of their teaching under the student-institution B2C service contract, an immunity admittedly prevailing in all legal jurisdictions globally and one arising from the granting of judicial deference to the proper exercise of academic judgement (this same concept also blocking the OIA from investigating student complaints about poor teaching) – see Chapter 6 on 'The Student as Consumer' in the 'Reshaping...' (2014) book cited above and also Chapter 12 on 'The Student-HEI Contract' in Farrington & Palfreyman (2012, Oxford University Press) 'The Law of Higher Education'. As such legal immunities have progressively been removed by the Supreme Court for solicitors, barristers, and most recently expert witnesses, and as English HE ceases to be a free public good by becoming one paid for by the student (sometimes payment being made to for-profit commercial businesses), it is an anachronism to give such immunity to entities functioning as businesses, especially when much of their activity is delivering skills and competencies vocational degrees rather than fancy nuanced teaching at the intellectual edge of Philosophy or involving great issues of academic freedom.

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