

## Regulating higher education A comparative perspective

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To say that higher education is in a state of flux is stating the obvious. The past decade has witnessed a further expansion in student enrolment, growing internationalisation in academic as well as in student recruitment, and considerable funding cuts, at least in those countries most affected by austerity-related public expenditure cutbacks. In the UK, so-called alternative providers (for example, BPP) have emerged that offer not just professional qualifications in accounting and law, but are vying to enter other disciplines. There has also been growing interest in the potential impact of digital learning technologies, most of all so-called ‘Moocs’ (massive open online courses), on the viability of traditional forms of teaching delivery. Finally, private international ranking exercises have received considerable attention, such as the QS World University Rankings or the more subject-specific *Financial Times* ranking of international business school programmes.

The UK offers a particularly interesting case for the study of higher education and its regulation. One key challenge has been the growing diversity across the different countries that form the UK, not just in terms of tuition fee regimes. In England, the past five years have brought about changes in the funding regime, with the elimination of teaching grants paid to universities for all but some select disciplines (the so-called STEM subjects covering science, technology, engineering and mathematics). Instead, funding was to be provided through a considerable rise in student tuition fees that, in turn, were backed by the taxpayer. Revised calculations by the Institute of Fiscal Studies in 2014 suggested that the new funding regime was unlikely to reduce taxpayers’ involvement as up to 43 per cent of all fees would never be fully re-paid (original calculations had put this figure at 28 per cent) (*Daily Telegraph*, 24 April 2014). Scotland was, at the time of writing, engaged in consultations about government-imposed changes in university governance requirements (*Financial Times*, 3 April 2015). Furthermore, the existing system of capping student places was abolished, allowing universities to expand student places. On the (UK-wide) research side, the latest round of the Research Excellence Framework (previously known as the Research Assessment Exercise) included changes in emphasis, especially with the addition of ‘impact’ as an assessment criterion.

These developments placed considerable strains on the existing institutions of higher education regulation. However, how do these developments, especially those in England, compare with those elsewhere? There is dearth of research into the regulation of higher education, especially in comparative perspective (Dodds 2009; Capano 2011;

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Frølich 2011; Dobbins and Knill 2014; Teelken 2015). Existing studies have focused on the Bologna process and on aspects of managerial performance management (Curaj et al. 2012; Hoareau 2012, 2011). This short article offers a brief introductory comparison of regulatory developments.

### *Different modes of regulation*

The regulation of higher education involves different objectives and is, traditionally, associated with a number of different regulatory modes or styles (Hood et al. 2004). For example, conventionally universities are seen as places of considerable competition or rivalry when it comes to access for students, as they present gateways to social mobility. Similarly, they are also places of rivalry in that academics seek recognition and status through findings, publications and research grants. At the same time, there have been dominant themes regarding ‘academic freedom’ (granting academics the right not be muzzled and autonomy in their work) as well as institutional autonomy from government, even where appointments and curricula may require *ex ante* vetting by ministries. This limited hierarchical oversight is matched by a strong emphasis on mutuality, be it in collegiate decision making at the university level or the wide-ranging peer review convention that guides the worlds of research in particular. Finally, there have also been elements of unpredictability in the allocation of peer reviewers and in opportunities for job openings and promotion. These different modes of regulating higher education are summarised in the table 1 below which builds on Christopher Hood and colleagues’ comparative studies of regulatory regimes (Hood et al 1999; 2004).

Table 1: Different ways of organising regulation in higher education

<p><b>Contrived randomness</b></p> <p>Anonymity of reviewing process, circulation of staff, changing evaluation/assessment criteria</p>	<p><b>Oversight</b></p> <p>Reporting to ministries/agencies; growing inspection and evaluation systems; curriculum setting; appointment by ministries</p>
<p><b>Rivalry</b></p> <p>League tables, competition over grant funding and student recruitment.</p>	<p><b>Mutuality</b></p> <p>Academic peer-review, collegiate decision-making, emphasis on decision making by committee</p>

These four ways of regulating have their benefits – mutuality with its stress on professionalism, rivalry with its stress on ‘competitive spirits’, contrived randomness with its stress on gaming-avoidance, and oversight with its emphasis on rules and consistency. All four modes also come with their disadvantages: mutuality with its potential for unaccountable ‘clubbiness’, oversight with its tendency to juridify and centralise, rivalry with its tendency to reduce solidarity, and contrived randomness with its tendency to destroy trust. Whether it is helpful to advocate ‘hybrid’ solutions consisting of one or more combinations of these has been a matter for considerable controversy. Some, such as Hood (1998) and Verweij and colleagues (2006) suggest that hybrids or ‘clumsy solutions’ may offer a way of reducing potential side effects;

others note the inherent contradictions and conflicts that such attempts involve (Lodge and Wegrich 2005).

There are a number of key themes in the study of regulation that can be used to explore the changing character of regulation in higher education and its direction of travel. One is whether there has been a wider shift towards an ‘audit explosion’, as diagnosed by Michael Power (1997) in the late 1990s, using experiences in the UK as an illustration. Accordingly, we would expect to witness an explosive growth in ‘audit’ to assess higher education institutions. This growth in audit may therefore be seen as a rise in oversight – but may also be seen to bring its own increase in contrived randomness as assessment criteria are continuously being shuffled around.

Furthermore, the supposed shift towards an increasingly international and marketised form of higher education also implies a growing move towards more competition and rivalry, whether in terms of international and national ranking exercises, or competition for students, staff and research money. In other words, positional competition may be said to have increased considerably.

Taking these trends together, one might expect the past two decades to have witnessed a decline in mutuality and a growth in both oversight – given demands for audit, evaluation and other procedural regulatory instruments – and rivalry. This in turn might be expected to have consequences for the nature of higher education institutions themselves, namely a shifting of organisational resources away from the front lines of teaching and research towards a ballooning of armies of university-based internal quality checkers and other administrators.

### *Where were we then?*

Over ten years ago, Christopher Hood and colleagues conducted one of the few comparative studies into the regulation of higher education within the context of a broader interest in changing patterns in the control, or regulation of, modern government (Hood et al. 2004). The overall direction of change pointed to the rise of an ‘oversight explosion’ (with the remarkable exception of the US), especially with the already noticeable Bologna-related changes which had given rise to the ‘European Network of Quality Assurance in Higher Education, ENQA. The rise of oversight was, however, largely of an indirect kind, namely by relying on league tables and peer-led evaluations.<sup>2</sup>

Among the broad trends, the national constitutional differences between the higher education systems of the US, England and Wales, Germany, Japan, France, and the Netherlands remained remarkable. These differences were particularly prominent in view of how universities have been embedded in the institutions of the state, their closeness to ministries (in those systems where professors were full-blown civil

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<sup>2</sup> This section is a summary of the findings presented in Hood et al. (2004).

servants, appointed by ministers) and how far the logic of marketisation had already started to creep into their higher education sectors.

In England and Wales, funding and therefore central control. was exercised by HEFCE on the basis of certain criteria. However, oversight was accompanied by a high degree of rivalry for students, and league tables and other benchmarking exercises, especially relating to research, were already highly prominent. The regulation of teaching quality reflected a mixture of mutuality and oversight in that centralised oversight by the QAA was exercised by fellow academics rather than ‘independent’ inspectors. In the assessment of research, regulation reflected more a combination of mutuality and rivalry as fellow academics judged the work of their colleagues which then resulted in judgements that were widely used to benchmark universities. On its own, therefore, the regulation of England’s higher education sector displayed many features that were noted above, namely a growing emphasis on markets and on audit, accompanied by a growth in internal university management to manage teaching and research aspects within institutions (Scott 2004a).

In contrast, in the US, there was comparatively very low interest by federal and state level institutions in the performance of higher education institutions. Instead, an important role was played by accreditation bodies whose assessment was critical for access to federal support for student loans and research funding. Competition for research grants and students was high. Whether or not recipients of research grants were audited at the end of their grant was, however, a matter of chance (Peters 2004). In Japan, a trend towards reduced ministerial oversight for national universities featured prominently in the early 2000s. This oversight was absent in the case of the large number of private universities. Accreditation bodies played a significant role, and the state had become involved in centralising and harmonising accreditation requirements. Finally, there was considerable competition for research funding and students (Hirose 2004). Australia, often seen as a ‘natural leader’ by UK-based observers had, over the years, witnessed the move of the higher education sector to the level of the Commonwealth, and was characterised by centralised reporting and auditing towards the relevant ministry which, in turn, decided on research grants and funding levels. Unlike New Zealand, no shift towards a competitive research assessment and other league-tabling exercises had taken place (Scott 2004b).

France was characterised by non-public inspections and close relationships to the central government ministry. Appointments and selection were on the basis of peer assessment and formal examinations. Very little rivalry existed across institutions in comparison to other national examples (de Montricher 2004). Germany was, at the turn of the century, witnessing a continuation of tripartism which granted students considerable representation in university management. There was, however, a diagnosed decline in the status of the ‘professor’ as reflected in the slight increase in mandatory teaching requirements and the reduction of other perks (such as private bathrooms). In turn, this encouraged a greater degree of collegiate decision making at the departmental level. There was also a change in the relationship to the sub-national (Land) ministry, with tendencies towards a growing managerial autonomy being granted to universities. Appointments nevertheless needed to be approved by the ministers responsible. While

research grants were allocated on a limited competitive basis, there was very little emphasis on rivalry in terms of student recruitment or other benchmarking activities, especially concerning research output (Derlien 2004). Similarly, the Netherlands were seen to witness only limited rivalry when it came to research funding. There was a move towards growing university self-management and thus also a rise in emphasis on ex-post quality control. Activities such as accreditation and evaluation were mutuality-based (Huisman and Toonen 2004).

### **Where are we now?**

By 2015, the UK had witnessed increasing diversification in its higher education policies due to devolution. Universities in England witnessed a change in funding regime (from grant to state-backed tuition fee-based income), the assessment of teaching quality had moved to a 'regulated self-regulation' model (THE 2001), a change in research-oriented assessment that emphasised 'exceptional' research output as well as 'impact', and a separate regime that sought to encourage 'fair access'.

How then does the UK fare in comparative perspective? Based on a small survey, what can be said about changes in higher education regulation? One country that was said to have witnessed hardly any changes was the Netherlands, although discussions about changes in the regime were said to be well-advanced at the time of writing. In the US, growing concerns emerged regarding student loans. This triggered federal and state government attention regarding the proliferation of private, for-profit organisations, many of which were deemed to be of dubious quality. In addition, there was a growth in procedural regulation that applied in particular to medicine, and the importance of (private) ranking exercises had grown even further. Similarly, rivalry over research funding had increased.

In Japan, concern about international competitiveness and demography resulted in a growing governmental interest in the higher education sector. This meant, on the one hand, a continued decentralisation of managerial tasks from the ministry to the national university level. National universities had been turned into independent administrative bodies with more discretion in terms of hiring and salaries. However, there was also a parallel centralising trend in terms of managing student numbers in a highly diverse sector of about 800 universities. The central ministry (MEXT, the Ministry for Education, Culture, Sport, Science and Technology) cut subsidies to private universities in metropolitan areas where actual student intake exceeded their quota by more than 20 per cent. The government's central objective was to create a number of world-leading 'Type-A' institutions, partly by enhancing international academic recruitment and collaboration, changing the teaching year to facilitate international exchanges, reducing professors' autonomy vis-à-vis university management, and introducing performance-related components in the reward system while reducing tenure.

Similar concerns about global competitiveness, as expressed in international rankings, were in evidence in France and Germany. In France, there was a continued, and growing, move towards granting universities further autonomy, such as in terms of managing their payroll. This, in turn, generated a number of financial problems in the sector. There was also a degree of control specialisation as funding decisions moved

towards a degree of performance-based budgeting, based on a centralised national agency that was concerned with funding allocations (HCERES, *Haut conseil de l'évaluation de la recherche et de l'enseignement supérieur*, created in 2006). Similarly, the government also required the regional coming together of universities, research organisations and *grandes écoles* (Comue). There was also more rivalry in terms of research funding as funding became increasingly project-based under the auspices of a national research council (the ANR, *L'Agence nationale de la recherche*), while teaching quality witnessed a rise in evaluative oversight. Overall, there was a growing bifurcation between institutions identified as 'national champions' (*grand emprunt*) and others.

While rivalry over student recruitment was arguably still limited in France, it had become increasingly prominent in Germany. The idea of identifying 'national excellence' emerged in the context of competition for federal funding under the so-called 'excellence initiative' (although funding decisions were accused of accommodating federal sensitivities). This was a further move towards granting universities managerial autonomy, and growing rivalry when it came to the recruitment of students. The latter was also in evidence when it came to seeking international students by organising English-language programmes. More generally, there was a rise in *ex post* evaluation and audit, especially due to reforms inspired by the Bologna process and changes to the German degree-type structure. This in turn, facilitated changes in the way university courses were regulated and evaluated so as to be 'Bologna compatible'. This process had, in the late 1990s, started as a largely peer review process, but this decentralised accreditations system led to the creation in 2002 of a centralised 'standard-setter', the *Stiftung zur Akkreditierung von Studiengängen in Deutschland*. The goal of this body was to set standards that individual accreditation organisations were to maintain, both in terms of programme- and institution-specific evaluations. In other words, the German world of teaching quality evaluation had already moved towards a scenario that was being considered in the context of the English QAA (Quality Assurance Agency for Higher Education) in late 2014 (*Times Higher Education* 2014).

Finally, developments in Australia foreshadowed to some extent developments in England. However, they were also characterised by ongoing uncertainty about the future of the regulatory framework. In 2008, the *Review of Australian Higher Education* (the Bradley Review) marked a shift towards a regime that subsequently moved towards student-place uncapping, tied to fixed pricing. There was an overall reduction in the government contribution per place that was compensated by uncapping prices and therefore making 'users' contribute further to their education. As regulator, the Tertiary Quality and Standards Agency (TESQA) was established in 2011 to replace the Australian Universities Quality Agency. TESQA was to address criticism that earlier attempts at auditing quality had not led to robust assessments. Instead, a focus on targets and threshold standards was to ensure quality assurance, undertaken on a 'risk based' basis. TESQA's subsequent attempts at establishing higher education providers' risk profiles ended in concerns about regulatory burdens. Complaints by higher education institutions led to a further review of TESQA's activities and attempts at reducing documentation requirements.

## Conclusions

This overview points to a number of commonalities. One is that there has been a continued oversight explosion in the higher education sector across countries. As in the case of the diagnoses from over a decade ago, these changes were mostly of an indirect kind, namely, by granting universities the ‘discretion’ to develop their own institutional self-assessment regimes, which in turn were then evaluated. In other areas, such as the US with its student loans crisis, Japan with its declining population numbers and France with its mandatory reorganisations, interventions could take on a somewhat more direct form. Australia’s change in funding regime and its subsequent battles over risk-based regulation, institutional profiles and standards provides for further evidence of the dual dynamic of growing marketisation and competition that is coupled with growing hierarchical oversight and reduced discretionary professional judgement.

The oversight explosion continued to be associated with variation over assessment criteria, and therefore a degree of contrived randomness. Mutuality remained central in terms of academic peer assessment, but arguably came increasingly under pressure in a world of professionalised university management. Most prominent, however, was the growing internationalised nature of positional competition among universities that went increasingly beyond national boundaries. This, in turn, raised further questions as to the purpose and scope of national regulation of higher education.

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