

Managerialism in Irish Universities, revisited

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Abstract:

The gradual, but nonetheless relentless, shift in the governance of Irish universities, from a high degree of autonomy towards a more managerial culture, has been remarked on by many. It has both an internal aspect (greater management of individual academics by their institution) and an external aspect (greater management of the institution itself by government). Several aspects of the process have been accelerated by the current crisis, as the need to assert financial control over all government-funded activities has become an urgent priority – though the increasing control has by no means been confined to strictly financial matters. This paper reviews developments over the past year, and likely future developments. These include: the new legislation on quality assurance; the increasing role of HR within universities, as employment contracts are standardised and regulated, and universities push employment rights to their limits in an effort to reduce headcount; revisions (and purported revisions) of academic contracts, including a supposed new duty to attend at the workplace, the “extra hour”, and performance management; the current status of the Croke Park agreement, and possible revisions to it when it expires or is repudiated; the future of tenure, seen especially in the context of public sector redundancy generally; and the threatened new legislation enhancing government enforcement powers, in the wake of the overpayment scandals.

Managerialism – What is it?

The pre-eminence of management is now well established in relation to universities (and indeed organisations generally), particularly following Willard Enteman, *Managerialism: The Emergence of a New Ideology* (University of Wisconsin Press, 1993). For universities in particular Deem, Hillyard and Reed, *Knowledge, Higher Education, and the New Managerialism: The Changing Management of UK Universities* (OUP, 2008); Chris Duke, *Managing the Learning University* (Open University Press, 2002).

For modern Irish comment and critique see:

Brendan Walsh (ed), *Degrees of Nonsense – The Demise of the University in Ireland* (Glasnevin Publishing, 2012), and especially:

Tom Garvin, “A Confederacy of Dunces – The Assault on Higher Education in Ireland” in Walsh, *Degrees of Nonsense* (above)

Tom Garvin, “[The bleak future of the Irish university](#)” *Irish Times* 1 May 2012

Mary Gallagher, *Academic Armageddon* (Liffey Press, November 2012)

However, no-one argues that managerialism is the only factor of importance in modern developments. Many powerful forces are ambiguous in that regard. Other factors, especially legal ones, directly oppose it – note particularly [Universities Act 1997 s 14](#), which openly seeks a balance between managerial needs and the right of both universities and their staff to independence.

Managerialism in practice

The trend since the Universities Act 1997 has clearly been towards more managerial control of staff by their universities, and of the universities themselves by government.

Steve Hedley, "[Managerialism in Irish Universities](#)" (2010) 1 *Irish Journal of Legal Studies* 117
Michael O'Malley, [University and the State in Ireland](#) (NUIM PhD thesis, 2012)

Of the making of official plans and reports there is no end. Each university must regularly make and update its own strategic plan. In addition, official reports on the university system issued in the past 12 months alone include: [Sustainability Study - Aligning Participation, Quality and Funding in Irish Higher Education](#) (HEA, November 2011); [From Transaction to Transition: Outcomes of the Conference on the Transition from Second to Third-Level Education in Ireland](#) (HEA/NCCA, December 2011); [Towards a Future Higher Education Landscape](#) (HEA, February 2012); [Matters Arising out of Education Audits](#) (Comptroller and Auditor General, February 2012); [Report of the Research Prioritisation Steering Group](#) (March 2012); [HEA Strategic Plan 2012-2016](#) (March 2012); [Reform of Selection and Entry to University in the Context of National Educational Policy](#) (IUA, August 2012); [A Proposed Reconfiguration of the Irish System of Higher Education](#) (HEA, August 2012); and [A Study of Future Demand for Higher Education in Ireland](#) (HEA, November 2012).

Employment issues

Headcount

Enforced headcount reduction continues. The Employment Control Framework (March 2011 issue) prohibited universities from replacing core staff with permanent replacements, but after frantic protest this was changed (June 2011), to permit it with the approval of the HEA. Leading cases directly resulting from attempts to reduce staff are:

- [UCC v. Bushin](#) [2012] IEHC 76 (17 February 2012)
- [TCD v. Moss](#) (Labour Court, 12 March 2012)
- [TCD v. Moriarty](#) (Labour Court, 14 February 2012)
- [DIT v. Nealon](#) (Labour Court, 17 February 2012)
- [TCD v. IFUT](#) (Labour Court, 30 April 2012)

The last is something of a *cause célèbre*, as (on one view) Trinity are in breach of the Croke Park Agreement for continuing to contest the matter.

A notable feature of the new redundancy arrangements is the offer of enhanced compensation for those who agree to leave Irish public service for at least 2 years (the "emigration clause").

Tenure

Tenure of permanent full-time academic staff is guaranteed by Universities Act 1997 ss 3 (definition of "officer") and 25(6) – though there is some doubt as to precisely what the guarantee entails (see especially [Cahill v. DCU](#) [2007] IEHC 20, para 6.3). Those on contracts of indefinite duration (CIDs) are in principle less secure, though under the Croke Park Agreement they have relatively little to fear. None of this would be very safe were Croke Park to fail or be re-written. Technically speaking, academic tenure is a different thing from Croke Park's guarantee of no redundancies, but the difference might not be apparent to those outside academia.

Terms and Conditions

New contract terms have been circulated by universities in compliance with Croke Park (including an extra hour, a duty to attend the workplace and a duty to “work flexibly and efficiently”). Whether any of this is legally enforceable must be doubted – Croke Park is not part of individual employment contracts ([Holland v. Athlone IT](#) [2011] IEHC 414), and while it is sometimes possible to infer a variation of contract from an employee’s failure to object to a purported notice of variation, this would in many cases be rather doubtful. Various exercises to check on how much work, and what sort of work, staff are actually doing, are in progress (the FEC and the Workload exercises); the data produced may not be of the highest quality.

Quality Assurance

Teaching

Whether teaching quality has gone down is a matter of opinion; the [Sustainability Study](#) (above) walks a very fine line between acknowledging that quality is at risk and denying that anything has gone wrong yet – choice phrases include “the tension of managing participation and quality”, “strain on resources”, “the strategy of growing numbers .. has reached the limits of its effectiveness”, and “the quality of the student experience in Irish higher education has come under severe pressure”.

[QQI](#) (Quality and Qualifications Ireland) has from 5 November replaced the old quality boards (NQAI, FETAC, HETAC, and IUQB). The new Act ([Qualifications and Quality Assurance \(Education and Training\) Act 2012](#), in force by virtue of S.I. No. 421 of 2012) is rather complex.

Rankings

Great controversy surrounds each new issue of the *THE* and QS rankings. The DES and the Minister for Education have maintained a very sensible agnosticism about their significance, but the same can’t be said of other political actors, or the press. There is beginning to be considerable use of citation indices (such as Thomson Reuters and Scopus) in the evaluation of the work of individual scholars and departments – a development likely to harm Arts Humanities and Law, which are usually poorly covered in such indices.

Students

Grants and fees

As grants and fees become more of a sore point, technical legal issues are coming to the fore, as witness the changes to the definition of home students, and proposed changes to the treatment of capital assets for means-testing purposes.

[Quigley and others v. Minister for Education](#) 2012 IEHC 414 (14 February 2012)

[McCarthy and others v. Minister for Education](#) 2012 IEHC 200 (25 April 2012)

Numbers

Student demand has grown significantly in the last few years, and while the growth is currently slowing it is expected to speed up very soon. This is the backdrop to the [Sustainability Study](#) (above), and for more detail see [A Study of Future Demand for Higher Education in Ireland](#) (above).

Admissions

The strengths and weaknesses of the CAO are well known. Universities are effectively now committing themselves to reform, while not having an agreed vision of what a better system would look like.

Student disorder

In particular student cities (Cork and Belfast spring to mind) there is now a serious problem in student-dominated housing areas – a perfect storm resulting from lack of money, increasing numbers, cheap booze, and absentee landlords.

Enforcement powers

It is most unclear which government officer or minister is responsible for Irish universities. Technically the D[e]partment of E[du]cation and S[k]ills has most power, but significant roles are also played by the D[e]partment of J[ob]s, E[nter]prise and I[n]novation, the [D]epartment of P[ub]lic E[x]penditure and R[e]form and the Department of Finance. The EU and other grant-awarding bodies also have significant powers. The role of the H[igher] E[du]cation A[uthority] is as obscure as ever: it is a buffer organisation between the ministries and the various third-level institutions, and the precise role it plays can change at very short notice.

The [Van Vught Report](#) has now been released.

The scandal which dominated headlines in 2010, of the overspend on pay for certain senior administrators, is now effectively over: the universities need not repay the sums concerned, but must devote equivalent sums to student services. But now universities receive closer attention from the Comptroller and Auditor General, and many new issues have emerged (see Comptroller and Auditor General Special Report No 78, [Matters Arising out of Education Audits](#) (February 2012), and discussion at the Committee of Public Accounts on 27 September and 4 October 2012, online at oireachtasdebates.oireachtas.ie).

The Future

Extension of the Ombudsman's powers to cover universities now seems inevitable.

A Universities (Amendment) Bill has been proposed by Ruairi Quinn, which would extend investigatory powers into universities, and authorise the temporary transfer of certain functions from universities to a ministerial nominee if a breach of law or policy seemed to the Minister to require it. This is being strongly opposed by the universities. For commentary see [my comments on 9th Level Ireland](#).

**New sections to be added to the Universities Act 1997,
under the new Universities (Amendment) Bill**

Directions of Minister in relation to remuneration, numbers or agreements

20A. (1) The Minister may, in relation to the performance by a university of its functions, give a direction in writing to that university requiring it to comply with a –

- (a) policy decision made by the Government or the Minister in so far it relates to the remuneration or numbers of public servants employed in that university, or
- (b) collective agreement entered into by the Government or the Minister.

(2) A university shall comply with a direction under this section.

(3) For the purposes of this section and sections 20B, 20C and 20D ‘remuneration’ means consideration, whether in cash or in kind, which a worker receives from his or her employer in respect of his or her employment and includes fees, allowances, superannuation and payments connected with appointment or termination of employment.

Report on operation of a university.

20B. (1) The Minister may appoint a person or persons (in this Act referred to as an “investigator”) to carry out an investigation into the –

- (a) performance by a university of its functions in so far as they relate to the remuneration or numbers of public servants employed in that university, or
- (b) implementation of a collective agreement entered into by the Government or the Minister.

(2) An investigator shall be entitled at all reasonable times to enter any premises occupied by the university and shall be afforded every facility and cooperation by the university, governing authority, chief officer and members of staff of the university, including access to all records, to perform his or her functions.

(3) An investigator shall, as soon as practicable after completion of his or her investigation, prepare a report and submit it to the Minister.

Directions following report on operation of a university.

20C. (1) Where, on consideration of a report submitted to him or her under section 20B, the Minister is of the opinion that it is appropriate to give a direction to the university concerned in relation to –

- (a) performance by that university of its functions in so far as they relate to the remuneration or numbers of public servants employed in that university,
- (b) implementation of a collective agreement entered into by the Government or the Minister

he or she shall give a direction in writing to the university concerned specifying the measures to be taken by the university in relation to the performance of any of its functions or implementation of such agreement and any other related requirements the Minister determines.

(2) A university and chief officer of the university shall comply with a direction given to the university under subsection (1).

Transfer of certain functions of universities

20D. (1) Where the Minister considers that –

- (a) a university has failed –
 - (i) to comply with a policy decision made by the Government or the Minister in so far as it relates to the remuneration or numbers of public servants employed in that university, or
 - (ii) to implement a collective agreement entered into by the Government or the Minister, or

(iii) to comply with a direction given under section 20C, or

- (b) there are serious deficiencies in the carrying out of one or more of the functions of the university in so far as they relate to the remuneration or numbers of public servants employed in that university or the implementation of a collective agreement entered into by the Government or the Minister,

he or she may by order, following consultation with An tÚdarás, appoint a person to carry out such and so many of those functions of the university as the Minister may determine in so far as they relate to the remuneration or numbers of public servants employed in that university and/or the implementation of a collective agreement entered into by the Government or the Minister.

- (2) Where the Minister proposes to make an order under subsection (1) he or she shall, by notice in writing –
(a) inform the university concerned that he or she so proposes and of the reasons therefor, and
(b) invite that university to make representations to him or her concerning the proposal, not later than 14 days from the service of the notice,
and the Minister shall, in deciding whether to make such order or not, take into consideration such representations.

(3) Where a function of a university stands transferred under this section that university shall not, during the period the function stands transferred, perform that function and the performance of that function shall not, during the period, be subject to its direction, control or supervision.

(4) A person appointed under subsection (1) shall have all such powers as are necessary or expedient for the purpose of carrying out the functions so vested and shall be appointed on such terms and for such period as the Minister decides, provided that in no case shall such functions be transferred for a period longer than 2 years.

(5) An order amending an order under subsection (1) (in this subsection referred to as the “first order”), shall not amend the first order in such a manner as would result in any function to which the first order relates standing transferred for a period exceeding 2 years.

(6) A person appointed under subsection (1) may consult with, and request information concerning the management of the affairs of the university from, the governing authority, chairperson or chief officer and in any such case that authority or person shall provide such information that is requested.

(7) The Minister may remove a person appointed under subsection (1).

(8) Where a person is removed from office under subsection (7) within the 2 year term referred to in subsection (4), or where a member resigns or dies in office the Minister may appoint another person for the remainder of that term.

(9) Upon the termination of the appointment of a person appointed under subsection (1), unless the Minister appoints another person and in any case at the end of 2 years from the date of first appointment, the functions vested in the person so appointed shall revert in the university, governing authority, chairperson or chief officer.

(10) At any time prior to the termination of the appointment of a person appointed under subsection (1), the Minister may, by order, revert any of the functions to which an order under subsection (1) applies in the university, governing authority, chairperson or chief officer to which the order relates.