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"Hullabaloo in the Groves of Academe": The Politics of 'Instituting' a Market in English Higher Education

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Forthcoming in P. Zgaga, U. Teichler and J. Brennan (eds.) (2012) *The globalisation challenge for European Higher Education: Convergence and diversity, centres and peripheries*, Bern: Peter Lang.

Abstract

In this paper I examine the UK Coalition Government's policies aimed at putting into place a regulatory framework to create a competitive market in English higher education. I explore the complexities of this highly charged political process, and the ensuing 'hullabaloo' it has created. This is because, as Polanyi (1992) remarks, instituting a market is a political process, conditioned by power, competing interests, contingency and contradictions. I show that whilst some elements of Coalition policy build upon the previous Labour administration's proposed reforms, in key aspects they also depart from them, particularly in terms of privatising the HE sector and opening it to for-profit firms, new forms of financialisation, governance through risk, and consumerism. In ambition, then, the Coalition's HE policy represents a potential radical transformation in the governance of the sector, and what it means to be a student. Revealing the strategies to legitimate and 'fix' the new sectoral rules for a competitive market in a regulatory framework is important if we are to fully understand the wider politics at play, and the longer-term implications of these for the sector, for students and for society.

Introduction

Observers of higher education reform in England could be forgiven for wondering what the commotion is about concerning current UK Coalition Government policies aimed at creating a competitive higher education market (Browne, 2010; BIS, 2011a, 2011b). After all, for more than two decades, terms like competition, marketisation and privatisation have circulated as shorthand descriptions of reforms within the sector (cf. Deem, 1998; Scott, 2000).

So what is so new about the Coalition Government's higher education reforms launched immediately following their election in May 2010, which has sparked a mix of responses: from violent student demonstrations and union protests, to regular consultations between the Government and potential new private providers? How are these policies similar to, or different from, previous initiatives in the sector? And how might we understand the nature, scope and consequences of these developments for students, the academy, and society?

In this paper I will be suggesting that concepts like the 'privatisation' or 'marketisation' tend to be used as if they were describing relatively homogeneous phenomena. Yet this is far from the case. For instance, in the broadest of senses, the concept of privatisation might refer to privatisation *in* as opposed to privatisation *of* higher education (Ball, 2007). It might also be used to describe a range of other developments: the shift in our understanding of undergraduate university education as a private benefit rather than a public good; the legal constitution of universities; new commercial income streams; or, the nature of the independence of some providers from the public regulatory system (McGettigan, 2011a).

I'll also be arguing that HE policies which refer to privatisation or marketisation cannot be read off from policy documents as if they can be, or had been, implemented by fiat. Rather, policies need to be studied theoretically, empirically, and over time (Shore and Wright, 2011) in order to capture them as processes which are shaped by political complexity, contingency and contradiction. Furthermore, discourses like privatisation and marketisation, need to be instituted in rules and regulatory frameworks that in turn shape our everyday practices, self understandings and social relations (Harvey, 1996: 78-79).

It follows that making a fully-blown market in higher education (out of mechanisms such as competition, choice, student as consumer, credit, information, risk, profit), as proposed in the UK Government's HE policies, is a process that is both political and needs to be instituted. As a political process it involves competing values, the exercise of authority, claims to what is legitimate, and the possibility of failure to commitment. Instituting a full-blown market is therefore a highly political process dependent upon the material capabilities, ideas and institutions (Cox, 1996: 97-98) to stabilise a new order of legitimatised domination (Habermas, 1976).

This is particularly the case when policies aimed at radically rupturing the existing institutional and social landscapes; its rules, routines and values, enter into public life. To paraphrase the title of Kieran Desai's (1998) wonderful book - *Hullabaloo in the Guava Orchard* - describing the commotion following a major disturbance in daily village life -

policymakers with policies aimed at radically transforming the structuring of everyday life within the groves of academe, are likely to create, confront, and have to manage, a hullabaloo. Drawing upon Polanyi's argument (1992), that markets are instituted processes that must be articulated through definite social institutions, and legal and political strategies, and Jessop's (2005) insight that strategies are structurally-inscribed, I advance a more theoretically nuanced account of the attempt to create and institutionalise a free market in higher education, including the Government's efforts to manage the ensuing 'hullabaloo'.

On Strategy, Selectivity, and Institutedness,

As Slater and Tonkiss (2001: 104) observe, whilst Polanyi's work on the economy as embedded in social relations has become a central idea in economic anthropology and sociology, this has tended to displace the equally valuable concept of economic 'institutedness'. By institutedness, Polanyi (1992: 33) means that markets are made, or produced, through social institutions and legal and political strategies and processes. In arguing this, Polanyi is rejecting the classical liberal assumption; that market society arises organically out of human's natural preference for market exchanges and private property rights.

To produce rational economic behaviour (Peck, 2010), projects must imagine 'a market' , whilst state policies aim to strategically advance and materially institute this imagined market in a range of hard and/or soft law; as forms of ownership rights, governance structures, rules of exchange and conceptions of control (Fligstein, 1996). Hard law secures market relations through forms of legal contract. Soft law encourages agents, or subjects, to perform or materialise the market, guided by disciplinary techniques, such as audit, quality assurance, benchmarking, or key performance indicators (Hood, 1991; Rhodes, 1997). Gill (2003, 131-32) has described the two mechanisms deployed for the purposes of market-making as 'the constitutionalisation of neoliberalism' (hard law), and 'disciplinary neoliberalism' (soft law).

However, markets do not get instituted from either a blank slate, or neutral terrain of institutional practices. Rather, making a market must contend with already existing interests which, when institutionalised, has the tendency to reproduce themselves over time. Breaking this path-shaping activity is important in order to bring into being a new regulatory system with very different logics, values, and modes of being. Successful making a market will be dependent upon strategies, the capacity to mobilise interests, and new forms of selectivity which capture, and institute, new interests, structures, social relations and subjectivities in turn transforming the existing landscape. Here Jessop's (2005) Strategic Relational Approach (SRA), with its innovative approach to structure and agency as selectively and strategically formed, is useful:

> …structures are thereby treated analytically as strategically selective in their form, content and operation; and actions are likewise treated as structurally constrained, more or less context sensitive, and structuring. To treat structures as *strategically selective* involves examining how a given structure may privilege some actors, some

> identities, some strategies, some spatial and temporal horizons, some actions over others. Likewise, to treat actions as *structurally constrained* requires exploring the ways, if any, in which actors (individual and/or collective) take account of this different privileging through strategic context analysis when undertaking a course of action…In short, the SRA is concerned with the relations between structurally inscribed strategic selectivities and (differentially reflexive) structurally-oriented strategic calculation (Jessop, 2005: 48).

Jessop's (op. Cit) Strategic Relational Approach helps us see higher education in England at any particular juncture as the outcome of the specific patterning of strategically-selected social relations constituted through economic and political imaginaries, with actors having differential capacities to selectively engage in, and reorganise, structures and strategies over different spatio-temporal horizons. Projects and processes aimed at transforming in the strategic-selectivities of the higher education sector can be described as a process of 'resectoralisation' (Robertson, 2011).

Instituting a Market in the Groves of English Academe

We can get a sense of the complexities and dilemmas facing the currently Coalition Government in imagining and instituting create a competitive 'free' HE market by examining the recent press release from Pearson, a FTSE 100 company with pre-tax profits in 2011 of £1.2 billion (Matthews, 2012: 1),[1] announcing it would open a degree-awarding education college. A small cohort of "pioneers" were to be recruited by September 2012 into a Pearson Business and Enterprise degree course (BSc Hons), especially designed by organisations that included British Telecom (BT), Cisco[2], the Peter Jones Foundation[3], and Atos[4]. Students enrolling in this degree could choose to study either following a conventional pattern of 3 years, accelerate their progress through in 2 years, or take 4 years through mixing work and study. The cost of the degree would be £6,500 per year. This fee was well under the ceiling (£9000) set in the new fee regime to be launched at the beginning of the 2012/13 academic year (BIS, 2011a, 2011b). The new fee ceiling, however, is triple that set in 2006 (£3,000), making it one the most expensive undergraduate systems in Europe.

Yet Pearson's new course was to be validated by Royal Holloway, University of London, rather than Pearson having its own degree awarding powers, as hoped for by the Minister for Higher Education for the start of the 2012/13 academic year. Pearson's announcement,

[1] Pearson owns the Financial Times, the qualifications company Edexcel, as well have having major interests in publishing

[2] Cisco Systems is a global technology firm specialising in the development of platforms for system integration. It also has a large education and learning portfolio.

[3] The Peter Jones Foundation aims to provide support to children in many different stages and circumstances of their lives. The Peter Jones Enterprise Academy educates young people in the UK, encouraging a confident 'can do' attitude amongst them.

[4] Atos is an international information technology services company with annual 2011 revenues of EUR 8.5 billion and 74,000 employees in 48 countries.

therefore, signalled business as usual within the sector. In other words, there have been a range of private higher education providers operating in the English higher education system for some time. For instance, the University of Buckingham was established in 1973 as the first private provider in an otherwise public system of higher education.[5] Buckingham also pioneered a different delivery model –some of which has been taken up by Pearson: high cost; students can complete a 3 year degree in two years; and it services an international student population willing to pay full fees.

However, the conditions for entry, operations and governance of the new alternative providers (including transnational HE conglomerates such as Laureate and Kaplan) into UK higher education (including access to degree awarding powers, state funding, and recognition as a university—all crucial to marketing and profitability), are different than for universities *within* the sector. It is this that the new providers want changed. For Pearson, the gap between the government's policy ambitions and its capacity to navigate the political space sufficiently well to realise a new regulatory framework favourable to new providers, is likely to be particularly irksome.

Yet, over the past decade there has been growing pressure on Government to rethink its position. This has paralleled the steady expansion of private providers in the UK higher education sector (Fielden and Middlehurst, 2010; Middlehurst and Fielden, 2011), though the scale and scope of their activity has not been officially monitored. Many private providers are the branch campuses of foreign universities whose degrees are awarded by their home institution. Others are firms, such as INTO[6], who specialise in joint ventures with existing public HE providers, largely in the area of foundation and language courses for international students in preparation for entry into university programmes. Many of these firms have intentions of expanding, and we can see significant mission creep as they learn how to work with, and around the existing regulations.

From the early 1990s onward, there had also been considerable interest by governments and new kinds of providers in the sector in viewing higher education as a services sector that could be traded internationally and regulated globally (Larsen and Vincent Lancrin, 2002; Kelsey, 2008). The launch of the World Trade Organization's (WTO) General Agreement on Trade in Services (GATS) in 1995, with its aim to progressively liberalise sectors such as education, was an ambitious project aimed at market making through multilateral agreements. Liberalisation in effect meant opening up public higher education to foreign direct investment, international student and academic mobility, and commercial operators. It also meant 'levelling the playing field' so that commercial operators were able to access similar conditions (such as subsidies, student loans, degree awarding powers, nomenclature) (Robertson et al, 2002; Verger and Robertson, 2012). Yet, this project has been dogged by controversy and organised resistance, particularly in education around claims that education is a public good that should not be commercialised.

[5] The University of Buckingham, a chartered university, was established in 1973 as a not-for-profit company.

[6] INTO has a wide range of 'products' that include organised student exchanges, and joint ventures with universities to provide preparation courses for universities [see http://www.into-corporate.com/en-gb/about-into.aspx - last accessed 20th August, 2012]

However, new providers wanting to enter English higher education have to make their claims for entrance and recognition to national regulatory bodies on a case-by-case, rather than multilateral or bilateral basis, as hoped for through the WTO and Regional Trade Agreements (RTAs). This has irritated the new providers, as well as slowed down their capacity to enter the sector under conditions that might be more profitable. In the UK HE sector, up until the beginning of 2012, only 5 organisations had been awarded degree awarding powers (DAPs). Amongst the five is BPP Ltd, a high profile, for-profit, provider (of under-graduate and graduate law, accounting and health studies) which was acquired in 2009 by private equity firm, Apollo Global; a subsidiary of the Apollo Group based in the US. In April 2012, Montagu Private Equity acquired the College of Law for £200 million in April 2012, and in doing so, acquired the Colleges degree awarding powers which it had secured from the Privy Council in 2006.

The situation in the UK can be contrasted with the US, where until recently, there has been remarkable year-on-year growth over the past decade amongst for-profit higher education providers, much of it driven by the rise of degree-granting institutions traded by publicly-traded corporations (cf. Kinser, 2006; Breneman, Pusser and Turner, 2006; Hentschke, Lechuga and Tierney, 2010). However, confronted with more demanding regulation by the US Department of Education, and seeking economies of scale and scope through transnational expansion, the for-profit providers have looked to entering new markets, including the UK. This has meant pressuring governments, such as the UK, to 'level the playing field' to enable their entry.

The Conservative Party in the UK has been ideologically open to these kinds of arguments. Since coming to power in May 2010, a Coalition Government, formed out of a contentious alliance between the Conservative and Liberal Democrat Parties (the Conservatives well disposed to a Hayekian version of neo-classical economics), have pressed ahead with promises and policies aimed at creating a 'more competitive higher education' system open to new providers who it is argued will expand the number of student places at a lower cost than current providers. In the words of the Coalition Minister for Higher Education, David Willetts (2010: 1), new for profit providers are: "…unencumbered by the weight of history…They offer a salutary challenge and new approaches to delivering higher education efficiently – and, in turn, cheaply for students". However the Government's main political challenge has been *how* to institute this imagined unfettered free market.

Beginning in October 2010, a series of Government policies were released, laying out the basis for a radical restructuring of the English higher education sector. Yet, by August 2012, the legislation necessary to realise the intent of the White Paper (BIS, 2011a) and the Technical Consultation to establish a new Regulatory Framework (BIS, 2011b) to legally and politically create a market, continued to be seriously delayed. Advancing legislation is viewed as politically difficult and likely to seriously compromise the governing Coalition. This also explains why Pearson's entry into the sector, for the moment, continues to be dependent upon the existing regulatory framework. Yet Pearson's proposed College has also embraced many of the elements regarded as central to the Governments new reform agenda: low cost, innovative delivery modes, and industry partnerships. There is little doubt Pearson will continue to pressure the Government for ongoing changes.

From 'Skills, Global Competition, Quality' to 'Making a Market'

Strategies for making a market must contend with already institutionalised interests, projects and politics. In the case of the Coalition Government policies, they could count upon a range of market-oriented activity within the sector which had been implemented since the 1980s (Hood, 1991; Deem, 1998). Following the election of New Labour in 1997, the transformation of the university to a competitive knowledge-based economy was central to policy. Flagship policies for Labour included *Our Competitive Future: Building the Knowledge Driven Economy* (DTI, 1998); the creation of English Regional Development Agencies (RDAs) to link universities to their regional economies (DTI, 1998: 7); the Lambert *Review of Business-University Collaboration* (Lambert, 2003) to foster university-business collaborations; *The Race to the Top* (Sainsbury, 2007) aimed to fostering more innovation and commercialisation in universities; and *Higher Ambitions* (BIS, 2009) intended to promote high value-added human capital for the creation of a knowledge-based economy. In sum, Labour's approach to higher education policy could be characterised as favouring skill development through human capital formation, innovation and commercialisation, to ensure global competitiveness, and governance through quality assurance (Brown, 2011). Labour's policies, however, stopped short of viewing higher education as an unfettered marketplace open to a range of providers – whether public or private.

Yet by 2009, an urgent policy question had become how to "…widen access and sustain and improve standards of university excellence in an increasingly pressured international context and in a more constrained public spending environment" (BIS, 2009: 3). It was this question; how to open up more places in higher education without increasing the longer-term financial burden on government, that set the terms of reference for the *Independent Review of Higher Education Funding and Student Finance* (the "Browne Review" led by John Brown, formerly Chief executive of the oil and gas multinational, BP). Under arrangements at this point, the Higher Education Funding Council for England (HEFCE) partially funded each place. However, it limited its annual outlay by imposing a total recruitment cap on student numbers on each institution.

However, before the Browne Review could report, Labour was heavily defeated in the May 2010 General Election. The Conservative party, unable to form a majority on its own, managed, after weeks of fraught politicking, to negotiate a deal with the Liberal Democrats to form a Coalition Government. Yet on higher education policy more generally, and the question of student fees in particular, the two parties in the Coalition had fundamentally opposite views. Indeed, as I have already pointed out, the Liberal Democrats had campaigned on a ticket that promised to abolish student fees. Those within Liberal Democratic Party circles worried about the longer consequences of these policy reversals on their own capacity to be re-elected.

What might this change in government in England, and the opposed ideological positions of within the Coalition, mean for the Browne Review which would report in October, 2010, and for the Coalition's approach to higher education policy? To begin, it was widely accepted the Browne Review was forewarned of the new Coalition government's decision to slash HEFCE central teaching budgets – to be announced in a Comprehensive Spending Review in November 2010 (McGettigan, 2011a).

The Browne Review (Browne, 2011) therefore built into its recommendations the withdrawal of the block grant to social sciences, humanities and arts (with sciences and technology areas, and vulnerable subjects like languages protected). It also recommended lifting the ceiling on student fees to enable universities to recover their lost block funding via significantly increased student fees. Fee increases were justified with the following observation; that in 2006, the ceiling of the Graduate Student Contribution had been raised to £3,000, but contrary to popular opinion, this had not discouraged students from seeking places. Instead, demand for student places had actually increased (Browne, 2011: 20). The Review also proposed a readjustment of the student loan system, which placed the ultimate burden of the costs of their undergraduate degrees on the student. However, repayments would only begin at the rate of 9% of income on salaries over £21,000 over a period of 30 years after graduation. Monies not paid back during this period would be written off by the State.

The justification for the increased burden on students was that having a degree generated a significant increase in salary, of well over £100,000 over a lifetime. However, as I have argued elsewhere (Robertson, 2010), reporting an average in this way removes from view the fact that some professions (such as medicine, law, dentistry and business studies), generate significant returns which distorts the average. Students enrolled in areas such as the arts will earn significantly less than this over a life-time.

Browne also promised the creation a Higher Education Council that would be at arms-length to government, to ensure the public interest. The Review, however, contains only one reference to 'new providers' (p. 46) where they state: "new providers will be able to apply for targeted HE Council investment if they offer priority programmes – and they will be subject to the same quality requirements as other providers". The Review therefore stepped firmly in the direction of a model of funding that aimed at privatising of the cost of higher education. Students, rather than the state, were now expected to shoulder the burden of the cost of undergraduate higher education. It stopped short of encouraging the entry of new providers into the mainstream activity of the sector.

"Ignoring Browne's request; that his recommendations be treated as a whole, the Coalition Government rejected the removal of an upper limit to what universities could charge. In December 2011 a 'snap' parliamentary vote – with no draft legislation in sight - was called, to set a new maximum of £9,000 to come into effect from 2012/13" (McGettigan, 2011a: 2). This move circumvented the possibility of any organised opposition to beginning the process of making a higher education market. Barr (2011) also argues that the ceiling reduces pressure on cost, and thus keeps prices high.

However the effect of setting an upper limit meant most universities in the sector, irrespective of their mission, status or social class intake, expected to charge students at or close to the ceiling of £9,000 and not the recommended £6000. This has not only created new problems for the state in terms of the overall costs of underwriting the student loan book until students pay back the loan but, as we will see, the move to institute a competitive, consumer-driven market in higher education has also presented the state with other headaches it is not at all clear it can solve without spectacular political fallouts.

Whilst the Coalition Government promised a comprehensive response to the Browne Review early in 2011, in the event, the Government's response did not materialise until June 2011 in the form of a White Paper presented by the Secretary of State for Higher Education, David Willetts (BIS), to Parliament. The Report was entitled *Students at the Heart of the System* (BIS, 2011a). This was followed by a 'Technical Consultation' – *A New Fit-for-Purpose Regulatory Framework for the Higher Education Sector* published in August 2011 (BIS, 2011b).

Taken together, the two documents build upon, but depart from, the Browne Review, in important ways. Whilst accepting the bulk of Browne's proposals, they outline a more explicit agenda for creating a competitive higher education market: (i) promote student choice rather than government subsidies for places (except in the STEM areas and some languages); (ii) be open to new providers - including for-profit providers who have degree awarding powers and can claim the title of university; (iii) remove the cap on the number of students a provider can take if student's grades are two A's and one B (AAB); (iv) a light-touch approach to the regulation for quality providers; (v) the use 'risk' as the mechanism for governing; (vi) sell off some, or all ,of the student loan book to a commercial provider of student finances, and (vii) a strengthened role for HEFCE as a champion and protector of student choice, as well as the first point of call for claiming degree awarding powers (and not the Privy Council – which in this new model can only make recommendations and not the final decision). As the regulator, HEFCE would be more responsive to Ministerial fiat.

Legitimating Strategies and Recognition Shortfalls

A proposal this radical requires legitimation if it is to be successfully instituted. And as Habermas (1997: 178) reminds us: "Legitimacy means that there are good arguments for a political order's claims to be recognised as right and just: a legitimate order deserves recognition. *Legitimacy means a political order's worthiness to be recognised* [italics in original]".

Habermas' understanding of legitimation highlights two things that are important for my argument: that the state's legitimacy is dependent on contestable validity claims; and that the stability of a political order and its right to rule is dependent upon recognition by its citizens. How 'right' and 'just' then, are the claims made in the Coalition Government's policies for its fit-for-purpose regulatory framework in HE? Do the claims made for this imagined market offer sufficient incentive, or opportunity, for some of the actors within the sector (as opposed to outside) to strategise their own path in it, in turn generating support for this market-making project? To answer the first question, we can examine the legitimatory discourses - 'saving', 'sustainability', 'efficiency', 'levelling the playing field', and 'enhanced social mobility' - and circulating counter-evidence to get some sense of the 'recognition shortfalls' the Government faces in strategising the instituting of a higher education market. The second question will form the basis of my conclusion, where I reflect upon what dynamics might be at work within, as to opposed to outside, the sector that are likely to generate some momentum toward a market model of higher education.

Legitimation Claim 1: Savings

'Savings', as the basis for legitimation for a market model, taps into the wider austerity narrative the Coalition Government has mobilised to cut back on public sector expenditures across the board. This kind of discourse has traction in that it is able to argue that they are not the creators of the financial disaster—the previous government was. The two Reports (BIS 2011a, 2011b) point to significant savings of around £3 billion per year by government by 2015/16, which it argues will reduce the budget deficit. It also points to an expectation that all public sectors need to 'pull their weight' by making a commitment to austerity. Yet as McGettigan (2012a) shows, the savings are nothing more than an accounting trick. In moving the funding of higher education from an institutional subsidy to a student loan underwritten by government, the government is using off-balance accounting techniques. Now the money does not show up on the government's books as a deficit, but is now a government asset (Student Loan Books) to be repaid by students to the government over a 30 year period.

But it is who pays, and when, that is also revealing regarding the long-term consequences of the proposed regulatory system. As it stands, the student loans scheme is very generous; an outcome of the difficult negotiations within the Coalition, of student protests, and the need to sell the new market model to a concerned public. Students will begin paying back 9% their loan once they begin earning over £21,000. So, at one level, the twin objectives - of reducing the deficit and generous support to students - have been achieved. However, for a range of obvious reasons, some students will never pay this loan off (intermittent access to the labour market, low salaries, out of the labour market, die, illness and so on) at which point the debt is the government's responsibility (and *ipso facto,* the public's).

So how would this work? The Resource Accounting and Budgetting (RAB) is a mechanism that government uses as an accounting convention around the write-off of unpaid loans. In calculating the level of likely repayments, all three Reports (Browne, 2010; BIS, 2011a, 2011b) have tended to overestimate the level of repayment possible. In their view, the shortfall in repayments would be around 30 per cent, or 30 p in every £1.

However experts[7] estimate that the figure is likely to be much closer to 40% - significantly increasing the cost of borrowing to underwrite the Student Loan Company, and the long term debt. Indeed, it is argued that government borrowing for student loans will account for a substantial portion of the UK national debt into the future – with some pundits worried about an equivalent to the sub-prime mortgage disaster that sparked off the 2008 financial crisis. McGettigan (2012a) notes that the Office for Budget Responsibility has stated the total student loan repayment as of June 2012 would peak at 6.1% of GDP (91 billion) around 2030, and fall to 4.4 % (67 billion) by 2061-62. However £67 billion continues as a government debt 50 years afterward.

[7] Hepi suggest 35%; the London Economic Consultancy say 37%; the Million+ lobby group say 38%).

The key issue facing government is the size of the shortfall between the total value of the student loan book and what students ultimately repay. These are all currently unknown. The student loan repayment rate is also very sensitive to income growth. If wages stagnate, then this again generates a major headache for government in that it risks facing a higher debt via the Student Loan Book, unless of course, the conditions of repayment were altered. But, this would create major political fallout, as these graduate students would also be voters. Removing the cap on fees and minimising number controls would also create a set of conditions where a wider range of prices were set (Barr, 2011). The other is to press for other forms of efficiency, such as 2 year accelerated courses, allowing in low-cost providers and student borrowings for 2 years of study and living and not three. Or, alternatively, the government could try and sell off the Student Loan Book to minimise it losses. Yet currently the private sector is not keen on taking on the Student Loan Book as it is not sufficiently profitable.

Legitimation Claim 2: A more sustainable system

Here legitimation is built on the promise that even in the short term it will brings more money into the system and thus create the basis for a more sustainable higher education system. In this regard, the Minister for Higher Education, David Willetts (2012) has claimed:

> Funding for university teaching is expected to grow by 10 per cent over this Parliament. Although the central HEFCE grant is falling, more money will reach institutions as resources follow the decisions made by students. We want a student-focused higher education sector, more choice over where to study and a renewed focus on the quality of the student experience. That's why we are freeing up centralised number controls, improving the information for prospective students and driving a new focus on the academic experience (Willetts, 2012: 1).

Whilst this is true; that there is more funding coming into the system, this is because students are taking out loans and assuming a greater level of the responsibility for the financial burden of higher education, rather than government. However it is also the case that students only take on a responsibility for that burden if they earn above £21,000. That burden might rest on the state in the longer run, if the state has to assume the debt. Will for-profit providers bring more money into the system? Not likely. This is because the for-profits see either the student (full-fee/student loan), or the state (teaching subsidy to the provider), as the financial basis for them to profitably entering into the sector. Lifting the cap on student numbers would in turn cost the state significantly more in student loans; as in the USA, the new providers would also drive demand up through marketing and recruiting, again increasing the cost to the state via the student loan system. In all, this model is not a sustainable system. Rather, like all markets, it will be prone to tendencies to monopoly control, crises and instability.

Legitimation Claim 3: More efficient

The Reports (BIS, 2011a, 2011b) argue a market model will be more *efficient* as a result of a single set of rules for all players, competition, student choice, the presence of more diverse providers, and light touch regulation of quality providers. The idea of competition leading to greater efficiencies is a trope common amongst those promoting education markets (Barrera-Osorio, Guaqeta and Patrinos, 2012: 207). Such claims are built upon a series of premises: that students accept that their learning is a form of consumption; that as consumers they are responsible for their choices; there is widely available information; a perfect relationship between preferences and education products; and a range of diverse providers in the sector able to respond to students demands for different kinds of 'education' experiences.

Aside from the ontological questions to be raised over assumptions about human behaviour (as *homo-economicus*) we can also challenge the premises of choice (demand) driving competition (supply) But not all of these 'student consumers' are able to realise their choice, not simply for economic, but also for social and cultural reasons related to the supplier. For instance, not all students are able to realise their choice to attend an elite institution (assuming better grades than their potential competitor choosers) because they do not have the social and cultural capital that is also part of the rules of the game of choice and competition. As sociologists have long since pointed out, social classes exploit the idea of choice in that it conceals (as individual freedom) those rules of the game which reproduce social class relations.

Consumer-driven systems are also dependent on larger amounts of the overall budget being allocated to marketing and recruiting, so that the balance between allocations to teaching courses versus marketing tends to shift in the direction of marketing departments. This in turn encourages providers to look more closely at economies of scale (large classes, on-line learning etc), of different ways in which they can lower labour costs (hourly paid tutors), and paring back costs, such as research, as it is indirectly associated with the costs of teaching. Many of the for-profit providers in the United States have recently been criticised for this kind of approach to learners and learning (Bennett, Luccesi and Vedder, 2010).

Legitimation Claim 4: 'Levelling the playing field'

As a discourse, the metaphor - 'levelling the playing field' - is used to legitimate the entry of private providers into sector. The metaphor suggests that all current and potential providers are similar kinds of actors, with similar levels of resources, and similar kinds of commitments. This is far from the case. Pearson's, for instance, is a vast global conglomerate able to access resources far in excess of most universities. This metaphor also implies that the rules of the game within the sector are set in such a way that not all players can enter as equals; in this case, the new private providers. 'Levelling the playing field draws on conceptions of equity as 'equality of opportunity', and not 'equality of outcome'. In reality, for the private providers to move in, levelling the playing field means removing those barriers which currently prevent them from more easily acquiring the 'currency' of the system (status, marketing, recruitment) whilst minimising the costs of compliance (validation, regular quality assurance), in order to enhance profits. These include degree awarding powers, conditions for access to the title of a university, conditions of access to student loans from the Student Loan Company.

As I have argued earlier, private providers can, and do, operate in the higher education sector in England. Students who are enrolled with a private provider have more recently been able to access student loans. Morgan (2012), for example, reports that a number of students in that sector do, and in fact numbers have nearly doubled in a year. This led the Minister to announce a system of 'due diligence checks' for private higher education providers. In 2009-10 there were 4300 – up to 9360 in 2011-12. However, one mechanism that has limited access is the definition of what might count as 'a university'. Currently the size of the student body, the range of what is taught, the link between teaching and research, and the nature of the faculty, are all used to define who is and who is not able to use the title of 'university'. With greater levels of access to recognition and funding, new providers must comply with requirements such as quality, information and so on. The light-touch regulation approach that is proposed in the sector (p. 70), however, may not provide sufficient information on quality to enable the sector to be properly regulated. More concerning, however, is the strong ideological stance of the Government toward markets and the limits this poses on reflecting on what might be the basis of publicly interested policy. Will it be open to hearing otherwise?

We can also detect another way in which the 'levelling the playing field' disadvantages other actors. For instance, not only can the Secretary of State alter the conditions of the student loan (in the 2012/13 Student Loans – A Guide to terms and Conditions, p. 8 it notes that students will: "Pay loans as due, ***and as amended***…..."), but currently students do not have the right to protection, and appeal, under the Consumer Protection Act. Given too, that the new funding regime is likely to move most English universities outside EU procurement rules on public institutions, since the major of revenue streams will now be private and not public, this in turn means the academy will be exempt from these regulations (McGettigan, 2012b). In what ways might this also change the basis on which the sector is regulated? This is largely unchartered territory.

Legitimation Claim 5: Improved social mobility through fairer access

Social mobility is defined in the Reports (cf. BIS, 20011a) as a measure of how possible it is for young people to improve their position in society. The Report notes that currently fewer than 1 in 5 young people from the most disadvantaged areas enter higher education compared to more than 1 in 2 for the most advantaged areas (BIS, 2011a: 54). So what are the solutions that are proposed that would realise this claim to a higher education market creating greater social mobility through fair access?

One solution is the development of a career service to provide advice to prospective students. However this kind of approach understands the causes of social immobility as individual, and about knowledge and choices, as opposed to an outcome of social class relations and their reproduction. Will this market framework challenge the role of higher education, and specific providers as carriers of elite status, in social class reproduction? Early evidence reported suggests that in the 2012/13 intake, there is a slight increase in the numbers of working class students applying for places, and a drop in the overall number of the middle class in comparison to previous years. This may well be the outcome of working class students recognizing the relatively generous conditions for working class student in the student loan (now payments beginning after earnings of £21,000, and a more generous living away from home grant). An Independent Commission on Fees (chaired by left-leaning Will Hutton) has been established to generate 3 reports over 3 years to report on the impact of fees on the affects of the new policies on low and middle income backgrounds (Independent Commission on Fees, 2012). This Commission will depend on having sufficient resources at its disposal to undertake some rigorous research that aims to understand not just shifting patterns but the motivations behind the decisions which students and their families are making. All universities charging above the £6,000 ceiling will have had to develop an Access Agreement with the Office for Fair Access (Offa). This means that universities have had to make proposals regarding fair access and widening participation with appropriate measures and targets in place. However, as Attwood (2011) has reported, Offa says that it will only use the penalties available to it if it commits a serious and wilful breach of its access agreement. Failure to meet targets is not one of them.

Politics, Selectivity, and the Future of the Sector

Taken together, we can begin to see that there are significant legitimation deficits, political unknowns, and economic risks associated with the new proposed regulatory framework to institute a market in English higher education. Far from being an easy outcome of policies. Instead this paper reveals attempts to institute a market which are shaped by the nature of political alliances, wider political pressures over the deficit, accounting trickery, the promise of opportunities for expansion for high status providers, and major challenges and bungles in getting the formulas right. To date, no legislation has been proposed to Parliament – largely as it would make it the object of fraught parliamentary politics.

Yet, there are now significant pressures to stay on course from a number of quarters. After all, there will be winners and losers in those fragments of the new framework that have been launched. The winners have already been strategically selected into the project of instituting a market. For one, many of the elite universities (known as the Russell Group) are now able to take as many AAB applicants as they wish, and view the current system very favourably. They are also likely to see the new for-profit providers as not generating any major threat to their capacity to operate competitively in the sector. Yet their activities and new conditions of operation are likely to exaggerate the social inequalities in the system, as they choose their students, have a less than serious commitment to access and equity targets, and have the kinds of student populations more likely to repay their student loan.

Second, the new (for-profit) providers will want to ensure that the promises made around entry into an HE market are realised. For the moment they are stalled on questions of recognition as a university, and degree awarding powers. But the critical component is already in place to enable the market to work in their favour; access to student loans. Their ongoing struggle will be to pressure the state around ensuring light-touch regulation, and a lifting on the fee ceilings, to enable it to strategise its market-making activity. Large firms like Pearson have deep pockets when it comes to courting political favours.

But much will be dependent on how the legitimation burden is managed by the state in the short term, and whether it can defer the legitimation shortfalls into the longer term sufficient for it to secure sufficient recognition and buy-in. This will require close scrutiny of the mechanisms and how they work, and a high level of financial literacy amongst observers. The danger, of course, for academics researching the academy is that their findings may well be regarded as compromising the commercial interests of their own institution; after all, where would critical HE research fit in a market-driven system?

The losers, of course, will be a mix of students, academics and the old academy, all of whom will be selectively disadvantaged in the 'restructuring' and 'relevelling' (Robertson, 2011) to institute a market. For students, in being positioned as a 'consumer' of credentials, rather than a 'producer' of knowledge, they are now offered a diminished set of possibilities for critically understanding our social and natural worlds, for interrogating 'truth' and for how to re-imagine our futures. Unless the state pursues a social equity agenda concerned with the social outcomes of choice (jobs/income) and not just inputs (e.g. information/loans), then some students will also be part of a sector that is characterised by widening social inequalities. To be sure the loans system as it stands looks favourable. But that window is likely to be small, and closing, because of the financial burden being stored up for a future public, and the legitimation deficits that it is currently generating.

Academics will be selectively disadvantaged, depending on where in the groves of academe they find themselves, or how prominent consumer satisfaction is, as a disciplinary logic. Already academics in social sciences, arts and humanities are differently situated in relation to their STEM colleagues regarding the nature of their annual funding. That is, they are thrust into a market, with all of its repercussions. Are there not vulnerable knowledges that need protecting in the arts, social sciences and humanities? For the moment, such knowledge is viewed only in more instrumental economic terms; as those disciplines central for competitive economies. In relation to what part of the sector academics might find themselves in, the conditions of work for academics will be highly dependent upon status, student fees, and potential profits. In relation to consumer satisfaction as a disciplinary logic, what does it mean for a student to be satisfied as a consumer? What does this look like from the point of view of a teacher? Taken together, these new logics will transform the old academy. This is not to assert an over-romantic view of the old academy as equitable, as outside capitalist logics, and so on. But it does make the obvious point that a higher education market, like all markets, will be driven by a logic that has little time for truth, curiosity, critique and reflection.

Finally, I began this paper arguing it was important we look more closely at discourses, such as privatization and marketization, and the need to theorise these as processes that must be strategised and instituted if they are to secure the basis of their ongoing re/production. But I also pointed out that this is a highly contested and political set of processes, with tendential, though not inevitable, sets of outcomes. That politics matters, is the key message here. And it matters in multiple ways; in seeing that we can, and must, contest these ideologically-mistaken policies; that we can, and must, think beyond what is good for 'my' situation, or 'my' institution and think of the sector and its higher purpose; and that we can, and must, think about how to re-imagine a new kind of academy that boots into the long grass this current, divisive, effort to institute a market. In short, we must continue to create a hullabaloo in the groves of academe.

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