Regulating the risk university

Roger King considers options for English higher education

Following the UK general election in May 2015, where should a new government focus its attention in considering policies for higher education in England? Some view will have to be taken without too much delay: the previous Coalition Government found it impossible to implement a planned piece of primary legislation to provide a new regulatory architecture for higher education to accompany its market reforms for England, partly to spare Liberal Democratic embarrassment over its tuition fee volte-face. The key issue will be over the line to be drawn between advancing institutional freedoms in line with market reforms, and yet regulating to protect the public interest by constraining such autonomies.

It should be noted, however, that higher education is a devolved matter in the UK; Scotland, Wales and Northern Ireland have eschewed many of the policies established by the UK Government for England, especially in their reluctance to follow marketization and student-fees policies. Moreover, universities are also subject to international flows of students becoming more competitive between countries and the constraints on fees that they are able to charge. Nonetheless, as predominantly status-seeking bodies, high reputation seems able to trump price signals for many elite institutions.

The context for all political parties is a further dilemma; universities have become increasingly accountable to a range of stakeholders for their performance and management of taxpayers' and other funds. There is intense media interest these days in what universities are doing, reinforced by regular publication of various national and global 'league tables' of university performance (or, really, their comparative reputations). As a result, the so-called 'risk university' is actually in danger of becoming the 'risk averse university'.

The 'risk university' may be regarded as exhibiting four key characteristics. Firstly, it corporately regards entrepreneurial risk taking as a potential source of value as well as hazard in its status and economic competition with other similarly located universities. Secondly, the university is increasingly subject to risk, not only as a result of increased marketization and often declining per capita public funding, but also to its organizational reputation through external – often media-amplified – evaluations by standards setters, such as those found in national and global university rankings, professional accreditation processes, and the activities of quality assurance agencies and other regulators. Thirdly, the university is increasingly required to introduce risk management models as a key issue of corporate governance, in part as a response to a rise in external threats (national and global), and also as a result of encouragement by regulators (such as the Higher Education Funding Council for England). Finally, in some countries, the university is increasingly subject to the introduction of risk-based regulatory approaches by government-supported quality assurance and funding bodies. Operating with broadly deregulatory objectives in mind, these regulators focus selectively on those institutions judged to offer the most risk to themselves and to the system overall. They thus exercise diminishing regulatory attention on the majority of perceived low-risk providers.

Some governments, especially those on the centre-right, tend to see not only ever increasing accountability demands on universities as blunting their risk appetites and entrepreneurial zeal, but also regard the type of accountability as a problem. Although accountability and transparency have been triumphant regulatory principles in recent years around the globe, there is no universal agreement on how these should be exercised. While lawyers often regard accountability as constituted by the processes of legal enforcement, and theorists of democracy and organization see them as best exercised through electoral and other forms of political participation, plus through hierarchical authority, neo-liberal and market policy reformers feel that such processes generally within societies have gone too far and threaten risk-taking. Rather, universities like other organizations, are best held accountable in this view through the disciplines arising from the multitude of well informed individual consumer decisions found in competitive markets (not by bureaucratic rule making).

Nonetheless, as with other sectors, higher education systems are generally characterized by 'regulatory regimes', in which a combination of self-governance, external state regulation, and the impacts of competitive markets all play a role. Individual academic freedom or autonomy is seen in some systems (such as the UK) as best protected by institutional autonomy, including universities' economic independence, while elsewhere, such as continental Europe, there has been a long tradition of seeing the state as the guarantor of individual autonomy –with the university as a collective actor rather more poorly placed and weaker in this regard.

In the search for innovation and global competitiveness, ministers have been concerned that red tape and constant public rebuttal and promotion results in universities recoiling from taking any risks at all and falling behind other countries. A strong domain assumption in political culture – not least in the so-called West – has been that scientific progress and innovation relies on the freedom and creativity (including the capacity to refute and test accepted truths) of universities.

Of course, personal autonomies in universities enjoyed by academics increasingly been overshadowed by increased organizational identity and freedom. The state (as principal) steadily has devolved more organizational autonomy to universities (agents) in many countries as part of a new modality of strengthened control. In this view, the local knowledge possessed by institutions is beyond the capacity of governments.

Consequently, universities can exercise more effective internal control over their staff than can governments, provided, of course, that they develop the managerial and other capacities to enable them to do so. Institutions have become incentivized to accept new corporate structures through law, markets and competitive status rivalry. Autonomy has become a means of control rather than a route to evading it.

Nonetheless, does the higher education sector in England need more regulation or less; or more institutional autonomy and less external political constraint? Two cases – charitable status and tuition fee levels – show that the answer is not necessarily the same for all circumstances. Charitable status for nearly all established universities and colleges not only provides tax advantages in comparison with other, non-charitable, corporatized entities (although gradually these are being eroded on such issues as VAT) but underlines the essentially public purpose of education. Recent reform proposals by ministers in Wales go so far as using charitable status to define the legitimacy of higher education providers for the purposes of public funding, regulation, and the freedom to operate (thus essentially excluding private for-profit entities).

In England, however, recent market reforms suggest that the next logical step for at least some institutions would be to dispense with charitable status altogether, not least as this prevents the raising of equity investment by issuing shares. Although most universities in England are perceived as private bodies, they do not have the full rights of private ownership enjoyed by commercial companies (such as the ability to disband themselves). This hampers one possible solution to the prospect of more institutional failures under a more marketized system – takeovers or mergers between for-profit commercial education providers and established universities and colleges.

New legislation should give higher education corporations the power to dissolve themselves, or to adopt through Board decision, another corporate form, such as a company limited by shares or a public limited company (plc). Nor is there any reason why most of the pre-1992 universities should be required to go to the Privy Council whenever they wish to change their constitutions.

An area, however, where further freedoms to institutions should be moderated by regulation is around student finance and tuition fee levels. A number of 'high branded' universities especially have called for governmental caps on domestic undergraduate fee levels to be eliminated, thus allowing market forces greater play while providing increased resources to allow continued excellence and global competitiveness. Yet the comparison with the freedoms enjoyed by the private commercial sector in setting prices is not valid here.

Universities are not simply recruiting student consumers as happens in pure retail markets. They are doing so in the context of a publicly funded student loan system. This confers enormous market power on institutions – a power that requires the retention of tuition fee caps.

The student loan system allows students, who generally lack the financial resources at the time of enrolment to pay up-front fees, to defer payments until later in life when they can better afford them (or not to pay if earnings are too low under the scheme). Higher fees tend not to defer demand – students, even if they are from quite poor backgrounds, pay them because they can defer loan repayments. Besides, what else are they supposed to do? Having set out to become well qualified in a professional area (in line with family, school and other expectations) they are not going easily to switch to plumbing or any other skilled trade. They pay up because the risk (which is relatively long-term) appears worth taking.

Universities and colleges are given a strong, publicly funded, market power if they are not constrained in what they can charge in the context of the student loan system. Institutions are not simple, stand-alone, service retailers. Governments have provided them with a monopoly-type advantage through the provision of student loans which follow an admission decision rather than a credit-checking one (in comparison with most other loans).

Moreover, institutions sell positional goods which means that most have to follow price leaders to maintain their reputation (and their finances). Market competition – making institutions honest on prices – hardly comes into it. Governmental controls on tuition fee levels should stay in place for some time yet.

This is an argument to maintain price regulation to protect students, not necessarily to reduce (rising) levels of public expenditure on the student loan system. The sustainability of the student loan system has been questioned but we cannot be sure how high will be levels of student non-repayment in thirty years time at this stage. But we should recognize that student loans are different from most other credit arrangements. The system is designed to permit non-repayment, not least on grounds of social access and career earnings, and to share some of the risk of paying to go to university or college between taxpayer and student. Maintaining the regulation of tuition price levels provides an example of defensible controls over universities that can be justified as being in the public interest.

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