

SEMINÁRIO

Estatuto Legal das Instituições de Ensino Superior
– autonomia, responsabilidade e governança

22 de Fevereiro de 2007

Abertura

Júlio Pedrosa¹

Quero começar por saudar o senhor Professor Jorge Miranda e o conselheiro Professor Alberto Amaral, saudar e dar as boas vindas aos Professores Guy Neave e Peter Maassen, agradecendo a todos pelos contributos que nos trazem ao debate que vamos promover sobre o Ensino Superior.

O Conselho Nacional de Educação inicia hoje uma série de reuniões dedicadas ao Ensino Superior. A ideia de considerar, em 2007, um programa de trabalhos centrado no ensino superior surgiu quando, no final do Debate Nacional sobre Educação, verificámos que era importante fazer um esforço adicional para aprofundar algumas das questões centrais que constam dos relatórios preparados pela ENQA, focado sobre o sistema de avaliação, e pela OCDE, que analisa todo o nosso sistema de ensino superior.

A apresentação que o senhor Ministro da Ciência, Tecnologia e Ensino Superior fez, na sessão plenária do CNE do passado dia 13 de Fevereiro, das “Orientações para a Reforma do Sistema de Ensino Superior em Portugal” justifica ainda mais a oportunidade de analisar e debater um conjunto alargado de questões estratégicas do ensino superior. A 3.^a Comissão Especializada do CNE – que trata as questões do ensino superior – concordou com a realização desta série de conferências e seminários, a terem lugar nos próximos meses e onde se tratarão as seguintes temáticas:

- *Estatuto legal das instituições de ensino superior – autonomia, responsabilidade e governança*, que aqui nos reúne hoje;
- *Recursos humanos e materiais – a carreira académica e os sistemas de financiamento*, em 6 de Março;
- *Acesso, equidade e modelos de acção social*, em 28 de Março;

¹ Presidente do Conselho Nacional de Educação

• *Qualidade, avaliação e acreditação – modelos e tendências actuais*, em 17 de Abril.

Foram ainda propostas mais duas iniciativas, cujo agendamento faremos em breve: uma delas dedicada a fazer o ponto da situação e algum trabalho prospectivo em relação ao Processo de Bolonha; outra sobre as questões relativas à diversidade da rede (universitária e politécnica).

Acreditamos que estas actividades permitirão ao CNE, no quadro da sua missão, assumir as responsabilidades que lhe cabem na apreciação e emissão de pareceres sobre as políticas e legislação associadas a esta anunciada Reforma do Ensino Superior.

Hoje, vamos ter a oportunidade de focar a nossa atenção sobre uma área que, tendo merecido já grande atenção dos peritos responsáveis pelo Relatório da OCDE, tem no documento de orientação para a Reforma um lugar destacado. Trata-se, na verdade, de olhar para a orientação e regulação do sistema, o estatuto legal, a autonomia e a governança das instituições. Organizámos os trabalhos destas reuniões em duas sessões: a parte da manhã, com a intervenção de conferencistas convidados e aberta à participação dos vários grupos de interessados que a capacidade da sala do CNE comporta; a parte da tarde é ocupada com o trabalho de um grupo de cerca de vinte pessoas, em que se procurará aprofundar a análise e o debate sobre a temática do dia.

Agradeço ao conselheiro Alberto Amaral a preciosa colaboração que nos está a prestar na organização deste ambicioso programa, trazendo o contributo de especialistas com trabalho relevante publicado nas várias áreas temáticas seleccionadas. São professores universitários ligados a centros de investigação sobre políticas e questões do ensino superior que integram a rede HEDDA, à qual também pertence o Centro de Investigação de Políticas do Ensino Superior – CIPES.

Hoje, temos o privilégio de ter connosco duas dessas personalidades. O Professor Guy Neave, investigador da Associação Internacional de Universidades, com sede em Paris, foi colaborador do CHEPS, na Holanda, e durante 2007, será investigador visitante no CIPES. O Prof. Peter Maassen foi professor na Universidade de Twente e investigador também no CHEPS,

é agora Professor na Faculdade de Educação da Universidade de Oslo, continuando a sua investigação sobre o Ensino Superior.

O senhor Professor Jorge Miranda, que não precisa de qualquer apresentação, concedeu-nos o privilégio de nos trazer a sua visão sobre o tema que nos reúne hoje. É um olhar de um eminente Professor de Direito, que sempre concedeu grande atenção às questões do Ensino Superior e, em particular, àquelas que hoje aqui vão ser discutidas. Agradeço-lhe a sua gentileza e a forma como aceitou a dar-nos este contributo para o importante debate que precisamos de ter sobre as questões que são o foco da nossa atenção.

A todos as senhoras e senhores conselheiros presentes agradeço o interesse que põem nestas iniciativas do CNE. Saúdo e agradeço a presença de todos quantos nos quiseram acompanhar nesta sessão e se deram ao trabalho de aqui vir.

Temos esperança que com estas iniciativas aconteça, de facto, um alargado debate sobre o Ensino Superior em Portugal.

From Guardian to Overseer; Trends in Institutional Autonomy, Governance and Leadership

Guy Neave¹

Prologue

For those engaged in the on-going saga of higher education – whether as participants or as observers – there is good reason for thinking that we have now reached a new stage in re-engineering the relationship between government and university. It is a stage primarily identified by the rhetoric of enhancing institutional – or more confusedly, academic – autonomy. Latest in the ranks of those making well-publicized utterances on the topic is Dominique de Villepin, then France's much-battered Prime Minister. It is, of course, a distressingly regular feature of French politics that in the latter days of a Presidential mandate many promises are made. Regrettably, those kept are rather less numerous. Not to be left out of the battle for public gratitude and adding his own contribution to the tottering heaps of electoral Manna and Quails, M. de Villepin held out the prospect of granting autonomy to France's Universities. In a land as well known for its volatile Student Estate as it is for its heavily interventionary mode of centralized governance, (Premfors, 1981) this was a bold step indeed. It was a statement of intent as bold as it was symbolically important, for in effect, it introduced a radical re-interpretation to the way Autonomy hitherto has been defined in French public life.

Institutional autonomy; an exercise in meaning and comparative socio-linguistics

In a society where central control is seen as an indispensable part of identifying and consolidating the General Interest, (Neave, 2001, pp.13 -73) Autonomy was not necessarily recognized as a desirable principle. Rather it carried with it a negative connotation. Autonomy involved those activities

¹ Centro de Investigação de Políticas de Ensino Superior, CIPES

either marginal or of so little significance that they could be left to function on their own. Such a difference emerges in the term used in French legal parlance to describe the status of that condition which, in English, is addressed as ‘academic autonomy’. The French term – *les libertés académiques*, *libertés* in the plural – is not simply a linguistic difference. It reflects a fundamental difference in concept. This, in turn, reflects differences cultural, political and historic that separate the notion of Academic Autonomy as a fundamental and inalienable right that is necessarily enjoyed by those engaged in scholarship, higher learning and the advancement of knowledge. (Thorens, 2005) In its plural form, however, *les libertés académiques* assume the status of privileges that, granted by the Prince, are revocable because privileged. That the State has not exercised this option does not mean it has fallen into disuse. Likewise in the sphere of institutional Autonomy. M. de Villepin’s promise was radical indeed if only for the fact that it entailed redefining Autonomy as a desirable condition. By so doing, it bids fair to redefining higher education in France not as a public service – as part of the General Interest and as the institutional basis of one of the *corps d’état* – the *corps universitaire* – but as a service to the public which is a very different matter indeed. Seen from the standpoint of the historic overtones that accompanied the French notion of Autonomy, expanding institutional autonomy may also be interpreted as the State’s abandoning an institution that plays a key role in contributing to the General Interest and assigning the University to the relative marginality that, until relatively recently, was associated with Institutional Autonomy.

Anglo saxon attitudes in the discourse on governance (sic) and leadership

In effect, such an example of French exceptionalism in the world of higher education policy provides us with an exceptionally interesting insight precisely because the basic political values that formed the underpinning to what has sometimes been alluded to as the ‘Jacobin University’ (Neave, 1991) are so very different. Such a perspective stands as an alternative to the mode of discourse that has predominated in the spheres of governance and leadership for the best part of the last two decades. In its contemporary

version, Institutional Autonomy derives its assumptions largely from norms, values and operational developments that draw heavily on the experience and the vocabulary of the Anglo-Saxon systems of higher education – of the United States, the United Kingdom and, in certain domains, on policies and practices drawn from Australia. (Hirsch & Weber, 2001, pp. 52 - 67)

Using the eccentricities of our french colleagues to justify a wide-ranging debate

I have focused on the differences in the fundamental values and the resulting differences in government higher education relationships in France for two good reasons. The first is simply to show that the nominal similarity that attends Institutional Autonomy, hides significant variations not all of which are explored, taken fully into account or still less made explicit. Yet, exposing these subtleties performs a function vital to any debate. Indeed, the exploration of differences in meaning opens the debate up to a broader range of interpretations than is possible when we take for granted that the same term has the same meaning or that such nominalisms bear the same meaning or share the same elements to the same degree. The second point I wish to make is that such variations, even if not analyzed on a comparative basis, are quintessential to *Europe's* experience of higher education. Not *the* 'European Experience'. This is just another example of that insidious doctrine "one size fits all", the scholar's version of tunnel vision. By focusing on our experiences and on trends in institutional autonomy, governance and leadership, we may conduct our debate within settings that are ours. It would in truth, be paradoxical indeed if in debating the current thrust in Institutional Autonomy, we do not permit ourselves full intellectual freedom. We ought not to indulge ourselves in a form of self-censorship, still less to do ourselves fashionable violence by seeking to fit contemporary trends into a supposedly 'global perspective'. Debates that follow the ill-advised belief that 'one size fits all' are largely deterministic. And sterile on that account.

Institutional autonomy – moving from or moving to

To sum up: At the very least, there are two perspectives to the issue of Institutional Autonomy. There is the current Neo Liberal doctrine and its accompanying interpretational framework both of which see enhanced Institutional Autonomy as an inevitable accommodation to individual demand, to the unpredictable and rapid shift in educational demand and which seeks to forward both by a dual policy: on the one hand by placing greater initiative on the individual university's ability to meet such demands; on the other by lightening the regulatory frame which otherwise prevents an efficient and direct relationship between University and Market. But policies are like the Roman God of Fortune, Janus with two heads. Thus, measures to enhance Institutional Autonomy as a further stage towards a quasi-privatized system of higher education, by the same token are also to be seen as moving away from established practice. Thus the rhetoric of Institutional Autonomy is not simply to be presented as a further step towards deregulation. There are other dimensions that are singularly important in the Western European context. Institutional Autonomy as a point in the policy agenda reflects a number of other issues – the “Off-loading State”, the rise of the Evaluative State, the difference being how far we are at the moment along the road to policy as anticipation or how far we have moved *away* from ancestral practice and archaic purpose.

Before exploring the patterns that are emerging within the spheres of Institutional Autonomy, governance and leadership in Western Europe (Eastern Europe is a different kettle of fish. For the sake of parsimony and sanity we will exclude our colleagues from beyond the Oder-Neisse line, interesting though their condition is) I will take one step back, the better to make a great leap forward. If we are to grasp the true significance behind the various measures in these three domains over the past half decade, it is as well to give a little attention to the nature of the relationships between government and higher education *from which* we are moving. I will do this by making a quick and merciful sketch that is comparative and historic. We need to remind ourselves that where we have come from rests on very different assumptions about the place of the State, higher education and the

Public Good as their main *raison d'être*. These constructs stand at the polar opposite from the values that have long underpinned the major referential systems in current higher education policy – to wit, the United States and the United Kingdom.

The humboldtian concordat

If today institutional autonomy is a prominent item on the higher education agenda in mainland Europe, it is largely because the very particular relationship between State and higher education that upheld institutional stability for more than two centuries is to all purposes, dead. The deceased paraded under various names. Some call it the Humboldtian Concordat. (Nybom, 2003, 2006) Others allude to it as the Guardian relationship. (Neave, 2006) To this both the United Kingdom and the United States are obvious exceptions.

To take a deliberately anachronistic view on the matter, the Humboldtian Concordat – first set down by Wilhelm von Humboldt in that astounding document of synthesis ‘On the Foundation of the University of Berlin’ – was the first modernization of the European University. Such modernization brought an end to the university as a private corporation. The university was placed at the service of the State. It also brought the House of Intellect into the public domain, and made it subject to what today would be classified as a system of answerability to public authorities. In return, the Prussian State – and others as the century progressed – granted a number of liberties to the Academic Estate. Such liberties set out its responsibilities, the condition under which that Estate operated and thus determined officially its intellectual and social standing whether as the “*corps universitaire*” in France or as the “*Gelehrtenstand*” (the “Estate of the Learned”), alternatively *Kulturträger*, (the Bearer of Erudition and Culture) in 19th century Germany. (Jarausch, 1983) Such glorious titles were the final expression of a number of fundamental liberties: the freedom to teach and to learn, the permanency of tenure, the designation of leadership exclusively

within the ranks of full Professors, national pay scales based on the corresponding rank in the national civil service.

Anatomizing the guardian relationship

The Guardian Relationship, however, revolved round two separate concepts; academic freedom which applied fully to senior academics, as exponents of the Truth. And a legal relationship by which the Public Authorities underwrote Academic Freedom, but not Institutional Autonomy. Thus, the Guardian Relationship was not just an administrative conjoining between Public Authority and University. It also involved a theoretical – perhaps even a spiritual – engagement that had to do with what today’s agenda calls ‘creativity’, excellence and originality of thought and, no less important, the conditions that fostered them and urged them forward. To put no finer point on it, the Guardian Relationship had as its main purpose to ensure the place of academia in what today is alluded to as the ‘production of knowledge’.² From a strictly historical point of view, knowledge production is an abiding function of the university. What changes are the beliefs and the convictions as to how best that function may be served and to what end.

Basic assumptions

The Guardian Relationship drew on a very explicit series of assumptions about the conditions necessary for the production of knowledge and the type of knowledge produced. Prime amongst them that the ‘pursuit of Truth’ – the university’s quasi religious ‘mission’ – demanded both separation and distance of the university from the external world. To parody

² As an aside, it is indeed amazing that any one worth his salt should see ‘knowledge production’ as something new. What is new of course is knowledge replacing manufacturing as the main driver of economic growth and social progress, just as the first industrial revolution gradually detached human physical strength from the process of manufacturing.

Max Weber's happy phrase, the university 'was in the world but not of it'. To von Humboldt and his heirs, the much-derided Ivory Tower fulfilled this end splendidly. Thus, the Guardian Relationship entailed in the role of the State was precisely to keep the external community at a distance. More particularly, such protection against outside and sectional interests was seen as indispensable if scholarship and knowledge were to be 'free' in the sense of their being available to all who should wish it. Such freedom was itself a prior condition for knowledge to contribute to the Public Good. And by the same token, knowledge that served only a particular and partial interest – that served the private interest rather than the national collectivity – was not the affair of the university.

If the State granted academic autonomy, institutional autonomy was a very different affair. Though there are obvious exceptions, the vision that predominated in mainland Europe held the university *stricto sensu* to be a national establishment. Rather more rarely was it the emanation of the local community. From time to time, local communities took the initiative to press for the establishment of a university to support the local economy only to see it slough off its primary purpose and move rapidly towards serving a national constituency. (Fagnière & Busman, 1978; MacIntock, 1972; Saunderson, 1974)

The guardian relationship and its operational dualism

In effect, the Guardian Relationship between State and University in its Humboldtian version and its variants ensured Academic Autonomy. It did not necessarily subscribe to Institutional Autonomy. On the contrary, the lines of accountability were laid down in the greatest detail and reflected another dualism. Such a dualism in the legal and procedural ties between university and Ministry bore considerable similarity with the medieval notion of 'ascending and descending hierarchies'. (Ullmann, 1961)

The Ascending Hierarchy is incarnated in, and represented by, the person of the elected Rector. By contrast, the Descending Hierarchy tied the university to the national administrative authorities in the person of a

permanent civil servant appointed by the Ministry to exercise oversight over universities by verifying the allocation of resources and the observance by the individual university of Ministry laws and rules, decrees and circulars. The Overlord of the Descending Hierarchy has different titles depending on the system he scrutinizes – *Secrétaire général* in France, *Kanzler* in Germany, Director of Administration in Sweden and *Regeringskommissaris* in the Flemish speaking parts of Belgium.

Such a bi-cephalous pattern of leadership was not the only arrangement that distinguished channels of accountability and service to the State from the freedom that to the European mind of the 19th century and beyond, was a natural guarantor of scholarship and excellence. For some systems, Belgium, France, Germany, for example, the need to serve scholarship and at the same time to provide public service with the talented and qualified, saw the emergence of a dualism in the qualifications for which students could present. On the one hand University degrees or Legal as opposed to Scientific degrees, the Staatsexamen and National Diplomas in Belgium, Germany and France stood as a clear boundary between academic autonomy and the freedom that scholarship demanded, and institutional obligation to the State.

Dualism and hierarchy

This dualism, curricular and administrative, accommodated academic autonomy represented through the ascending hierarchy terminating in the elected Rector. The descending administrative hierarchy which linked Ministry and University was effectively an alternative relationship to institutional autonomy. Through this second channel passed constraint, oversight and public answerability. Its key functions of control, verification, oversight and approval were handed down from Ministry to individual university. Amongst such elements of control which required Ministry approval were senior academic appointments; the final decision ratifying the elected Rector; verification of the quality of individuals and their eligibility for appointment to the Academic Estate sometimes exercised through

national competitive examinations; allocation of resources, upkeep of buildings and the granting to individuals of the right to undertake research for private as opposed to public agencies and interests.

These dimensions, in short, were fundamental to that arrangement, which a decade and a half ago some analysts termed the ‘State control’ relationship between university, national administration and government. (van Vught, 1989; Neave and van Vught, 1994)

British exceptionalism

To every generalization, there is always an exception. In the realm of governance, when set against the experience of Continental Europe that exception is the UK. Unlike mainland Europe, British universities were not incorporated into State service. Indeed, the argument can be made that the British universities retained their ancient form of Guild governance, leadership and autonomy until far into the 20th Century. This was not the only difference. As we have seen, if the Humboldtian Concordat acknowledged the reality of academic autonomy, institutional autonomy shone by its absence. This was not so in Britain. Institutional Autonomy was an essential principle. It was reflected in the fact that until the late 1980s system-wide legislation – the basis of the principle of Legal Homogeneity (Neave & van Vught, 1994) – was rare indeed. Rather, the legal basis of each university, its structure, pattern of governance and administrative procedures were enshrined in an individual Parliamentary Act. Known as the University Charter, it was individually tailored to the purpose the founding fathers laid upon a particular university. This founding legislation laid down the individual university’s responsibilities, structure, inner workings, regulations and procedures. Powers of oversight and verification that in Europe formed part of the University’s responsibility to the collectivity, in Britain were vested in the individual university and exercised in keeping with the terms of the Founding Charter – or its modification.

British exceptionalism: the relationship between institutional autonomy and academic autonomy

Thus, appointment to positions of leadership, academic recruitment, promotion, the granting of tenure, the holding of – and sometimes, the canvassing for – endowment capital, the selection of individual students, the determination of curricular content and the methods used to evaluate student performance and indeed the award of degrees from Bachelor through to Doctorate all stood as very real instances of the institution's right to govern its own affairs and the substantial nature of its autonomy. Other differences follow from this condition, not least of which the view that Institutional Autonomy is the prior condition that guarantees Academic Autonomy. To the British academic, without the first, the second is precarious at best. This is a very different way of interpreting the ties between Academic Autonomy and Institutional Autonomy. By contrast, the Humboldtian Concordat looked to the State³ to uphold academic autonomy. The British, however, in not untypical eccentricity, looked to Institutional Autonomy laid down in the Charter to protect the University and Learning from the State itself.

Réforme à la britannique

That the Universities of the United Kingdom have long enjoyed that degree of self-determination, which today others seek to make their own, does not mean that reform in governance, leadership and radical changes in the balance of power between the Administrative Estate and the Academic Estate are not to the fore in Britain. Since the British start from a relationship between government and university, and between Academic and Institutional Autonomy very different from the systems of mainland Europe, it is not surprising that thrust of Britain's higher education policy in the domain of governance moved in a direction diametrically opposed to trends in Mainland Europe. Institutional Autonomy, so desirable to the

³ Humboldt saw the Monarch as the best guarantor and through him the apparatus of state. However, the elevation of the Prussian monarch as Protector of Universities was realized only in 1848.

South of the Channel, is the object of official suspicion and second thoughts to the North of it. Indeed, Institutional Autonomy finds itself reigned in by the expansion of agency control – a licentious growth in bodies dedicated to verifying quality, performance, funding of higher education with an agency for each of the three Ancient Kingdoms, the pedagogic training of academics, the vetting of access policies. In sooth, a complexity that would have delighted the ghost of the Great Napoleon. (Neave, 2005, pp. 17 – 22)

Put succinctly, just as the historic control relationship in Continental Europe sought to limit Academic Autonomy by offsetting it against national governance patterns grounded in the administratively powerful dual hierarchy, so policy in Britain today seeks to constrain Institutional Autonomy by setting up a detailed and complex nexus of Agency control to counter balance it. Here is a situation passably ironic, and contradictory in the extreme. The irony is that the strategic purpose of reform both in John Bull's Island and on the European Continent is very similar in objective – to speed up institutional adaptability, to allocate resource usage with greater effectiveness, to raise academic productivity. Whilst the latter sees reform as best shaped by expanding institutional initiative and prying loose the grip of the descending administrative hierarchy, the former justifies broadly similar reforms in the name of cutting back on a surfeit of Institutional Autonomy.

Same purpose, different solutions

Indeed, following this line of reasoning, Britain's universities were inefficient because they had too much Institutional Autonomy. Unlike their European colleagues, they lacked the 'firm smack of government'. Too much institutional autonomy, so both Conservatives and, later Labour policy argued, had brought about the expropriation by the Academic Estate of a national institution, had driven a wedge between the private and corporative interests of Academia and what British governments of the day regarded as central to the redefinition of the General Interest – a more cozy and consenting connection of the University to the culture of entrepreneurdom.

In Britain, setting new limits upon institutional autonomy was the prime task of the Evaluative State and of central government. Arguably, the task was made less complex precisely because of the sheer legal diversity and institutional latitude contained in the individual University Charters. The virtual absence of framework legislation – despite the 1988 Educational Reform Bill – worked in favour of reform but reform of a very particular nature. Precisely because universities enjoyed Institutional Autonomy, decisions crucial to re-shaping the relationship between public policy and institutional response allowed British universities to adapt to the new policy incrementally and individually. The irony of the situation lay in the fact that the very Institutional Autonomy that policy so roundly condemned, was essential in advancing the policy of its own curtailment.

Leadership and its great transformation

No domain better illustrates the virtues of Institutional Autonomy as a device for organic change than the changes that took place in British institutional leadership from the mid Eighties onward. Because Vice Chancellorial appointment is not subject to national legislation so much as the individual founding Charter, redefining of role and responsibilities do not require national legislation. Change may be introduced by the individual University. And change in leadership style, purpose and influence has been both rapid and radical in Britain. The transformation of the Vice Chancellor from being first amongst equals to acquiring executive functions, reflected not simply the end of the university as a symbol of continuity with the past, a continuity rooted in the principle of collegial governance. It also shifted the referential paradigm from the past to the future. The major change in assigning the status and responsibilities of Chief Executive Officer is precisely to define, negotiate and to carry out those priorities that correspond to the university's vision of its self – that is to say literally a 'managed identity'. Other transformations lie behind the move away from the Chancellorial Seat of historical honour and the transfer of leadership status founded on the recognition as first in the Academic Estate. As Chief Executive Officer, however, leadership power derives from being Head of

the Administrative Estate, not longer first amongst equals of the Academic Estate.

These are not the only aspects to have undergone revision over the past 20 years in Britain. Changes in methods and criteria for recruitment to positions of institutional leadership are equally marked. Though Britain has a long way still to go before individuals can make a life-time career as ‘professional’ President – a practice well established in the United States (Kerr & Gade, 1986) – there are nevertheless significant developments to be noted here too. One is the extension of recruitment to beyond the UK and indeed beyond academia. Certain of Britain’s more globally sensitive universities now ‘head hunt’ for well-known manager/scholars with an outstanding track record. Nor is recruitment to university leadership limited to the scholarly world. Civil servants and figures from business are also to be seen in the ranks of leaders, though academic credentials, if desirable, are not always a necessity. The balance between managerial acumen and a proven track record for institutional development may perhaps be considered as a pointer to the weakening of academia’s power to organize their institution and of its re-definition as “managed professionals” rather than scholar/managers.⁴

The replacement of representational status by executive management powers if evident in Britain, is a trend equally visible elsewhere. Typical of this is the Dutch 1996 Law on University Governance. Here one sees an interesting profile in the governance structure. It retains the basic duality in mentioned earlier but redefines the descending administrative hierarchy. Whilst the Governing Board is smaller in number, the administrative hierarchy has evolved with the President as the direct and explicit representative of external interests. The Rector is still formally elected from amongst the senior Professorate, with strengthened executive powers for the internal management of the university: However, the Rector reports to the President. In effect, if administrative bi-cephalism has survived, the functions each discharge are now very different. The President represents civil society in place of a descending chain of oversight that bound Ministry

⁴ I must acknowledge a debt to Gary Rhoades whose work has traced a parallel development in American academia. See Rhoades, 1998.

to University. In place of verification, which was the prime responsibility of the Ministry delegate in the classic configuration of the descending administrative hierarchy, the President serves in a strategic role as intermediary between civil society and university. The Rector is responsible for the execution of the strategy determined in the Governing Board and acts as intermediary between Board and the constituent interests *within* the University. (de Boer, 1999)

The Danish University Act of 2003 stands as a further variation on the general theme of reforming governance. The managerial aspect, which is a central characteristic in the present day version of Institutional Autonomy, is clear. Executive Management is vested in a Board, not greatly dissimilar to the American Board of Trustees. Whilst the Dutch version has outside interests speaking through the person of the President, membership of the Danish University Board has an external majority of members of whom the Chairman is one.

The wagging of the tail or the wagging of the dog

These two instances, the Dutch and the Danish, illustrate a development central to the new and emerging relationship between university and society. This development entails a ‘reversal in the direction of penetration’. In turn, Institutional Autonomy draws upon a very different justification for present-day developments in contrast to earlier arrangements underpinning the relationship between university and society. Under the emerging patterns of leadership, the university is involved less in ‘outreach to society’ so much as society reaching into the university. Thus, the prime justification for institutional autonomy is that it serves to work out in detail the options and to interpret the operational consequences of priorities defined by outside interests reaching into academia from without. Alternatively, to change the perspective slightly, institutional autonomy strengthens the university’s decision-making capacity. But it also strengthens the power of external interests to influence the university’s strategic direction which is as neat a description of governance reform as a

key element in the rise of what some observers call ‘The Stakeholder’ Society (Neave, 2002, pp. 17 – 38) others the ‘Service University’ (Tjeldvoll & Holtet, 1998, pp 27-48) as ever one might wish.

A chronological brainteaser

Such descriptors are important examples of how the purposes and thus the identity of the University, are being redefined and, with the extension of Institutional Autonomy the opening up of further possibilities for individual universities to re-state both. Yet, the question remains precisely why public debate has shifted towards Institutional Autonomy over the past half-decade or so? From one standpoint, Institutional Autonomy may be understood within a framework broader than governance and leadership alone. It is also the final step in a long drawn-out process which multiplies the number of decision-making layers in higher education – a process that takes us on the one hand beyond the Nation State to supra government sphere of policy and below it to the regional level. Irrespective of the motives behind this phenomenon – and they range from adding weight to a regional dimension as part of participant democracy through to the pragmatic and utilitarian priority of setting closer links between university and regional economic development.⁵ Viewed within these perspectives, Institutional Autonomy is the final step in an on-going saga that involves policies of decentralization, devolution – and administrative stratification of higher education systems. Some of these policies may be traced back to the late Seventies in the case of Sweden (Lane and Bertilson, 1983), a half decade later in the case of Spain (Garcia Garrido, 1992; Diez – Hochleitner, 1991) or two decades in the case of Austria and Germany. Indeed, it fits closely in with the logic of these reforms amongst which the creation of the Spanish Autonomous Communities in 1984, the Federalization of Belgium in 1988, the regionalization of university funding in the United Kingdom. Within the narrower confines of Higher Education, a different rationale is at work.

⁵ This facet of change both in the university’s task and its links with society is particularly important in the Scandinavian lands where it parades under the descriptor of ‘the Third Task’.

Reinforcing the instruments of oversight

One of the most significant achievements – indeed, an indispensable condition for re-defining the relationship between Nation and university these two decades past, has been the setting up of a powerful, relatively precise and detailed instrumentality over and above that control and oversight traditionally exercised through legislative and legal procedures. This augmented instrumentality is specific to higher education. Based on performance indicators, which permit high degrees of aggregation and disaggregation, such system of multi-level evaluation placed the relationship between university and Society on a radically different footing. The new instrumentality was the vehicle for reforms ranging from the rise of ‘remote steering’, the replacement of *a priori* input based financing by *a posteriori* allocation related to institutional output. Here indeed was reform’s Archimedes’ lever. It provided a new operational basis for systems of accountability and verification, for quality assessment, for comparing performance at departmental, institutional and even regional levels. An alternative interpretation on this development interprets it in terms of the rise of the Evaluative State. (Henkel, 1999; Neave 1989, 1998) On this formidable instrument of intelligence and information-gathering were grafted new modes of ‘steering’ higher education – sometimes remote. It introduced an unprecedented growth in such instruments of leverage as ‘performance driven steering’ in Finland, incentive led funding in Denmark, performance linked budgeting in the United Kingdom, management by objectives in Sweden, and last but not least, the application of the principle of ‘contractualisation’ into such systems as France from the early Nineties and its various sub-sets; university development contracts in Denmark, incentive funding in Flanders later. (CHEPS Monitor 2004, 2005)

The chronology of overhauling system and institution

From the standpoint of sheer chronology, the implementation of such a system of accountability and reporting back to specialized agencies with

responsibility for evaluating institutional performance, quality assessment and more recently, accreditation (Schwartz Hahn & Westerheijden, 2004) clearly is a top down undertaking in two senses of the word. Re-engineering evaluation around instruments of assessment was first of all a policy initiative from central authority. Second, it concentrated either on injecting new responsibilities to agencies already in place – a pattern seen in the Netherlands and Sweden, for example. Assessment of institutional performance in the Netherlands was assigned to the Associations of Netherlands's Universities (*Vereeniging der Samenwerkende Nederlandse Universiteitent VSNU*). In Sweden, the Swedish National Higher Education Agency (*Hogskolverket HSV*) – the national body in charge of administrative oversight for higher education – assumed this charge. Only when the new agencies of public purpose – and the instrumentality they elaborated and wielded – were in place and fully 'run in' was the issue of Institutional Autonomy raised. Succinctly stated, only when the boundaries of control and the techniques for steering and evaluating institutional achievement were 'up and running' did national strategy for higher education directly address itself to the institutional level. This is not to say that re-defining task, structure, mission and procedure that accompanied the establishment of Agency steering had little impact upon the latter. Quite on the contrary. But such impact was the outcome of policy aimed first of all at modernizing procedures of verification at national level. In effect, the issue of Institutional Autonomy as a self standing agenda was tackled only when national agencies and their particular instruments of steering had set the operational bounds at system level.

An example very concrete

At this point, having looked at the general trends in the area of Institutional Autonomy, I want to take a particular case study to examine some of the concrete and practical issues that addressing this topic has posed to one province in the German system of higher education. The Land of Lower Saxony is not the only province to consider strengthening

institutional autonomy. The provincial governments of North Rhine Westphalia and Baden Wurttemberg are similarly engaged. (Palandt, 2005)

The heart of the issue as the authorities of Lower Saxony see it, turns around the legal redefinition of universities as dependent state institutions. One should note that with the exception of some four establishments, one medical school, the University Veridiana at Frankfurt on Oder, a Catholic University of Eichstadt in Bavaria, German universities are public corporations. Enhancing institutional autonomy starts from the thesis that efficiency in higher education increases as the Land authorities relax the close supervision and oversight accumulated over the years. In common with many other systems whose development draws strength from the theory of New Public Management – public administration's theoretical perspective to the economic doctrine of Neo Liberalism – the central assumption is that Lower Saxony's universities suffer from a dearth of Institutional Autonomy.

Key issues

Redefining the legal status of the university is the key issue. As at present constituted, universities are state institutions. The first step changes their legal status from dependent state institutions to becoming a self-administered public body. State supervision is transferred and vested in a Foundation, which will serve as a Supervisory Board. (Palandt, 2004) Individual Membership of the Supervisory Board will be nominated by the University Senate and the appointment confirmed by the Provincial Ministry of Education and Culture.

The transfer of authority from Provincial Authorities to Foundation, as a corporate body, confers on the Foundation legal oversight over the university qua corporate body. Transfer of corporate responsibility to the Foundation brings a number of very substantial changes with it. First, Foundation universities are not managed as part of the State budget. As the Foundation assumes managerial responsibility, it takes over the task of determining its own budget. Provincial Authorities will contribute part of

the Foundation's funding. The relationship between university and provincial authorities is re-defined as a species of contract, negotiated around set targets by the two interested parties.

Interestingly, though doubtless reflecting a particular prejudice in Germany, the Foundation format is thought to be more appealing to private donors and firms than a fully public establishment. Yet, the transfer of financial responsibility presuppose an enhanced capacity for institutional planning and planning in turn presupposes a certain stability in resource flow over time. Such stability is necessary both develop medium term institutional strategy – a period of four to six years is thought necessary to seat institutional planning firmly in the institutional fabric. Key to this is the transfer to the University of real estate previously financed and administered by Provincial Authorities which will provide a financial underpinning, to be supplemented by the build-up of external endowment capital.

How is the transfer of power from State to Foundation to take place? The University Reform Act of June 24 2004 confers upon the university the right to opt for the Foundation model provided two thirds of the University Senate support the proposal. There are, however, two further issues. First, the Foundation may recruit staff independent of state intervention; second, the public salary scale remains intact – though for how long is a very different matter.

Fate hanging in the balance

Some have argued (Palandt, 2005) that as more universities move over to the Foundation arrangement, so new salary structures may follow. Another possibility – and it amounts to virtually the same thing – is that national negotiation of academic salaries is replaced by 'plant-level' agreements. Such a development is visible in the Netherlands. (van Vught Thijssen & de Weert, 1999) A compounding factor is whether the Foundation model will not carry this further by differentiating salary structures along disciplinary lines? Such a practice – rare indeed in Western Europe – has wrought untold ravages in the United States.

Yet, one element in the Foundation relationship between State and University reflects a particular aspect of German exceptionalism. Transferring responsibility to Foundations does not absolve the State of obligation to protect the universities by laying down the rights and duties of academic staff irrespective of the legal base on which they are recruited. This obligation is of more than passing interest. For whilst the Foundation format is often argued by its adepts to be simply the German interpretation of New Public Management, it also shows most assuredly that certain key features of the traditional Guardian relationship remain intact, despite – if not wholly because of – certain barbarous episodes three quarters of a century back.

The general trends underlying governance, leadership and the enthusiasm for Institutional Autonomy have evolved with amazing speed over the past ten years. The principles that today are incorporated into the contemporary construct of institutional autonomy, however, do not find their roots in the post Humboldtian systems of mainland Europe, I would argue. The first modernization of the University in Europe, on the contrary, brought it into the national community, as part of public service and closely identified it with the professionalization of government, with the civil service, and heavily engaged it in the formation of national elites. The Guardian relationship, which emerged from what today would be termed the classical mission of the University in Europe, saw the State committed to protecting academic autonomy but not Institutional Autonomy. Whilst the sudden re-discovery of Institutional Autonomy may be seen as part of the rise of New Public Management, that phenomenon introduces a concept of Institutional Autonomy, which had few immediate roots in Europe. However, Institutional Autonomy does have a long and fruitful existence in certain offshore university systems, and very particularly those of the United Kingdom and the United States.

In Western Europe, the classical function equivalent to the Anglo Saxon interpretation of Institutional Autonomy rested on diametrically opposed presumptions – of close engagement with government, but not with society. By contrast, the ethos underpinning the Anglo Saxon version of Institutional Autonomy built upon distance from government and close and

intimate ties with the local community, its sectional and often quarrelsome interests. (Neave, 2003)

The issues that re-engineering poses

The re-engineering that generates the post-modern version of Institutional Autonomy, raises a number of enduring issues. And because they are enduring, so they will remain central to the debate. Arguably, Institutional Autonomy is the final step in the logic of the Evaluative State. In Western Europe, the rise of the Evaluative State, was the prime lever in moving university systems away from the Guardian relationship, grounded on the principle of legal homogeneity as the prime means of exercising oversight in higher learning. The Evaluative State has re-defined this basic legal instrument. It has replaced legal homogeneity by evaluative homogeneity. (Neave, 2006b, pp.23) The consequences that follow from this are dramatic indeed. They have given rise to a situation that whilst nominally tied to the concept of Institutional Autonomy, is not necessarily compatible with the reality thus created. Indeed, to the skeptical – and scholarship just as debate about higher education, demands such an attitude – it matters not a fig whether universities are self-guided; whether they determine how order is to reign in the house of academia if, in the end, the criteria on which performance is judged are grounded, knowingly and deliberately, on the principle of evaluative homogeneity. The question that others will have eventually to address is whether Institutional Autonomy in its present form is not conditioned by an instrumentality more powerful, more invasive and more consequential than ever it was when the Guardian model of the relationship between government, society and the university operated through the legal construct of ‘State control’.

Envoi Second Thoughts and Primordial Questions

Not so long back, the first faltering steps towards a relationship founded on the principles of conditionality, flexibility and negotiated

contracts which are the means the Evaluative State serves, were heralded as the advent of the ‘facilitator’ state – the replacement of State Control by a lighter mode of ‘state surveillance’. (Neave & van Vught, 1994) Perhaps our optimism was misplaced. Offloading responsibility for planning, budgeting, staff appointment, active student recruitment, the general quest for camels and cowerie shells may in truth fuel institutional self-determination. But this – shall we say “liberalism”? – also involves the redistribution of power. It installs procedures which, if efficiently rearranged, cannot but have irrevocable consequences for the relationship between the Three Estates in the university realm – the Estate Administrative, the Estate Academic and the Student Estate.

What are the consequences for the university – ostensibly autonomous- of the Evaluative State, of its instrumentality of reporting back, rendering accounts and demonstrating both efficiency achieved and mission fulfilled? One consequence – and to me it merits further debate – might well shift the role of Guardian from the State to the Administrative Estate? Where does this leave the Academic Estate? Faced with performance driven steering and other instruments of evaluation and assessment, the Academic Estate in turn is faced with an instrumentality of unparalleled potential for intervention, immediate, direct and indirect.

To gain some insight over this issue, I pored over some fairly detailed questionnaires sent out or planned, by the central agencies of public purpose and oversight in Austria, (Austria, 2006) Catalonia and the United Kingdom. The density, detail and precision of these documents all beg the question whether reforms in governance, in the reassignment of weight and consequence between various constituencies within the university and without, are not moving us furiously *less* towards a new edition of State Control so much as a form of public control, more weighty, more interventionary, exercised across multiple agencies, each focusing on particular segment of university activity. Might it be that, in the course of the past decade, what we have achieved is simply to put Overseers in the place that Guardians occupied for the past two centuries? And Overseers, more efficient, more cost conscious in their handling of resources financial,

built and human, tend to differ from Guardians in but one aspect. They are more economic, *plus regardant* with their benevolence and mansuetude.

Has our progress brought us full way through a species of Hegelian spiral, a learned way which philosophers, and sometimes students of higher education, use to describe going round in circles? Have we, like the American pop song of the 1940's come "right back where we started from"?

In bestowing the assorted blessings of Institutional Autonomy, governments are seemingly engaged in exercising a self-denying ordinance by handing off functions previously undertaken by Ministries. To offload such responsibilities is one thing. It is another to deny the self-denying ordinance, which is what results from setting up a battery of instruments for institutional assessment that brings in its wake an unprecedented degree of control over the enterprise of higher learning. Agreed, the emergence of different layers of oversight – from beyond the Nation State, down to the region and even to the communal level – lend further complexity in achieving a reasonable understanding of the dynamic we expect the university to have. What about the end result? The net result may not lessen the degree of control so much as shift its location, expand the number of bodies of rectitude and good practice (sic) and multiply the levels across which they operate.

This is not the only enduring issue that lies behind reform, whether it focuses on Institutional Autonomy, on leadership or on governance. In symbolic terms, all three may be presented as a transition from a relationship between government, society and the university in terms of Guardianship and Protection and one moving onward toward the trappings and outward tools of a society model and relationship best qualified as the Overseer Society. The most delicate issue that lies behind the new forms of governance, the re-definition of the role and the reinforced presence of Stakeholders, Constituencies and local interests is whether enough power has really been given to the individual University to give substance and not simply the shadow of Institutional Autonomy? This is a question all the more central precisely because one possible outcome of Enterprise or Entrepreneurial culture penetrating into Academia, is to bring with it a conflict of interests into Board Room, Board of Trustees or the Governing

Body. Put in terms of the utmost pragmatism is the autonomy universities now enjoy or which they are promised in the near future, sufficient for the university to refuse those outside demands it deems in conflict with its self defined mission?

It is this condition that tests the reality of the institutional autonomy a University enjoys – or regrets. And, no less so, it is a reasonable test of the ability of an institutional leadership strengthened to be able successfully to deal with such divisions and conflicts.

References

- Catalan Government - UPOC (2006). Contract Programme 2006-2009, Barcelona.
- CHEPS Monitor (2004, 2005). Higher Education Policy Issues and Trends, Enschede, CHEPS
- Consejo de Universidades (1987). La Reforma Universitaria española: evaluación e informe, Madrid, Consejo de Universidades. 140 pp [Report to the Spanish Minister of Education]
- De Boer, H. (1999). The troublesome Dutch university and its Route 66 towards a new governance structure. *Higher Education Policy*, 12.3, 329-342.
- Díaz-Hochleitner, R. (ed.) (1989). *La Educación postsecundaria: ante la sociedad del conocimiento y de las comunicaciones. Documentos de un debate*, Madrid: Fundación Santillana.
- Fragnière, G. and Busman, C. (1976). La difficile coordination de la planification nationale et ses besoins régionaux. *European Journal of Education*, 11.2. 52 -53.
- García Garrido, J.-L. (1992). Spain. In Clark, B. and Neave, G. (Eds), *The Encyclopedia of Higher Education* 4 vols Oxford, Pergamon, vol. 1 National Systems of Higher Education, pp. 663 - 676.
- Henckel, M. and Little, B. (1999). *The Changing Relationship between Higher Education and the State*, London: Jessica Kingsley.
- Hirsch W.Z. and Weber, Luc E. (Eds) (2001). *Governance in Higher Education: the University in a State of Flux*, London/Paris/ Geneva: Economica, pp. 52-67.
- Jarausch, K. (1983). *The Transformation of Higher Learning 1860 – 1930, Expansion, Diversification, Social Opening*, Chicago: University Press.
- Jongbloed, B. (2001). *Performance-driven funding in Higher Education: an international survey*, Enschede: CHEPS.
- Kerr, C. and Gade, M.L. (1986). *The Many Lives of Academic Presidents: Time, place, character*, Washington DC, Association of Governing Boards of Universities and Colleges.
- Lane, J.-E. and Frederiksson, B. (1983). *Higher Education and Public Administration*, Philadelphia (PA): Coronet Books.

- MacLintock, M. (1972). *Quest for Innovaton: the University of Lancaster*, Lancaster: University Press.
- Neave, G. (1988). On the cultivation of quality, efficiency and enterprise: an overview of recent trends in higher education in Western Europe 1986-1988. *European Journal of Education*, 23.2-3, 7-23.
- Neave, G. (1998). The Evaluative State Reconsidered. *European Journal of Education*, 33.3, 265-284.
- Neave, G. (1991). On Programmes, Universities and Jacobins: or, 1992, Vision and Reality for European Higher Education. *Higher Education Policy*, 4.4, 37-41.
- Neave, G. (2001). The European Dimension in higher education: an excursion into the modern use of Historical Analogues. In Huisman, J., Maassen, P. & Neave, G. (Eds) *Higher Education and the Nation State*, Oxford: Elsevier Pergamon, pp. 13- 73.
- Neave, G. (2002). The Stakeholder perspective historically explored. In Enders, J. and Fulton, O. (Eds), *Higher Education in a Globalizing World: international trends and mutual observations*, Dordrecht: Kluwer Academic Publishers, pp. 17 – 38.
- Neave, G. (2003). The Bologna Declaration: Some of the Historic Dilemmas posed by the Reconstruction of the Community in Europe's systems of Higher Education. *Educational Policy*, 17.1, 141-164.
- Neave, G. (2005). The Supermarketed University: Reform, Vision and Ambiguity in British Higher Education. *Perspectives: policy and practice in higher education*, 9.1, 17-22.
- Neave, G. (2006a). Mass Higher Education and the Research University: a post-modern revival of Ockham's Razor. In Tadmar, Z. (ed.), *Transition to Mass Higher Education Systems: international comparisons and perspective*, Haifa (Israel): The Technion Israel Institute of Technology, The S. Neaman Press, pp. 241- 264.
- Neave, G. (2006b). A Privatização da Educação Superior e a Dinâmica do Estado Avaliador, Conferência Magna do 8º Forum Nacional; Ensino Superior Particular Brasileiro, October 19 – 21, 2006, World Trade Centre, Sao Paulo, Brazil, pp. 23.
- Neave, G. and Van Vught, F. A. (1994). *Prometeo Encadenado: estado y educación superior en Europa*, Barcelona: Gedisa.
- Nybom, T. (2003). The Humboldtian Legacy: reflections on the past, present and future of the European University. *Higher Education Policy*, 16.2, 141-159.
- Nybom, T. (2006). Creative intellectual destruction or destructive political creativity. In Neave, G., Bluckert, K. and Nybom, T., *The European Research University: an historical parenthesis*, New York: Palgrave Books, 3-13.
- Palandt, K. (2005). Universities as Foundations- the new Model of Lower Saxony. *Higher Education in Europe*, XXVIII.2, 181- 187.
- Premfors, R. (1980). *The politics of higher education in a comparative perspective: France, Sweden, United Kingdom, Stockholm*, Department of Political Science.
- Republic of Austria, (2006). Federal Law Gazette 63 rd Regulation on Intellectual Capital Reports, issued on February 15th 2006, Vienna.
- Rhoades, G. (1998). *Managed Professionals: Unionized Faculty and rethinking academic labour*, Albany, NY: SUNY Press.
- Saunderson, R.L. (1974). *The Universities and British Industry*, London: Routledge & Keagan Paul.
- Schwartz Hahn, S. and Westerheijden, D. (Eds) (2004). *Accreditation and Evaluation in the European Higher Education Area*, Dordrecht: Kluwer Academic Press, pp. 1-42.

- Thorens, J. (2006). Liberties, Freedom and Autonomy; a few reflections on Academia's Estate. *Higher Education Policy*, 19.2, 87-110.
- Tjeldvoll, A. & Holtet, K. (1998). The Service University and Service Society. *Higher Education*, 35.1, 27-48.
- Ullmann, W. (1961). *Principles of Government and Politics in the Middle Ages*, London: Methuen.
- Van Vught, F.A., Thijssen, L. and de Wert, E. (1999). Academic staff between threat and opportunity: changing employment and conditions of service. In Jongbloed, B., Maassen, P. and Neave, G. (Eds), *The Eye of the Storm: Higher Education's changing institution*, Dordrecht: Kluwer Academic Publishers, pp. 39 – 61.
- Van Vught, F.A. (1989). *Governmental Strategies and Innovation in Higher Education*, London: Jessica Kingsley Ltd.

The Modernisation of Higher Education Governance in Europe¹

Peter Maassen²

Introduction

European higher education, and especially the traditional research university³, seems currently to be in a state of institutional confusion and search. The traditional pact between higher education and society is deemed to be no longer valid, and there is not yet a new pact (Maassen and Olsen 2007). This is to a large extent caused by far-reaching change processes in the environments of HEIs, including general reforms of the governance and organisation of the public sector, and European integration efforts. The former refers to general efforts to improve the effectiveness of governments and the performance of the public sector; the latter includes not only specific higher education initiatives, such as the Bologna process (Neave 2003), and the proposal to create a European Institute of Technology (Commission 2006a, c), but also more comprehensive reforms, such as the Lisbon strategy (Gornitzka 2005). As a consequence, there is a growing imbalance between demands from environmental actors on higher education institutions and the institutional capacity to satisfy these demands (Clark 1998). In addition, many changes taking place within HEIs are a result of internal, i.e. intra-institutional, and -disciplinary processes and decisions.

¹ In this paper the situation in the EU member states will be discussed. This does not imply that it is assumed that there is a homogeneous development in the EU higher education systems. The situation as regards UK universities is, for example, very different from the situation in continental Western Europe (Brown 2005), while also the governance of higher education in the new EU member states differs from the governance of higher education in Western Europe (File and Goedegebuure, 2003; Altbach and Levy, 2005).

² University of Oslo, Norway

³ In the remainder of the paper the term higher education institution (abbreviated as HEI) will be used to refer to the traditional European research university as well as other types of higher education institution. HEIs in the EU member states have currently more than 17 million students and some 1.5 million staff members working within 4000 institutions (Commission 2006b).

Making sense of these changes and interpreting their effects in a valid and meaningful way is not an easy endeavour. This is caused in the first place by the growing complexity of the governance mode with respect to higher education in Europe. Governmental steering of the European university takes place through a multi-level governance system in which the decisions at the European/supra-national, national, regional and institutional level have become so intertwined that it is in practice very difficult to identify at which level by which actor which initiative or decision was taken that has led to which result.

Further the theoretical and empirical basis for understanding the institutional dynamics of European HEIs is relatively weak. Solid scientific comparative higher education studies are rare in Europe. This can be attributed, amongst other things, to a lack of funding, a lack of research capacity, and a dominant national focus in higher education studies. In addition, there are a number of methodological issues that affect the validity of comparative higher education studies. First the organization and governance structure of higher education systems in Europe are still nationally determined. This implies e.g. that in the case of the use of indicators the same indicators might have a different meaning according to the country where the HEIs in question are located.

A second methodological issue concerns the heterogeneity of individual HEIs. This includes structural features of national higher education systems, e.g. public versus private, and PhD and non-PhD awarding institutions, but also differences in disciplinary and field mix of HEIs. Third there are specific data problems, for example, related to the different accounting systems between European countries (Lepori et al. 2005).

In addition, and related to the previous point, there are important gaps between the problems identified and the solutions advocated in the European level policy debates, and the quality of the analyses and evidence reformers have forwarded. Higher education reform policies are to a considerable extent based on belief systems and a set of commitments where key assumptions are problematic and unverified by theoretically oriented, empirical research.

While the ultimate effects of the change processes on the governance and organization of higher education in the EU Member States are not visible in all respects yet, the emerging new institutional contours show that the HEIs' governance structures, funding sources, the organization of their primary processes (teaching, research and services), and the general political, economic and social conditions under which the HEIs operate are being altered. As a consequence the traditional underlying idea of the European HEI as a public, democratically run, social institution is clashing with the instrumental vision of the HEI as a professionally managed, autonomous "enterprise", operating in various markets as a service industry⁴.

The effects of the change processes have been interpreted differently by different scholars. Some suggest that the changes amount to a fundamental transformation of the HEI as an institution (e.g. Marginson and Considine 2000). They suggest that the changes go fast and are comprehensive. Others have emphasized that the traditional institutional dynamics of universities and colleges in handling external and internal pressures, i.e. their evolutionary change capacity, also dominate in the current period. These scholars suggest that also the current changes are stepwise and to a large extent incremental (Birnbaum 2000; de Boer 2003).

This apparent disagreement raises a number of questions about the nature and the outcomes of the change processes: What is the extent of change and in what direction is it going? How do processes of European integration affect the institutional dynamics of higher education institutions within their national context? Under what conditions are markets in higher education perfect enough (few frictions, perfect knowledge, easy entry, etc.), and oriented towards academic quality rather than low prices, so that competition rewards excellent research and teaching and eliminate low quality? How does the Europeanisation of higher education compare to the changes higher education institutions in other parts of the world are undergoing?

⁴ For a discussion of the tensions between the underlying ideas of the university as a social institution versus the university as an industry in the USA, see, for example, Gumpert (2000).

Addressing all these questions is beyond the realm of this paper. However, they should be kept in mind when discussing the notion of “modernisation” of European higher education, since they are an indication of the complexity of the change processes going on in European higher education at the moment. Of special importance in this is to point to the “shocking diversity” of European higher education (Neave 2003: 151), the lack of valid problem analyses and the “simplicity” of the proposed solutions (Schleicher 2006), the fact that especially as a consequence of European integration efforts, politically higher education has become “more important”, but at the same time “less special” (Maassen and Olsen 2007).

Modernising the steering (or governance) relationship between the state and higher education institutions has the last 20 to 25 years been a constant item on the political agenda of most European countries (Maassen 2003). In the following sections the developments around these “reform packages” will be discussed from slightly different perspectives. The paper starts with a brief introductory reflection on the changes that have taken place since the 1970s in the governance of US and European universities. This is followed by an overview of the main governance developments at the national level. Next a discussion of the European level debates on the modernisation of the university will be presented, with a number of conclusions and recommendations at the end.

Us and european university governance

In their efforts to modernize the organization and governance of their higher education institutions European governments have increasingly put faith in the working of the marketplace. This faith is in many respects inspired by the leading position of US universities and their reliance on market interactions.

For understanding the governance roots of the current success of US higher education we can point, for example, to Martin Trow, who is best known for his introduction of the concept of the massification (1970). However, he also provided an interesting framework for studying higher

education governance by linking the concept of massification to governance. As the following quote is showing, Trow was afraid that growing societal interference would lead to the end of the traditional autonomy of the US university:

We will be living in an environment increasingly sensitive to what the university does, and especially to what it does that has direct effects outside the university. It is not generally recognized how much the university's freedom and autonomy were a function of popular indifference and of the management of special interest groups outside the arena of popular politics. But for various reasons the society is less and less indifferent, at the same time as trustees and regents are less able to perform their traditional function of defending the university through forms of elite politics. (Trow, 1970: 12)

Trow's observation that in the USA "the society" would become more interested in higher education was, of course, correct. For various reasons the societal indifference that Trow was referring to is a phenomenon of the past. Society has become more and more interested in higher education's performance from the early 1970s on, and the notion that governing bodies, such as trustees and regents, are there to protect and defend higher education, sounds in 2007 rather outdated.

Of relevance in this is that the 1970s were a period of relative "malaise" for US higher education (Geiger 2004: 22). Government interference in higher education was greater than ever before, enrolments in higher education were not growing anymore, and institutional income grew at a lower rate than the annual inflation thereby "eroding university assets" (Geiger 2004: 23). In order to handle this crisis the relationship between the state authorities and the university in the US has been radically transformed since the early 1980s. This transformation has resulted in a university model that is generally seen as the best in the world, a model that the European societies and the European university eagerly try, or are at least expected, to copy, apparently without much success⁵.

⁵ See, e.g. the survey on higher education in the Economist (Sept. 8th 2005), that uses headings such as: "How Europe fails its young", and "The state of Europe's higher education is a long-term threat to its competitiveness". Also Newsweek (21/28 August 2006) has covered the success of US universities and the apparent failure of continental

In discussing the comparison between European and US HEIs and the reform solutions proposed for addressing the apparent “lagging behind” of European HEIs it is of relevance to point to the “paradox of the marketplace” (Geiger 2004: 265):

“The marketplace has brought universities greater resources, better students; a far larger capacity for advancing knowledge; and a more productive role in the US economy. At the same time it has diminished the sovereignty of universities over their own activities; weakened their mission of serving the public; and created through growing commercial entanglements at least the potential for undermining their privileged role as disinterested arbiters of knowledge”.

The diagnosed gap between the US and European HEIs is also a question of what kind of criteria and objectives are used to assess performance.

Like in the USA also in Europe the 1970s were characterized by economic crises and a high level of government interference in the HEIs’ affairs. However, the enrolment situation of European universities and colleges was more complex, in the sense that the first massification wave in European higher education started later than in the USA. In most Western European countries the growth in enrolment started in the late 1960s, and in some countries, such as Portugal, the UK, and the new EU member states from Central and Eastern Europe, only in the late 1980s or early 1990s.

While in the USA during the Reagan era a rather radical shift from the high level of state interference to the marketplace was seen as the answer to the crisis in higher education (Bok 2003; Geiger 2004), in Europe governments were, at least initially, far more reluctant to allow the market to steer higher education. The modernisation of European university governance was sought more in a combination of increased institutional autonomy with respect to organizational input matters, such as selection of students, personnel management, financial administration, with growing external attempts to control the output, i.e. the performance of the HEIs,

European universities, stating e.g. that “Universities abroad are increasingly copying American practices, including abandoning recitation in favor of creative thinking”.

especially concerning the number and nature of graduates, and the research output.

While in continental Europe the 1980s and first half of the 1990s can be characterized not by less, but rather by a different kind of government interference, the Thatcher period marked the end of the dominant position of the academic oligarchy (Clark 1983) in British university governance, and introduced a form of government controlled modernisation of the university, i.e. less influence of academics and a growing influence of the government and institutional management.

In the European context a number of higher education scholars have used the concept of “steering” to analyse the changes in the governance relationship between the state and higher education in this period. Van Vught (1989), for example, introduced the concepts of state control and state supervision models of government steering⁶. The implicit assumption underlying these models was that a development from state control (or a centrally planning state) to state supervision (or a facilitatory state) was to be promoted, because a supervising role of the state would lead to a better performance of higher education than a controlling role. State supervision was thus, from this perspective, the preferred alternative to the traditional ‘top down’ form of coordination.⁷

In the 1990s, a number of European higher education researchers (see, for example, Van Heffen *et al.* 1999; Gornitzka and Maassen 2000) became inspired by the four so-called state models introduced by Olsen (1988): the sovereign (or unicentric) state, the institutional state, the segmented (or corporatist) state, and the market state. Of these four models the first two, the sovereign state model and the institutional state model, can be regarded as variations on the traditional governance model discussed above. The other two models are alternatives to the traditional models. Unlike the models introduced by Van Vught, these four models are not necessarily mutually exclusive. They represent different ways of organising the

⁶ For a further conceptualization of this initial interpretation of ‘steering’ in the higher education context, see: Neave and Van Vught 1991; Maassen and Van Vught 1994; Maassen 1996.

⁷ See also Goedegebuure *et al.*, 1994 for a comparative analysis of this argument.

relationship between the state and society, namely, state dominance and control, state protection of specific social values and norms, the state as one of the involved interest groups, and a minimal state. Mixed forms, far from being unusual, are common, as indicated by Gornitzka and Maassen (2000) who speak of “hybrid” forms of governmental steering with respect to higher education.

The steering models introduced by Van Vught and the use of the Olsen state models reflected an attempt to analyze the first wave of university governance shifts in the 1980s and early 1990s. They represent the transition period in which new governance approaches were studied and experimented with, without the old ones having been rejected or done-away with completely. Maassen and Van Vught (1989) typify this period as one with a *Janus-head* character of state governance (see also: Amaral and Magalhães 2001).

Fifteen years later, it can be concluded that we are in a different phase. It is argued that the modernisation of the governance and organization of European universities has not led to the expected result. With few exceptions, continental European universities are apparently no longer able to perform at the same level as the best US universities when it comes to their research activities. Below we will discuss the underlying European level interpretations of this situation in more detail. What suffices here is to emphasize that the modernisation of the governance, organization, funding, management structures, etc., of European HEIs has become a central concern not only in national policy arenas, but also at the European level. In addition to the national “modernisation reforms” with respect to higher education, which in some countries (e.g. the UK, Sweden, and the Netherlands) have started more than 20 years ago, there is a growing European level pressure on the European universities to modernise. In the remainder of the chapter first an overview is given of the most important recent reform efforts at the national level, followed by an analysis of the arguments and nature of the European level modernization pressure on the university.

National level governance reforms in Europe

From a funding and regulatory perspective the national context is still the most important one for European HEIs, and this has not changed as a consequence of the “adding of a new, supra-national” governance layer. As a consequence, obviously each EU member state has its own specific sectoral reform and policy agendas. Nonetheless, despite the differences between Member States in reform emphasis and outcomes, there are a number of common trends and reform patterns that can be identified throughout the EU. In practically all of the member states with a mature university system the following policy issues are part of current or recent reform efforts. In other words, the following “traditional” policy issues are part of the modernisation agenda for universities in practically every EU member state:

1. The aim to decrease the extent of direct government interference in higher education and enhance institutional autonomy accordingly.
2. Professionalisation of institutional leadership and management, and the subsequent adaptation of the institutional governance structures.
3. The further development of the quality assessment mechanisms with respect to higher education, and the responsibility concerning quality assessment.
4. The adaptation of the funding basis of the HEIs.

In addition, there are more specific, more diverse, and less widely addressed policy issues that nonetheless can be related to these four overarching themes. These aspects of university modernisation include, amongst other things:

1. Stimulating the cooperation between HEIs and Industry (Public-Private Partnership), with the aim to promote innovativeness, create jobs, and create a direct link between research/knowledge and commercial activities.

2. Strengthening the international competitiveness of HEIs, in research, education, services, and innovation.
3. Promoting system differentiation in higher education, including the trend to concentrate talents and resources in one or more institutions, or programmes.
4. Increasing the attractiveness of the university as a working place.

Further, when analysing the aims of the modernisation efforts addressing the above issues, in most cases it is indicated that the aims are to increase efficiency, to assure accountability, to improve responsiveness, and to enhance the effectiveness of the HEIs.

In the following the above policy issues will be discussed in more detail with reference to specific national cases.

A. System level governance and institutional autonomy

Over the last decades European universities have been “denationalized”, i.e. they have been transformed from state agencies to public corporations⁸. A recent example is Austria where the 2002 Universities Act (which came into effect January 2004) transformed the universities from federal establishments into independent “legal entities” under public law. Also Poland a new Act on Higher Education (2005) includes a proposal to turn universities into public corporations.

A possible consequence for the prevailing university governance mode was that the government had to relax its control over the universities and allow for a more direct interaction between universities and society. However, not all countries have taken this step. France, for example, has a long tradition of state control, and despite the changes in the state-university relationship in recent decades the French higher education system remains in practice strongly steered by the state (Chevaillier 2004: 311). In the

⁸ This can be compared with the Japanese higher education reform of 2004 that turned the national universities into university corporations.

French society education is regarded to be an essential part of the public services, and this basic view is not much affected by regulatory changes. The Netherlands on the other side has introduced a number of measures that represent a “more genuine” shift towards market steering. Portugal is a country somewhere “in the middle” when it comes to university governance, given its hybrid situation with respect to state steering with the state moving from an overstaffed and bureaucratic system towards a model of “state interference”, amongst other things, via the use of market-based instruments. Finally in the UK the 2004 Higher Education Act aimed at widening access and helping the universities to remain internationally competitive. Clearly this Act is a next step in the modernisation of the British universities which started under the Thatcher government.

It seems obvious that institutional autonomy is enhanced when the government is “stepping back”, and indeed in all EU Member States the strengthening of university autonomy is a policy issue. However, can and do all national governments of the EU Member States want to “afford” that universities are using that autonomy at their own free will and determination? In many countries there is a tension between institutional autonomy and governmental control over the use of the autonomy, e.g. Walloon, Czech Republic, Finland, Greece, Poland and Hungary (Hood et al 2004), while – as referred to above – in France there is a surprising distance between the *opportunities* for market oriented behaviour of the universities offered by the legal framework and the *actual* behaviour of institutions and individuals (Chevaillier 2004: 325).

Apparently university autonomy is enhanced with a certain expectation about its use. Despite the “stepping back” of European governments with respect to university governance, they do not want to leave the determination of the intended outcomes of university activities wholly to the universities themselves. In the specific continental European tradition of strong state control and limited central institutional autonomy it is not obvious that the institutional leadership will use its autonomy for reaching the expected outcomes. For example, in certain circumstances it might be more opportune (and easier!) for the institutional leadership to support its “weaker” units through cutting back on the “stronger” units, than

to concentrate its support on its stronger units and reform or close its weaker ones. An additional concern is the responsibility for system-wide issues. If through enlarged institutional autonomy each university takes care of its own affairs, who then takes care of the interests of the system (or society) as a whole? This concern forms one of the underlying arguments in some countries, such as Denmark, Sweden, and Finland, to use government-university contracts. Negotiations about the contracts can be used to put system wide issues on the agenda, e.g. the position of traditionally underrepresented student groups, dropping student numbers in specific programmes, and the dramatic under-representation of women in some countries in senior academic⁹ and administrative staff positions. Some of these policy issues can also be addressed through earmarked funding programmes, as is being done, for example, by HEFCE in the UK.

The areas in which institutional autonomy has been strengthened differ from country to country. In Germany the first major step in the enhancement of university autonomy was the shift from earmarked funding to block grants. Also in Greece enlarging the institutional financial autonomy has been realized, but the Greek universities still have limited autonomy in other areas when compared to the situation in other member states. Strengthening the institutional autonomy in the area of financial management as well as with respect to institutional strategic affairs has been the aim of the Polish government, however, without essentially reducing government control over the universities. Like in the Czech Republic the Polish state has produced a strategic development plan (until 2010) for the higher education system as a whole. The Hungarian government has strengthened institutional autonomy in number of areas, i.e. financial management, personnel affairs, and the responsibility for the content and pedagogical approach of the institutional teaching programmes. The latter has also been an important element in Italy, where enhancing institutional autonomy has been one of the central issues in the recent higher education

⁹ Austria, the Netherlands, Belgium, Germany and Malta have the lowest percentage of female professors in Europe (< 10%), while only in Portugal, Finland, Turkey, Latvia, and Rumania more than 20% of the professors are female. Of these countries Rumania has the highest percentage (29.3%) (Stichting de Beauvoir 2006: 9).

reforms. In Portugal institutional autonomy has been strengthened with regard to certain areas, e.g. access requirements, quality assessment, and managerial structures, though new restrictions have also emerged, e.g. in the area of pedagogical autonomy. Spain has increased institutional autonomy with respect to a variety of different issues, i.e. financial management, staff management, internal organisation, and student access. Finally in the UK institutional autonomy over financial affairs was further strengthened with internal governing bodies being solely responsible for the effective management of the universities. Also in the UK the government has produced a strategic plan for its universities (2003-08) addressing institutional leadership, governance and management issues and highlighting four key areas: (1) capacity and capability building; (2) accountability to stakeholders; (3) staff equality and diversity; and, (4) sustainable human resources management (rewarding and developing).

B. Professionalisation of institutional management and adaptation of institutional governance structures

When the government is stepping back and institutional autonomy is enhanced, a complementary policy issue concerns the capability of the institution to handle the autonomy in a “professional way”. This goes for the technical administrative tasks of the institutions, for example, in the areas of financial and personnel management, as well as for the strategic dimensions of institutional leadership.

National governments have promoted this issue in various ways. The Flemish government, for example, has stimulated the flexibility and efficiency of institutional management; also Hungary wants to make university management more efficient; while a number of countries, including Denmark, the Netherlands, the Czech Republic, Poland, Spain, and Finland have introduced measures that were aiming at replacing the democratic, collegial institutional governance, leadership and management structures, by “managerial” ones.

While in the 1960s the frame of reference for the introduction of the democratic governance structure was public governance, current reforms use private company executive structures as sources of inspiration. The resulting way of handling the university affairs has been referred to as a form of New Public Management (NPM), even though that concept does not have a clear, homogeneous meaning across institutional, sectoral and national borders.

The main trends to be observed to institutional governance structures in European higher education are first that there has been a move away from vertical to horizontal, or complementary forms of governance. This implies in practice a move away from steering on the basis of “hard” regulations and laws and a growing reliance on steering on the basis of “soft” contracts, targets, benchmarks and indicators. The important task for institutional managers resulting from this is the need to steer intra-institutional teaching and research activities accordingly. A possible paradox following this shift in governance is that while increasing institutional (and managerial) autonomy is emphasised politically, the result of a policy focusing on a particular targets and benchmarks can imply tighter not looser (micro-) political control of higher education.

Second, making HEIs more autonomous does not necessarily mean that the academic staff of the institutions feel that they are better off. Instead of having an “enemy at a distance”, they now might get an “enemy in their own house” by which the academic discretion that usually has been associated with teaching and research becomes narrower. This might likely increase the need for accountability within the institutions, and subsequently increase the level of conflict within institutions for resources and funding, not least between departments and faculties. A consequence for the academic leadership might be that they have to spend more time and energy on issues relating to institutional policymaking and negotiation. A possible paradox emerging from this situation is that internal processes might occupy the institutional agendas in a time where the external relations between HEIs and their surroundings are believed to be more important than ever before.

Third the notion of elected versus selected/appointed institutional decision makers. The main issue in this is not whether institutional leaders

and managers are elected or appointed/selected, or the formal nature of the governance structure per se. In several European countries one can witness hybrid governance models emerging where old and new forms of principles and practices are mixed. Examples include the tendency to listen carefully to views and attitudes of the academic staff when new academic leaders are appointed at different levels, and the emergence of new and informal “council” and “academic meetings/hearing” discussing important strategic and academic issues. Instead of solely focusing on the formal structure of governance, increased attention should be given to the actual roles of the various bodies and actors in the governance structure.

Overall, the basic challenge in all European higher education systems adapting the institutional governance structures is to handle the growing gap in HEIs functioning as loosely coupled organisations, between management intentions and academic realities, and to deal with the lack of trust between managers and academics. In practically all international studies on the effects of the changes in governance structures (Amaral et al. 2003) the gap between intentions and realities, and the lack of trust are mentioned as the most important challenges for the new wave of managers in HEIs. Reed (2002: 163), for example, suggests that governing is about managing the gap between expectations and realities. In his view:

“New managerialism strives to close the inevitable ‘reality gap’ between expectations and delivery by denying its existence or relevance. However, the grounded experience of the changes associated with new managerialism, for its creators, agents, and consumers, has been much more ambiguous, not to say tendentious, for all concerned. In the very act of its organisational consummation, new managerialism seems to create even bigger gaps or fissures within the institutional order and moral foundations of higher education that then have to be bridged or repaired in some way or another... (Reed 2002: 180-181).

Hence, identifying examples of how trust is established or eroded within the framework of the new governance models in higher education is one of the primary research tasks in the years ahead.

C. Quality assessment and accreditation

The European level discussions on quality assessment, including the establishment of a European register of licensed accreditation agencies, has affected the national developments in some respects. However, this policy area is in general still a national responsibility, even though in some countries, e.g. Denmark, an authority shift is noticeable towards the institutions. New accreditation systems have been introduced in a number of countries, including France, Spain and the Netherlands. The developments with respect to evaluation and accreditation of higher education have been described in detail in Schwartz and Westerheijden (2004), and we refer to this publication for more detailed information on developments with respect to quality assessment in the European Higher Education Area. In this respect we can point, for example, to the measures that have been taken by Portugal to stimulate the development of a quality culture at Portuguese universities and polytechnics, and the establishment in Spain of a ‘Coordination Committee’ that is supposed to act as a bridge between the national and regional quality assessment agencies.

Finally, two developments are worth emphasizing here. First the UK has introduced new national (higher) education qualification frameworks (for England, Wales Scotland). Second in the Netherlands where the traditional emphasis in (higher) education has been on equal chances and equality of opportunities, a shift can be observed towards considering selection of students and emphasizing talent and ambition of students above equality. This includes not only the introduction of ‘binding study advices’ to underperforming students in order for them to stop their studies, but also the establishment of separate teaching structures, such as master classes, university colleges, and honours programmes, to highly talented and motivated students. In addition, in the Netherlands discussions are taken place concerning the establishment of a (research) assessment system similar to the UK system.

D. Funding and tuition fees.

In a number of countries attempts have been made to redistribute the public funds for education on the basis of performance or other non-traditional criteria. For example, new funding arrangements have been introduced in Hungary, the Czech Republic initiated a lump sum performance based approach, and Spain has promoted competitive bidding as a means to increase institutional responsibility, enhance commitment to the process, and help developing entrepreneurial-like (institutional) structures. However, for various reasons the end-effects are not always leading to the intended redistribution. Usually the recommendations with respect to new funding mechanisms have been ‘modified’ by institutional representatives, especially from the institutions that threatened to loose funds in the intended redistribution.

In the UK the part of the university budget that is covered by the public governmental grant is in general lower than on the continent (Lepori et al. 2005), and the universities are promoted to further generate their own funds from a variety of external sources (e.g. sponsorship, tuition fees, donations, etc.).

Overall there is evidence suggesting that changes in share of public funding of the European University have been modest over the last decade, at least from an international comparative perspective. Although there are exceptions, for example in the UK where the state is no longer the primary funder of all HEIs, stability rather than change can be said to characterize higher education funding in a European perspective. One can witness a decrease in the share of governmental appropriations and an increase in grants and contracts, but this shift has not substantially altered the distribution of the institutions’ funding pies (CHINC 2006). However, even if the share of public funding has been rather stable, there is evidence that the form of funding has been changing to some extent. Over the last decade more emphasis has been given to interdisciplinary and applied research as well as commercialized research and patenting (CHINC 2006). So competition between universities, and between the universities and other entities, has become a stronger element of the control regime of European

HEIs. Likewise, changes in level of funding and funding mechanism might affect the diversity and stratification of higher education institutions across Europe.

Concerning tuition fees a wide variety of trends, initiatives and developments can be observed throughout the EU. In the UK (England and Wales) a system of variable fees has been introduced, allowing universities to charge tuition fees of (up to) £3.000 in principle to be paid by the graduates and not the students. Special financial aid mechanisms to students in order to ensure fair access were also created/enhanced (e.g. bursaries, grants, etc.). Like in the UK also in the other member states the universities are not free to fully determine the level of the tuition fees they can charge for their programmes, if they can charge a tuition fee at all. Institutional autonomy with respect to the level of the tuition fee only exists in some cases, such as Denmark, the Netherlands and the UK where the universities are expected to use special tuition fee levels for non-European students, allowing the universities to charge the costs of their education to (specific groups of) non-EU students. In France the level of tuition fees can only be determined by the institutions for non-accredited programmes. This also goes for the non-registered (and not publicly funded) master level teaching programmes of the Dutch Universities for Applied Sciences (the HBO institutions). In Germany¹⁰ the situation is more complex. At the moment (Sept. 2006) 3 out of 16 Länder expect their universities to charge €500 tuition fee to beginning students, while eight or nine additional Länder plan to charge tuition fees to beginning university students somewhere in the future. While there is an overall cap of €500, it is expected that in some Länder a higher tuition fee will be introduced in the near future. In Greece tuition fees are only charged for postgraduate programmes, while in Poland public universities have been given the (legal) right of charging tuition fees for certain programs, though, in certain circumstances, a maximum amount (cap) is still set by the Ministry of Education.

¹⁰ For detailed recent information on the situation in the German Länder concerning tuition fees, see: http://www.studis-online.de/StudInfo/Gebuehren/tuition_fees.php, or the website of the DAAD: <http://www.daad.de/deutschland/studium/studienplanung/00493.en.html>

In addition to these four traditional, broad policy themes with respect to higher education as indicated there are a number of “new” policy issues that have gained a prominent place on the higher education policy agenda in some Member States, but not in all. In the following a brief discussion is presented of the four mentioned above.

E. The cooperation between university and industry

This is an important ‘new’ topic in national higher education policy processes. In Hungary, for example, in the realm of innovation (and R&D), the development of ‘Regional Knowledge Centres’ at some universities, targeting the exploration of co-research and development opportunities between universities and industry, has been given a special priority. The new Dutch higher education Act, expected in 2006, is focusing, amongst other things, on the need of universities to respond more efficiently to the demands of industry towards higher education. Also in countries such as Austria, Belgium (Flanders), Czech Republic, Finland, and the UK, a variety of procedures and measures have been introduced to facilitate the involvement of academics with applied (problem-solving) research and (further) improve the links between academia and industry/business. In Austria, for example, in 2005 governmental proposals have been submitted aimed at creating a link between research funding and an incentive system for attracting industry support for research efforts at universities.

F. Strengthening the international competitiveness of European universities

This relates to the previous point, and an important starting-point in this is what has been referred to as the European *paradox* (Maassen and Olsen 2007): the HEIs of the EU Member States play a leading global role in terms of top-level scientific output, but lag behind in the ability of converting this strength into wealth-generating innovations (Commission 2006b). However, at the same time European universities are claimed to “lag behind US universities and are threatened by universities from

emerging economies (China and India)” (Figel 2006). Unfortunately, the latter position is only supported by reference to university rankings and lacks more valid evidence.

Nonetheless, various Member States have introduced specific measures to strengthen the international competitiveness of their HEIs, and especially their research universities. Austria, for example, has introduced special (state-sponsored) programs aiming at attracting scientific talent into the country, both Austrians and/or foreigners based overseas. In addition, the building up of *innovative capacity* at the national level as well as leveraging international *competitiveness* (Lisbon Agenda), are two of the critical elements composing the current Austrian higher education (and innovation) policies. Also the current Danish higher education policy is clearly aimed has introduced measures to strengthen the international competitiveness of its HEIs. For example, the globalisation strategy of the Danish government presented earlier this year, is of direct relevance to the Danish HEIs (Danish Government 2006). As part of this strategy the Danish government aims at creating the conditions under which both Danish universities and the short and medium-length institutions can become world class. In Germany of particularly importance in this is the policy of attracting international talent into German higher education as well as the attempt to repatriate renowned German scientists from overseas¹¹.

All in all various efforts are undertaken by the Member States to maintain if not strengthen the competitiveness of European HEIs. What is of relevance here is that the apparent lagging behind of European higher education, refers especially the 300+ research intensive universities in Europe, and not to the 4000+ other HEIs. The international university rankings all use a limited number of contested indicators, that are all “measuring” aspects of university research quality. They do not give any insight into the quality of teaching programmes. The few international comparative studies that have been done with respect to the quality of teaching programmes all suggest that the level of the Master and PhD

¹¹ See, for example the German government’s ‘Pact for Research and Innovation’ (2005). Also the UK government’s 2004 Higher Education Act aimed at helping the HEIs to remain internationally competitive.

graduates of European research intensive universities is at least comparable to the graduate output of the leading US research intensive universities.

In addition, the rankings do not given any insight into the characteristics of the world's leading research universities. Is there a set of characteristics with respect to, for example, the size of the budget, the balance between undergraduate and graduate student numbers, the composition of the academic staff group, the nature of the disciplinary basis, the organisation and funding of research, etc., that might explain the difference between research universities when it comes to the quality of their research activities? Would it, for example, be possible to select a number of representative European research-intensive universities and compare them through a large set of relevant indicators with universities in other parts of the world? In other words, is there an interest in Europe to develop a more sophisticated and academically more valid version of the so-called Shanghai university ranking¹²?

G. Promote system diversity

System diversity is a multi-faceted concept. It refers, for example, to the distinction between (research) universities and other types of HEIs, such as polytechnics, *Fachhochschulen*, *Hogescholen*, Colleges, and *Høyskoler*. Academic and professional drift are well-known concepts that represent the “academization” of traditional higher vocational teaching programmes and institutions, and the “vocationalization” of traditional academic programmes and institutions. Kyvik (2004) has identified five types of higher education “landscapes” in Europe, i.e. university dominated, university separated, binary, integrated and hierarchical higher education systems. Also in this respect it is clear that the higher education systems in Europe are very diversely organised, and that all national governments have to deal with the question of system diversity within the specific boundary conditions set by the current organisation of their own higher education system. Relevant

¹² This refers to the annual “Academic Ranking of World Universities” by the Shanghai Jiao Tong University (<http://ed.sjtu.edu.cn/ranking.htm>).

policy questions in this are, for example: Which HEIs should have access to basic research funds? Which institutions should offer what type of degree programme? What kind of cooperation between different types of higher education institution should be stimulated, what kind should be limited (if not “forbidden”)? In which areas should competition between the HEIs be stimulated, where should it be limited? Etc.

Recently the question of “Elite institutions” has become of relevance in a number of countries, as well as at the European level. This refers to the proposal for the establishment of a European Institute of Technology (EIT) (Commission 2006c), as well as to national initiatives for supporting a number of existing institutions to become world class universities (e.g. Germany), and national debates concerning the proposals for setting up a new “elite” University of Science and Technology (Austria). In addition to this kind of institutional differentiation, there are also examples of initiatives to stimulate intra-institutional differentiation, for example, in the form of the establishment of University Colleges (the Netherlands).

H. Attractiveness of the HEIs as a working place

In a number of Member States the issue of the attractiveness of the HEI as a working place and attractiveness of the academic career has become a policy issue. Denmark, for example, has taken some measures geared towards supporting – with the aim of strengthening – the institutional (human resources) capacity of universities, leveraging the ability of retaining and attracting highly qualified staff on a more competitive basis. Also in Germany efforts have been made to increase the attractiveness of the university as an employer, especially for young talents and women (see note 9). Also in Hungary measures have been taken to make the academic career more attractive, e.g. by increasing the salaries of the public staff in HEIs by 50% (2003).

Many EU Member States are facing a “greying” of academic staff in some fields and disciplines. While addressing this issue is nowhere a top policy priority, it is clear that the combination of the “greying”, with the

demographic developments in most EU member states, as well as the lack of attractiveness of the academic career for certain groups of citizens (esp. women), the decreasing overall status of the academic profession in general, and the attractiveness of US and UK universities for continental European academic talents, forms a major worry for European higher education policy makers, and institutional leaders.

The european dimension¹³

What is the significance of the emerging European layer of governance and policy-making for national higher education policies making and institutional dynamics?

In Europe, HEIs have historically played an important role in nation-building, that is, in supplying states with educated manpower, building a national consciousness and identity, integrating national elites, and providing a national research capacity for economic and social development. Consequently for long the HEIs have been regarded in Europe as national institutions, with the national authorities being responsible for their regulatory and funding bases. The Treaty of Maastricht is a clear expression of this in the sense that it indicated that the subsidiary principle applies to (higher) education, implying that the Commission cannot take any initiative itself for harmonizing higher education.

However, recently it has become more common to emphasize the need for a European perspective on higher education institutions, and higher education governance has become embedded in a variety of organized settings beyond the territorial state. There are trans-national, intergovernmental and supra-national processes of cooperation and policy making and new actors, issues, solutions, resources and modes of governance have been introduced. The European Commission, in particular, has claimed that a dynamic knowledge-based economy (and society) requires modernisation of the European HEIs (Commission 2006b). The

¹³ This section is to a large extent based on Olsen and Maassen (2007).

president of the Commission and the Commissioners responsible for higher education and for research observe that higher education has never featured so high on the Commission's agenda, that the political interest in higher education is growing, and that reforms are urgently needed (Barroso 2005; Figel 2006; Poto nik 2006b).

While the Commission sometimes plays down its own role, it has also produced a steady stream of documents promoting reforms of a radical nature. Common institutions have been established and a "Charter for Researchers" specifying roles and responsibilities has been developed (Commission 2005). The European Research Council (ERC) is presented as an important institutional innovation and an autonomous entity under independent scientific leadership (Poto nik 2006b). The European Institute of Technology (EIT) is portrayed as Europe's "knowledge flagship" bringing together research, education and innovation. One of its missions is supposed to be "to disseminate new organizational and governance models". Its governing board is to consist of academics and business people who are imagined to be able to select the best areas for long-term investment in research 10-15 years ahead (Commission 2006a: 7; also Figel 2006: 11).

This focus on higher education is accompanied by a demand for radical change and the mistrust of especially university traditions. "We need a new model – we need something which can demonstrate to countries where university models still hark back to the days of Humboldt, that today there are additional ways of doing things" (Figel 2006: 12).

The "new model" proposed by the Commission questions the Humboldtian ideal of a community of autonomous professors and doubts that self-governing scholars will produce the best results for society at large. It emphasizes leadership, management and entrepreneurship more than individual academic freedom, internal democracy and the organizing role of academic disciplines. HEIs should have more autonomy and also be more accountable and this requires new internal governance systems based on strategic priorities and on professional management of human resources, investment and administrative procedures. Universities and colleges must overcome their fragmentation into faculties, departments, laboratories and administrative units and target their efforts collectively on institutional

priorities for research, teaching and services (Commission 2006b: 5-6). All this “necessitates new institutional and organizational approaches to staff management, evaluation and funding criteria, teaching and curricula and, above all, to research and research training.” There should be multilateral consortia, joint courses, double degree arrangements, networks and cooperation (Commission 2006b: 8-9). The Commission also opens for more differentiation and stratification among HEIs, so that not all research and higher education will be of equal excellence, yet with fewer differences between countries and more differences within each country.

Indicators of reform success are primarily economic. Research and higher education are identified as core instruments for economic performance and growth and for mastering global competition. The guiding philosophy for research policy is to create a single market for research – the creation, diffusion, and exploitation of scientific and technical knowledge (Poto nik 2006b). Strengthening the triangle between research, higher education and innovation is supposed to make Europe more successful in converting its research achievements into commercial technologies (Poto nik 2006a). While the Commission claims that there is a reform consensus¹⁴, it also observes that there is a general need to build trust in science and technology among ordinary citizens. The general public in Europe is seen to become more concerned about the social and economic impact of scientific and technological advances, as well as about how decisions relating to these developments are taken.¹⁵

International competitiveness and the HEIs’ ability to do good for society are seen to be “held back” by the role historically played by governments (Figel 2006: 7).¹⁶ The state is supposed to have a less

¹⁴ The Commission, for example, writes that “discussions at European level show an increasing willingness to modernize [university] systems, and the agenda mapped out below is not, in essence contested” (Commission 2006b: 4).

¹⁵ This is also a theme found in many documents from the Commission and, again, it is a view that is supported by an expert group appointed by the Commission (Ormala et al. 2004: 3).

¹⁶ Here, too, the Commission can find support in the Aho-group: “Alongside the operation of sufficient markets, a significant constraint to the efficient exploitation of research and

dominant role as funder, receiver of graduates, and user of knowledge. There should be governance by standardization, dialogue, benchmarking, and exchange of “good practice”. “Soft” methods, such as the Open Method of Coordination, are presented as an alternative to the “hard” laws that cannot easily be used in European coordination of the sector. The accountability of higher education to society also requires an external system of quality assurance and accreditation, and a move from state control to being accountable to society and customers (Commission 2005a). There should be external controls through increased competition, externally defined standards and goals, demands for results that can be documented in numbers, and external monitoring units.

Of course, the reform rhetoric is multi-vocal and evolving over time and the Commission is not blind to other aspects than the economic ones. Nevertheless, when a Commissioner sees it as necessary to claim that “I don’t want to give the impression today that I see universities as a purely economic instrument” (Figel 2006: 10), the statement suggests that many observers perceive a dominance of the “knowledge economy” over the ‘knowledge society’. The statement also acts as a foil to the lack of a systematic discussion of the democratic purposes of higher education (McDonnell et al 2000) and how university reforms may affect the civic and democratic quality of Europe. That is, reform documents give little attention to the possible role of universities in developing democratic citizens, a humanistic culture, social cohesion and solidarity, and a vivid public sphere. Neither is university reform linked to the Union’s ‘democratic deficit’ and the limited citizens’ commitment to the Union as a political community. Furthermore, there is no serious discussion of how a commitment to economic (as well as democratic or social) goals can be squared with academic values and the potential dangers of subordinating the academic curiosity for knowledge and the pursuit of truth to some external agenda. In sum, the role of Academia and Democracy is primarily defined as serving economic purposes and the growth of competitive markets.

knowledge lies in the surrounding framework conditions and structures, which today limit mobility and adaptability” (Aho et al. 2006: 22).

While one view has a dominant position in reform documents and speeches, there are competing views. This impression is also documented when the Commission asks stakeholders to comment upon policy documents and ideas, for example, with respect to its vision of a “Europe of knowledge” (Commission 2004a, b). Attitudes, perceptions and reform rhetoric usually reflect the actors’ different institutional belongings and positions. Therefore, actors are not necessarily consistent. For example, it cannot be taken as given that professors and universities will always be carriers of academic principles and values, when both researchers and universities increasingly have commercial interests in their research and teaching (Nelson 2005). University rectors may say different things in the context of the Magna Charta and in fierce competitions for funds, and so may other actors.¹⁷

In a situation where the European HEIs find themselves in an ecology of competing and not easily reconcilable expectations, demands and constituencies across levels of governance and institutional spheres, institutional dynamics can be hypothesized to include several different processes of change, more or less loosely coupled. Processes such as deliberate design and reform, competitive selection, experiential learning, rule driven change systems, and political processes of argumentation and bargaining can be expected to have shifted in relative significance over time, sometimes reinforcing, sometimes counteracting each other. The Bologna and Lisbon reform processes also document that two processes with different starting points over time have become blended. While these two reform processes have received ample attention in political as well as academic arenas, the Magna Charta Universitatis is not reflected upon in

¹⁷ For example, the European University Association combines elements of the Commission rhetoric and the Magna Charta rhetoric: “Mission diversity, strategic capability, and accountability can only be developed if universities have the freedom to do this. The higher education system must therefore be based on autonomous institutions, with freedom to control and manage their own resources and to compete as well as collaborate, accepting the responsibility to make the most efficient use possible of the resources they command; this requires that universities are trusted to act responsibly. Old state bureaucratic systems which prefer control over trust must be swept away so that universities can respond rapidly and efficiently to the needs of society and the economy” (European University Association 2006: 3).

the same way simply because there has not been a similar European political follow-up of this initiative.

Governance of the European university: reform intentions and institutional realities

The shifts in system level governance indicate a development towards a more market driven European higher education area. But, while the political rhetoric seems to have accepted the “service enterprise” and market coordination vision, the institutional practice in European higher education still is far removed from this vision. Let me illustrate that with a number of facts.

First, European higher education systems are still largely dependent on public funding. European HEIs receive on average between 50 and 75% of their budget in the form of a public basic grant from the State (Lepori et al. 2005). HEIs can either charge a low to moderate tuition fee, or are not allowed to charge a tuition fee at all. In the case of the moderate tuition fee, e.g. the Netherlands, it is the Ministry of Education that determines the tuition fee level, and even in the UK (England and Wales) the government has initially determined the price cap of £3000 for the institutional tuition fees.

Second, the institutional and programme diversity is in general limited with a rather high average quality level of all institutions, but with few institutions or programmes having a “world-class” reputation.

Third student choice is only in exceptional cases based on transparent information on the quality of institutions and programmes in their own country. European students have very limited access to valid information on the quality of programmes and institutions in other European countries. Intra-European student mobility is therefore more driven by cultural interests and language preferences than by academic quality.

Fourth, quality assessment and accreditation of formal degree programs in universities and colleges are still a governmental responsibility.

Fifth, academic and administrative staff members of European HEIs are still in many countries civil servants, with relatively little room to manoeuvre for the institutional management in their personnel policies.

Sixth, the European Commission stimulates the development of “networks of excellence” in research and education consisting of individuals and programs from at least three different countries, thereby decreasing the importance of the individual HEI as the organizational basis for (top-quality) research and teaching activities.

Seventh, institutional governance structures are still dominated by traditional academic values, with limited influence of an “entrepreneurial” spirit.

Finally, there is in all countries a general agreement among all major political parties that higher education is first and foremost a public sector. Even though higher education is stimulated in many ways to become more “entrepreneurial” and more market-oriented, in practice this is “entrepreneurial European style”, i.e. within fixed public limits.

So what does this mean for the “European alternative” to the dominant US market model? Is there an alternative, or is European higher education forced to choose between becoming marketized or marginalized? Here it is of relevance to point to a number of factors that might influence the ultimate answer to this question. First the transformation of European higher education has started later than in the USA. The reforms under Thatcher in the UK started in the late 1970s, while continental Europe started to reform its universities in the 1980s if not 1990s.

Second the basic socio-economic and political conditions for the transformation of European higher education are different from the circumstances found on the other side of the Atlantic. The European shifts in system level governance imply a quest for finding an appropriate balance between strengthening competitiveness as well as social cohesion. In this quest higher education is seen as a core institution, given its economic and social roles. From that perspective the public “does not want to let go” of the traditional public nature of higher education. This is part of the large (and in many respects growing) suspicion in European societies that market

forces might have a positive effect on growth and (possible) innovation, but they have a (potentially) negative effect on social equality and the quality of traditional public services, such as public transport, health care, schooling, safety, social welfare, and education. In the choice between growth and the creation of economic wealth on the one side, and stimulating social cohesion, equality and high-quality public services through re-distribution of wealth on the other, many European societies move back and forth between the first and the second option, implying that political parties on both side of the spectrum are accepting the importance of finding an acceptable balance between the two positions.

From this perspective it is of interest to point to the success of the Nordic societies in their efforts to find an acceptable balance between creation of wealth and wealth re-distribution. Based on a recent study, Castells and Himanen (2002) indicate, for example, that there is an alternative for the successful Californian bottom-up market-driven innovation model, i.e. the Finnish (Nordic) top-down, government-driven model. In this model independent public bodies stimulate and fund innovation in a non-bureaucratic, democratic, effective way. Also the adaptations and modernizations of the Nordic HEIs show signs of this. Emphasizing the public character of higher education, but stimulating them to combine their public responsibility with a market awareness in societies where charging tuition fees for national/EU students is still a political taboo. Also other smaller European countries, e.g. the Netherlands, Switzerland, Austria, have successfully adapted the relationship between state and the University, without diminishing the role of the state or charging high tuition fees. The consequence is that a number of the HEIs from these countries are remarkably successful nationally as well as internationally. Therefore, instead of primarily looking at the US as an example for the adaptation of HEIs, it might be time for the larger European countries to focus also on their smaller neighbours, in an effort to understand why they are apparently successful in adapting their societies, including their HEIs – while maintaining a balance between competitiveness and social cohesion.

Concluding remarks

National (and in some cases regional) European governments have “modernized” their higher education systems and institutions for at least 15 to 25 years. The results are clearly visible, for example, European HEIs are more autonomous than they were previously; the size of the non-governmental financial resources earned externally has increased; HEIs are far more aware of the importance of the international dimension; they are more productive than ever before in their history (e.g. in terms of research output and number of graduates); and many national ministries of (higher) education have adapted their role and steer more through strategic indicators and contract negotiations than through law and (often rigid) regulations.

An important characteristic of higher education reforms in many countries is that the reforms have moved from being mainly ideological to becoming more pragmatic, i.e. more oriented towards finding out what works and what does not work on the basis of the evaluations of the previous reforms.

However, at the same time there is the feeling that the reforms have not gone fast and far enough. The current higher education modernization agenda of the EC (Commission 2006b) is addressing more or less the same reform issues as the European ministries have done for 15 to 25 years, and suggests that more needs to be done: larger and more radical institutional autonomy, a more radical professionalization of institutional management and leadership, more private funding (incl. tuition fees), etc. This raises the question whether this modernization agenda is based on the evaluations of the national reforms and concludes that the national governments do not take the lessons from these evaluations serious enough, or whether this agenda is bringing back an ideological element, i.e. a *belief* in the effectiveness of the marketplace and the willingness to accept the above mentioned negative effects of a greater reliance on market steering (Geiger 2004).

Whichever of these two positions is closer to reality is not that relevant here. The ongoing reforms of European higher education

institutions and systems raises additional questions that are at least as relevant, such as:

- Does an enhancement of institutional autonomy lead to more institutional and system dynamics or institutional conservatism?

- Does a further professionalization of institutional leadership and management have a positive effect on the performance of HEIs, a negative effect or hardly any effect at all (Birnbaum 1988)?

- Is a promotion of excellence more effective in separate, new structures, or in existing universities and colleges?

- How does the quality and relevance of the education and research activities of European HEIs compare to the quality and relevance of higher education research and teaching activities elsewhere?

- How can an appropriate balance between the various roles (cultural, social, economic, innovative) of HEIs be achieved?

Answers to these and related questions cannot only be given solely on the basis of thorough knowledge, since the ultimate responsibility for deciding on the organization of European higher education institutions and systems is in the hand of the political order. However, in order for responsible politicians and other stakeholders to make more balanced and better founded decisions concerning higher education institutional arrangements, appropriate and valid knowledge is essential; knowledge that unfortunately in many respects is lacking, especially on the European level.

Therefore, in addition to the other paradoxes mentioned earlier one remaining paradox to point to is that the European level policy debates and initiatives with respect to the role of the “knowledge institution” in a “Europe of knowledge” seems to be comparatively “knowledge poor”.

References

Aho, E., Cornu, J., Georghiou, L. and Subirá, A. (2006). *Creating an Innovative Europe*. Report of the Independent Expert Group on R&D and Innovation appointed following the Hampton Court Summit. (<http://Europe.eu.int/invest-in-research/>)

Altbach, Ph. and Levy, D.C. (Eds) (2005) *Private Higher Education: A Global Revolution*. Sensepublishers: Rotherdam.

Amaral, A. and Magalhães, A. (2002). The emergent role of external stakeholders. In Amaral, A., Jone, G.A. and Karseth, B. (Eds), *Governing Higher Education: National Perspectives on Institutional Governance*, Dordrecht: Kluwer Academic Publishers, pp. 1-23.

Barroso, J.M. (2005). *Strong universities for Europe*. Glasgow 2 April 2005. Speech to the European Universities Association Convention.

Barroso, J.M. (2006). *More Europe where it matters*. Speech to the European Parliament, Strasbourg, 15th March 2006 (Speech/06/168).

Birnbaum, R. (1988). *How Colleges Work*. San Francisco: Jossey Bass.

Birnbaum, R. (2000). *Management fads in higher education: Where they come from, what they do, why they fail*. San Francisco: Jossey-Bass.

Boer, H. de (2003). *Institutionele verandering en professionele autonomie. Een empirisch-verklarende studie naar de doorwerking van de wet 'Modernisering Universitaire Bestuursorganisatie' (MUB)*. [Institutional change and professional autonomy. An empirical-explanatory study into the effects of the Dutch 'Modernising University Governance Structure' Act (MUB)]. Enschede: Cheps/University of Twente.

Brown, R. (2005). *Higher Education and the Market: some thoughts and reflections*. OxCHEPS Occasional Paper No. 20.

http://oxcheps.new.ox.ac.uk/MainSite%20pages/Resources/OxCHEPS_OP20.pdf

Castells, M. and Himanen, P. (2002). *The Information Society and the Welfare State: The Finnish Model*. Oxford: Oxford University Press.

Chevallier, T. (2004). Higher Education and Markets in France. In Teixeira, P, Jongbloed, B, Dill, D. and Amaral, A. (Eds), *Markets in Higher Education: Rhetoric or Reality?* Dordrecht: Kluwer Academic Publishers.

CHINC (2006). *Changes in University Incomes: Their Impact on University-Based Research and Innovation (CHINC)*, Final Report. Sevilla. Joint Research Centre IPTS

Clark, B. (1983). *The Higher Education System*, Berkeley: University of California Press.

Clark, B. (1998). *Creating entrepreneurial universities: organizational pathways of transformation*, Oxford: Pergamon Press.

Commission (2000a). *Towards a European Research Area*. Brussels: COM (2000) 6.

Commission (2000b). *Making a reality of The European Research Area: Guidelines for EU research activities (2002-2006)*. Brussels: COM(2000) 612 final.

Commission (2001). *European Governance. White Paper*. Brussels

Commission (2002a). *The European Research Area: An Internal Knowledge Market*. Luxembourg: Office for Official Publications of the European Communities.

(http://ec.europa.eu/research/era/leaflet/pdf/era_en.pdf)

Commission (2002b). *More research for Europe. Towards 3% of GDP*. Brussels: COM(2002) 499 final.

Commission (2002c). *The European Research Area: Providing New Momentum. Strengthening-Reorienting-Opening up New Perspectives*. Brussels COM (2002) 565.

Commission (2003). *The role of the universities in the Europe of knowledge*. Brussels: COM(2003) 58 final.

Commission (2004). *Progress towards the common objectives in education and training – Indicators and benchmarks*. Brussels: Commission staff working papers 21.1.2004. SEC (2004) 73.

Commission (2004a). *Outcome of the stakeholders' consultation*. Brussels, European Commission Research Directorate General, 6 April 2004 C1(03) D/568721.

Commission (2004b). *The Europe of knowledge 2020: A vision for university-based research and innovation*. Liège, Belgium 25-28 April 2004, Conference Proceedings edited by G. Blythe, B. Hasewend and B. Laget.

Commission (2005). *The European Charter for Researchers. The Code of Conduct for the Recruitment of Researchers*. Brussels: Directorate-General for research, Human Resources and Mobility (www.europa.eu.int/eracareers/europeancharter).

Commission (2005a). *Mobilising the brainpower of Europe: enabling universities to make their full contribution to the Lisbon Strategy*. Brussels: COM(2005) 152 final.

Commission (2006a). *Implementing the renewed partnership for growth and jobs. Developing a knowledge flagship: the European Institute of Technology*. Brussels COM(2006) 77 final.

Commission (2006b). *Delivering on the modernisation agenda for universities: Education, research and innovation*. Brussels COM(2006) 208 final.

Commission (2006c). *European Institute of Technology*. Website of the European Commission (consulted 15 September 2006)

http://ec.europa.eu/education/policies/educ/eit/index_en.html

Council Conclusions of 5 May 2003 on "Reference Levels for European Average Performance in Education and Training (Benchmarks)". OJ C 134, 7.6. 2003.

Council and Commission (2004). *Education & Training 2010 – The Success of the Lisbon Strategy Hinges in Urgent Reforms*. Joint interim report of the Council and the Commission on the implementation of the detailed work programme on the follow-up of the objectives of education and training systems in Europe. Adopted by the Council on 26 February 2004.

Danish Government (2006). *Fremgang, fornyelse og tryghed. Strategi for Danmark i den globale økonomi – de vigtigste initiativer*.

www.globalisering.dk/multimedia/Globaliseringsstrategi_pixi.pdf

Dutch Ministry of Education and Science (1985), Hoger Onderwijs: Autonomie en Kwaliteit [Higher Education: Autonomy and Quality]. Zoetermeer: Ministerie van Onderwijs en Wetenschappen.

Eurydice (2000). *Two decades of reform in higher education in Europe: 1980 onwards*. Brussels: Eurydice.

Figel, J. (2006). *International competitiveness in higher education – A European perspective*. Oxford 3 April 2006, Association of Heads of University Administration, Annual Conference.

http://ec.europa.eu/commission_barroso/figel/speeches/docs/06_04_03_Oxford_en.pdf

File, J. and Goedegebuure, L. (Eds) (2003). *Real-time Systems. Reflections on Higher Education in the Czech Republic, Hungary, Poland and Slovakia*. Enschede: CHEPS, University of Twente.

Finnish Ministry of Education (2004). *Management and Steering of Higher Education in Finland*. Publications of the Ministry of Education, Helsinki, Finland 2004:20.

Geiger, R. (2004). *Knowledge & Money. Research Universities and the Paradox of the Marketplace*, Stanford: Stanford University Press.

Gornitzka, Å. (2005). *Coordinating Policies for a Europe of Knowledge – Emerging practices of the “Open Method of Coordination” in Education and Research*. Arena Working Paper Series 16/2005.

http://www.arena.uio.no/publications/working-papers2005/papers/05_16.xml

Gornitzka, Å. and P. Maassen (2000). Hybrid steering approaches with respect to European higher education. *Higher Education Policy*, 13.3, 267-285.

Heffen, O. van, Verhoeven, J. and De Wit, K. (1999). Higher education policies and institutional response in Flanders: Instrumental analysis and cultural theory. In Jongbloed, B., Maassen, P. and Neave, G. (Eds), *From the Eye of the Storm. Higher Education's Changing Institution*, Dordrecht: Kluwer Academic Publishers, pp. 263-295.

Hood, C., James, O., Peters, B.G. and Scott, C. (Eds) (2004). *Controlling Modern Government. Variety, Commonality and Change*, Cheltenham: Edward Elgar.

Kyvik, S. (2004). Structural Changes in Higher Education Systems in Western Europe. *Higher Education in Europe* XXIX.3, 393-409.

Lepori, B., Benninghoff, M., Jongbloed, B., Salerno, C. and Slipersæter, S. (2005). *Changing Pattern of Higher Education Funding: Evidence from CHINC Countries Intermediate report from the CHINC project*. Sevilla: Joint Research Centre Institute for Prospective Technological Studies (IPTS).

Maassen, P. (2003). Shifts in governance arrangements. An interpretation of new management structures in higher education. In Amaral, A., Meek, V.L. and Larsen, I.M. (Eds), *The Higher Education Managerial Revolution?* Dordrecht: Kluwer Academic Publishers, pp. 31-53.

Maassen, P. and Olsen, J.P. (Eds) (2007). *University Dynamics and European Integration*. Dordrecht: Springer.

Maassen, P. and van Vught, F. (Eds) (1989). *Dutch higher education in transition. Policy issues in higher education in the Netherlands*, Culemborg: LEMMA.

Marginson S. and Considine, M. (2000). *The Enterprise University: Governance and Reinvention in Australian Higher Education*, Cambridge: Cambridge University Press.

Neave, G. (2003). The Bologna Declaration: some of the historic dilemmas posed by the reconstruction of the community in Europe's systems of higher education. *Educational Policy*, 17.1, 141-164.

Nelson, R.R. (2005). Basic scientific research. In Nelson, R.R. (ed.), *The Limits of Market Organization*, New York: Russell Sage Foundation, pp. 233-258.

Olsen, J.P. (1988). Administrative reform and theories of organization. In Campbell, C. and Peters, B.G. (Eds), *Organizing Governance. Governing Organizations*, Pittsburgh: University of Pittsburgh Press, pp. 233-254.

Olsen, J.P. and Maassen, P. (2007). European Debates on the Knowledge Institution: The Modernization of the University at the European Level. In Maassen, P. and Olsen, J.P. (Eds), *University Dynamics and European Integration*, Dordrecht: Springer, pp. 3-25.

Ormalá, E., Vonortas, N., Ayme, S., Cok, L., Donnelly, D., King, J., Mandl, C., Meyer-Krahmer, F., Oleksy, E., Quintanilha, A., Stame, N., Tarrach, R. and Thys-Clemmt,

F. (2004). *Five Year Assessment of the European Union Framework Programmes 1999-2003*. European Commission.

http://ec.europa.eu/research/reports/2004/fya_en.html

Poto nik, J. (2005). Putting the Charter and Code into context: Keeping Europe competitive. London 8-9 September 2005, key note speech UK Presidency Conference on the European Charter and Code for Researchers.

Poto nik, J. (2006a). Embedding European science into European society. Vienna, 20 January 2006, Austrian Academy of Sciences.

Poto nik, J. (2006b). Back to basics – putting excellence at the heart of European research. London, 25 April 2006, London School of Economics & Political Science.

Reed, M.I. (2002). New managerialism, professional power, and organizational governance in UK universities: a review and assessment. In Amaral, A., Jone, G.A. and Karseth, B. (Eds), *Governing Higher Education: National Perspectives on Institutional Governance*, Dordrecht: Kluwer Academic Publishers, 163-185.

Schleicher, A. (2006). *The economics of knowledge: Why education is key for Europe's success*, Lisbon Council Policy Brief. Brussels: The Lisbon Council asbl.

Schwarz, S and Westerheijden, D.F. (Eds) (2004). *Accreditation and Evaluation in the European Higher Education Area*, Dordrecht: Kluwer Academic Publishers.

Soete, L. (2005). *Activating knowledge*. Discussion paper prepared for the UK Presidency October 2005.

<http://www.fco.gov.uk/Files/kfile/Soete-final.pdf>

Stichting de Beauvoir (2006). *Monitor vrouwelijke hoogleraren 2006* [Monitor female professors 2006]. September 2006.

www.stichtingdebeauvoir.nl/PDF-artikelen/Monitor%202006.pdf.

Estatuto Legal das Instituições de Ensino Superior¹

Jorge Miranda²

Introdução

Senhor Professor Júlio Pedrosa, Presidente do Conselho Nacional de Educação, agradeço muito sinceramente o convite generoso que me fez para intervir neste debate, saúdo os membros da mesa, e permitam-me que, muito especialmente, cumprimente o senhor Professor Alberto Amaral, com quem tive a honra de colaborar na criação e instalação da Faculdade de Direito da Universidade do Porto; uma obra sua, uma grande obra que continua em marcha.

A minha intervenção vai ser talvez um pouco mais longa e vai ser essencialmente jurídica, tenho dificuldade em me desprender da minha qualidade. De resto, o senhor Professor Alberto Amaral já traçou, em moldes muito claros, a situação actual das universidades portuguesas, e também o contexto internacional em que elas agora têm de se mover. De maneira que vou situar-me numa perspectiva essencialmente jurídica.

Devo dizer também que, porventura, a minha visão será considerada demasiado conservadora por alguns, em face de algumas propostas que tenho visto serem apresentadas. Ainda recentemente li um texto, que o senhor Professor Júlio Pedrosa teve a gentileza de me enviar, de uma comunicação do senhor Ministro da Ciência, Tecnologia e Ensino Superior, relativamente àquilo que se pretende que seja o ensino superior em Portugal. A minha posição será relativamente conservadora.

No essencial, aquilo que quererei dizer é que estamos numa fase em que todos os males são assacados às universidades. Não digo que as universidades não tenham males, não tenham culpas, não tenham responsabilidades em muitas situações, por exemplo, as faculdades de Direito relativamente à situação das magistraturas. Não digo que isso não se verifique, mas penso que a responsabilidade maior tem sido do Estado e

¹ Texto não revisto pelo conferencista.

² Universidade de Lisboa

também da própria sociedade. Do Estado, porque não tem regulado, não tem estabelecido um sistema de regulação adequado, porque entendeu a autonomia das universidades como uma forma de desresponsabilização. E como não foi capaz de estabelecer um sistema equilibrado entre o ensino universitário e o ensino politécnico, e entre as universidades e os institutos públicos, e as universidades e os institutos não públicos. Quanto à sociedade, porventura, a sociedade civil portuguesa é fraca, é pobre; não se verifica em Portugal nada de comparável ao apoio, à intervenção, ao interesse e ao incentivo que noutros países a sociedade civil dá às universidades. Parece-me ser essa uma realidade indesmentível. Por isso, vejo com alguma preocupação estar-se agora a defender a intervenção de áreas estranhas às universidades na gestão ou, pelo menos na estratégia das políticas universitárias, quando tem havido um tão grande desinteresse relativamente à vida universitária, por parte das instituições da sociedade civil.

Nesta minha intervenção, vou primeiro traçar um pouco o quadro histórico e, em segundo lugar, apresentar as minhas maneiras de ver a situação. Naturalmente, salientando que são sugestões a título meramente individual, e que são meras sugestões que careceriam de uma melhor ponderação, de um estudo que eu, infelizmente, não pude fazer. Também e, infelizmente, não pude trazer um texto escrito, mas julgo que esta minha intervenção está a ser gravada e, portanto, as minhas opiniões ficarão aqui registadas. Quero também dizer que me vou concentrar essencialmente, como disse, em aspectos jurídicos, o sistema do governo, a governança, o sistema de gestão universitária, por um lado e, por outro lado, o estatuto jurídico das universidades. Vai ser à volta disto que irei concentrar a minha atenção.

Quadro histórico

Começando pelo sistema do governo, pelas formas de governo das universidades. Convém recordar que nós até agora, pelo menos desde que me conheço, desde que entrei para a Universidade até agora, tivemos três

grandes fases no desenvolvimento das formas de gestão e de governo das universidades. Tivemos uma até 25 de Abril de 1974, caracterizada pela autocracia, pela falta de autonomia e pela total dependência, inclusive política, do Governo, traduzida, muitas vezes, ao longo de várias décadas, até em demissões por puras razões políticas de eminentes professores universitários. Nessa fase, aquilo que se verificava era que o reitor era nomeado pelo Ministro da Educação, era nomeado pelo Governo, e os directores das faculdades eram também nomeados pelo Governo. Era, portanto, uma estrutura vertical, de cima para baixo, em que as universidades e as faculdades, embora teoricamente pessoas colectivas distintas do Estado, estavam totalmente sujeitas à dependência do Estado. Dependência que entrou muitas vezes até nos domínios científicos e pedagógicos. É certo que havia, a nível da universidade, um senado; é certo que havia, a nível de faculdade, um conselho escolar, mas eram essencialmente órgãos consultivos, órgãos simbólicos, que traduziam ainda uma homenagem a um passado, mas que não tinham poder efectivo na governação das universidades. Essa foi a situação em que me encontrei quando fui aluno e depois quando comecei as minhas actividades como assistente, ainda antes de 1974. E daí também facilmente se compreende uma enorme falta de participação da comunidade académica na vida, na gestão universitária e uma sujeição completa a factores de ordem política.

As sucessivas crises académicas que se deram já na minha vida universitária, desde 1962 até 1969, 1970/71, tiveram, em larga medida, por origem esta situação da autocracia em que vivia a universidade. E permitam-me que o diga, em homenagem ao Professor Marcelo Caetano, até chegou a haver em 1962, aquando da crise académica desse ano, a desautorização pública do Reitor pelo Ministro da Educação. Portanto, a situação era uma situação de autocracia e dependência directa e imediata do Governo, num âmbito que podemos chamar decorrente de um regime autoritário.

A seguir ao 25 de Abril, vamos ter dois anos que eu chamaria de populismo ou até de anarcopopulismo, que se traduziria pela ideia da democracia de base. O poder passou nas escolas para reuniões gerais de alunos, assembleias de multidões, mas crescentemente reduzidas a número

relativamente pequeno de alunos. Sem correspondência com o número real de alunos das escolas, as assembleias assumiram todos os poderes, inclusive poder de saneamento relativamente a todos os professores. E também, permitam-me que refira a este propósito o que aconteceu na minha Faculdade em Janeiro de 1975, em que todos os professores existentes foram pura e simplesmente saneados! Todos! Toda a Faculdade em 1975 caiu! E demorou muito tempo a ser feita a sua reconstrução, muito tempo! Hoje, por acaso, é um dia em que vai haver um momento significativo, porque vão tomar posse sete professores catedráticos da Faculdade de Direito da Universidade de Lisboa. Nunca isso tinha acontecido, nunca um número tão grande de professores catedráticos tomaram posse no mesmo dia. Mas isto mostra o que custou a reconstrução de uma faculdade. Noutras faculdades, porventura, a situação não terá sido a mesma, mas particularmente nesta sentiu-se muito o peso do domínio de um grupo de extrema esquerda que, através de uma legitimação mais ou menos vinda de assembleias gerais de escola ou de reuniões gerais de alunos, governou durante cerca de um ano.

A situação mudaria em 1976, com o I Governo Constitucional e com as medidas legislativas adoptadas pelo Ministro Sottomayor Cardia. E também, permitam-me que neste pouco tempo depois do seu falecimento aqui deixe uma palavra de homenagem ao Ministro Sottomayor Cardia, que com grande determinação, com grande coragem e com grande rigor, enfrentou certos poderes estabelecidos, enfrentou também com dignidade situações de crise, de resistência à implementação das suas medidas. As suas medidas, no essencial, consistiram em transpor para a universidade os princípios constitucionais da democracia representativa e da separação de poderes. Assim, a nível de faculdades, passou a haver uma assembleia de representantes eleita por sufrágio universal na base dos corpos académicos, professores, assistentes, alunos e funcionários; um conselho directivo eleito por essa assembleia de representantes, portanto com uma legitimidade democrática; um conselho pedagógico paritário de docentes e estudantes; e finalmente, um conselho científico com uma composição restrita a doutores.

A nível de universidade, levaria algum tempo até se chegar a uma solução. Seria apenas em 1988, com a lei da autonomia, que se consagraria

um sistema paralelo de organização com um reitor eleito por uma assembleia de universidade, por sua vez baseada em eleição por sufrágio directo; um senado como órgão de apoio do reitor e, na prática depois, várias comissões de entre o senado coadjuvando o reitor. Portanto, temos de 1976/88, a nível de universidade, um sistema de democracia representativa e também um sistema de separação de poderes. Particularmente a nível das faculdades, é muito clara a distinção entre os conselhos directivos e os conselhos científicos. Esta é a situação que temos tido até agora. Que juízo emitir sobre ela? O meu juízo é mais favorável do que desfavorável. Não nego que haja inconvenientes em alguns dos aspectos do funcionamento do sistema de governo criado por Cardia, em 1976, mas julgo que as vantagens são largamente superiores.

Vantagens e problemas da lei de autonomia (108/88)

Em primeiro lugar, criaram-se formas de participação institucionalizada dos vários corpos na gestão e no governo das escolas. Nem a autocracia, nem o basismo, o populismo ou o anarcopopulismo de 1974/76, mas democracia representativa, reproduzindo o sistema democrático consagrado a nível do Estado. E essas formas de participação têm levado a uma integração da comunidade académica, têm levado à ultrapassagem de muitas crises, e têm contribuído também para a dinamização das actividades universitárias. Não quero negar, no entanto, que haja aspectos negativos, alguma complexidade do sistema de órgãos, uma sobrerrepresentação, sobretudo dos funcionários e dos alunos em órgãos de gestão, embora, na maior parte das vezes, também se tem verificado que os funcionários têm tido a sensatez de não levantar problemas e de acompanhar as posições dos docentes. Mas, de certo modo, pode considerar-se que há uma sobrerrepresentação de funcionários e alunos no governo das escolas e das universidades. Além disso, apesar da lei de autonomia e dos estatutos das universidades e das faculdades em geral preverem a representação ou a participação de entidades estranhas às universidades, vindas da sociedade civil, no governo da gestão das

universidades, o certo é que até agora têm sido muito reduzidas as formas de aproveitamento dessa participação.

Há pouco disse, porventura poderei ser acusado de injusto, que a sociedade civil portuguesa pouco se tem interessado pelas universidades, mas também é verdade que as universidades pouco têm feito para chamar a si, para convidar à colaboração instituições estranhas às universidades. E, apesar da lei da autonomia, dos estatutos universitários, das faculdades e das unidades orgânicas preverem formas de participação ou de representação, na prática isso tem funcionado em termos extremamente reduzidos. Devo dizer que, por exemplo, quando fui Presidente do Conselho Directivo da Faculdade de Direito, foi criado um Conselho Consultivo, talvez não tenhamos sido suficientemente persuasivos, mas o que é certo é que o Conselho Consultivo, tanto quanto sei, só se reuniu quatro ou cinco vezes e, passados mais de dez anos, nunca mais se reuniu. Recentemente, a nível da Universidade de Lisboa, foi criado um Conselho Consultivo e espero que ele funcione bem. A nível da Faculdade de Direito, aquele que foi criado praticamente morreu já há vários anos. Portanto, há essa deficiência nítida de pouca abertura das universidades e das faculdades a essa participação da sociedade civil.

Depois, também há outra deficiência que considero grave. Em larga medida devido à falta de intervenção reguladora do Estado, do Ministério do Ensino Superior, em larga medida também devido a vícios ancestrais, os conselhos científicos, muitas vezes, têm funcionado como órgãos corporativos, como órgãos fechados, em que as primas-donas disputam o poder em vez de funcionarem como deviam funcionar, sempre como verdadeiros órgãos administrativos. Muitas vezes, tenho que lembrar às pessoas que um conselho científico de uma faculdade é um órgão administrativo, sujeito, por exemplo, ao Código do Procedimento Administrativo e, muitas vezes, isso não se verifica. As pessoas pensam que se numa faculdade de Direito isso acontece, provavelmente noutras faculdades o desfasamento será maior.

Também outra deficiência que julgo existir é a falta de coordenação a nível nacional. Coordenação quer das universidades, quer de faculdades ou unidades orgânicas relativamente a áreas específicas. O Conselho de

Reitores é uma instituição relativamente importante, mas os seus poderes são extremamente reduzidos. São, essencialmente, mais poderes de orientação e de consulta do que propriamente poderes de coordenação. E julgo que seria importante que o Conselho de Reitores tivesse um papel importante a nível de coordenação, de orientação e também de regulação do ensino superior. Até agora, na minha maneira de ver, o Conselho de Reitores não tem conseguido fazer isso, em larga medida por deficiência do quadro legislativo. Mas há outro aspecto que é igualmente negativo, que é a falta de coordenação a nível nacional das faculdades ou unidades orgânicas das várias áreas: estou a pensar na coordenação das faculdades de Letras a nível nacional, na coordenação das faculdades de Direito, das faculdades de Medicina, das faculdades de Engenharia, isso não tem sido feito.

Também Sottomayor Cardia, em 1976, tinha previsto a criação de comissões científicas interuniversitárias – essas comissões científicas interuniversitárias nunca passaram do papel e, no entanto, poderiam desempenhar uma solução extremamente importante, essencialmente no plano científico. E não só no plano científico, na medida em que poderiam promover iniciativas científicas comuns, contribuir para a internacionalização das nossas universidades, contribuir para uma racionalização dos recursos educativos, num país com escassos recursos como é o caso português, mas não só; poderiam contribuir para uma promoção da racionalização dos recursos científicos, como poderiam ter também uma função importante de ultrapassagem do corporativismo dos conselhos científicos e da endogamia que muitas vezes se verifica a nível dos conselhos científicos.

Há muitos anos que defendo que os concursos depois do doutoramento, todas as provas académicas e todos os concursos deveriam ser a nível nacional e não a nível de escola. Uma pessoa não deveria fazer, como acontece em Portugal, uma carreira exclusivamente numa só escola, numa só unidade orgânica, numa só universidade; deveria ser desafiada a fazer uma carreira a nível nacional, que é o que acontece em Espanha, França, Itália, Alemanha e em muitos outros países que conheço relativamente bem, é isso que acontece. Em Portugal, a pessoa entra como

assistente estagiário, é assistente, é professor auxiliar e, sucessivamente, vai ficando sempre na mesma escola, sujeito muitas vezes a poderes quase feudais por parte dos professores mais antigos; tende a fazer uma carreira na dependência, na sombra dos professores mais antigos. Depois, quando chega ao cume, muitas vezes vinga-se, é essa situação que se verifica. Conheço casos, por exemplo em França, em que um dos maiores constitucionalistas franceses começou a sua actividade em Madagáscar. Madagáscar é independente, mas tem acordos de cooperação e, portanto, um professor pode começar a sua carreira em Madagáscar, depois vai sucessivamente subindo até chegar a Paris. Em Itália, é a mesma coisa com Roma; em Espanha, com Madrid e Barcelona, etc., etc. Em Portugal, nada disto se verifica.

Outra situação que se verifica também e estou a pensar no caso da Faculdade de Direito da Universidade do Porto, que está numa fase de crescimento, mas que ainda não tem o número suficiente de professores nas várias áreas científicas. Em contraposição, pessoas que estão em Lisboa podiam ir para o Porto, mas querem ficar em Lisboa, estão em Lisboa e não estão dispostas a fazer uma carreira começando ou fazendo o desenvolvimento da sua actividade noutras escolas.

Ora bem, a criação dessas comissões científicas e interuniversitárias e um regime de concursos nacionais julgo que poderiam obviar a isso e seria uma forma de circulação das pessoas, seria um desafio à actividade das pessoas e poria fim a esse corporativismo, a essa endogamia, a esse ambiente muitas vezes fechado que encontramos nos conselhos científicos. Portanto, julgo que é uma deficiência, agora por omissão, do actual sistema de governo das universidades.

Quanto à estrutura jurídica das universidades tal como elas hoje se encontram, há um debate doutrinal, não vou naturalmente aqui desenvolver esse debate, mas há um debate doutrinal acerca da natureza das universidades.

As universidades, durante o regime autoritário e penso que também durante o período anterior ao regime autoritário, eram consideradas meros serviços públicos, quanto muito institutos públicos com algum grau de

capacidade jurídica. Depois do 25 de Abril, a situação manteve-se mas entrou em crise, e entrou em crise particularmente com a Lei de Autonomia de 1988. Embora continue a haver autores que defendem que se tratam de institutos públicos, portanto, pessoas colectivas integradas na administração do Estado, embora administração indirecta do Estado, e seja verdade que os professores universitários têm, no essencial, o regime da função pública, a meu ver com consagração legislativa.

Antes disso, esqueci-me de dizer, temos a consagração constitucional do princípio da autonomia, o art.º 76º, número 2 da Constituição diz expressamente: “As universidades gozam, nos termos da lei, da autonomia estatutária, científica, pedagógica, administrativa e financeira, sem prejuízo de adequada avaliação da qualidade do ensino”. Não me parece que perante este princípio da autonomia, e tendo em conta também o sistema democrático de gestão que existe, as universidades possam ser reconduzidas a meros institutos públicos. A meu ver, elas entram no âmbito daquilo que a própria Constituição chama administração autónoma, e não administração indirecta do Estado, mas administração autónoma. Há um nível de proximidade ou de uma certa similitude com as autarquias locais e com associações públicas. É a esse nível e a esse ângulo que penso que hoje se devem inserir as universidades.

É certo que o regime jurídico é ainda muito deficiente, não se têm tirado todas as consequências deste princípio de autonomia mas, até devido à dependência financeira total em que as universidades se encontram em relação ao Estado, a minha ideia básica é que se trata de instituições gozando de uma ampla margem de autonomia, cujos estatutos deveriam reflectir essa mesma **margem** de autonomia. Voltarei ao assunto já na parte final.

Governança e estatuto jurídico

Qual a minha maneira de ver esta perspectiva relativamente a estes dois problemas: o problema da governança e o problema do estatuto jurídico? Quanto ao problema da governança, como disse no início, sou

essencialmente conservador. Julgo que o sistema é um sistema que no essencial é correcto e, além disso, é o único sistema, permitam-me que agora o diga também, é o único sistema que está de acordo com a Constituição. Porque a Constituição não apenas proclama, como disse há momentos, o princípio da autonomia, mas também o princípio da participação democrática. No art.º 77º, fala-se em participação democrática no ensino, dizendo que “Os professores e alunos têm o direito de participar na gestão democrática das escolas, nos termos da lei”. É certo que a Constituição também diz, e este ponto não tem sido aproveitado na linha do que há pouco disse, também diz que a lei vai regular as formas de participação dos professores, alunos, pais, das comunidades e das instituições, mas há incentivo à participação na definição da política de ensino. Este número 2 do art.º 77º abre à tal participação da sociedade civil. Mas, antes de mais nada, o princípio é o princípio da participação democrática. Qualquer sistema de governo que não respeite esse princípio da participação democrática é necessariamente inconstitucional. E, por isso, vejo com alguma preocupação algumas ideias, algumas hipóteses, alguns projectos que têm aparecido, no sentido de passar a haver uns conselhos estratégicos, uns conselhos fundadores ou uns conselhos de entidades da sociedade civil que assumam o essencial do poder nas universidades, designadamente nomeiem o reitor ou promovam concurso para efeitos da designação do mesmo, o que provavelmente aconteceria em muitas universidades. Vejo isso com muita preocupação, e julgo que afrontaria directamente a norma n.º 1 do art.º 77º da Constituição.

O princípio da participação democrática não pode ser tocado e, portanto, tirando os órgãos científicos em que naturalmente o critério tem de ser científico, os conselhos científicos, as comissão científicas universitárias a nível nacional, tirando esses órgãos, os outros órgãos, os órgãos de gestão, os órgãos de governo, essencialmente a gestão escolar, administrativa e financeira devem continuar a cargo de órgãos com uma legitimidade democrática, vinda do interior das universidades. Isso não significa, no entanto, que o modelo paritário que tem sido adoptado ou que, de certa maneira, consta ou se extrai da Lei de Autonomia, como se extrai dos decretos-lei de 1976 de Sottomayor Cardia, não quer dizer que esse modelo

paritário deva manter-se. Julgo que tem inconvenientes: grandes assembleias de representantes em que há um número exagerado de representantes de funcionários ou de alunos, ou conselhos directivos, como acontece na Faculdade de Direito de Lisboa, do qual fazem parte quatro docentes, quatro alunos e dois funcionários, em que os docentes não têm maioria, de resto, no grupo dos docentes entram sempre assistentes, porque também têm que estar representados.

Esse sistema, apesar de nos dez anos em que fui Presidente do Conselho Directivo ter funcionado relativamente bem, esse sistema é demasiado pesado e pode levar a grandes distorções. Portanto, aí deve haver uma simplificação mas devendo sempre manter-se o princípio da participação democrática; a autonomia só é verdadeiramente autonomia, se for uma autonomia democrática. Tal como a autonomia das autarquias locais, só é verdadeira autonomia, se for uma autonomia democrática, também a autonomia das universidades e das unidades orgânicas só é verdadeiramente autonomia enquanto seja uma autonomia democrática, enquanto venha do interior da comunidade, enquanto exprima as aspirações, os interesses, as formas de desenvolvimento próprio da actividade universitária.

Isto não significa, no entanto, que eu defenda esse princípio da autonomia, que inclui a participação democrática, como absoluto. Não há absolutos em matéria destes princípios, até porque a Constituição fala no princípio da avaliação da qualidade e sendo as universidades entidades públicas, entidades que se situam na esfera pública, o Estado tem aí um papel a que não pode fugir. Daí que eu, como aliás foi salientado pelo Professor Alberto Amaral, defenda menos intervenção do Estado em certas áreas e mais noutras áreas. Uma coordenação a nível nacional das universidades, das faculdades, reforçando designadamente o Conselho de Reitores, e criando, pondo a funcionar, comissões científicas universitárias, também com uma co-responsabilização do Ministério da Ciência e do Ensino Superior, através do incentivo à racionalização dos cursos e no sentido da promoção da acção social escolar, são outros aspectos em que é extremamente necessário actuar. Agora, não podemos pôr em causa, a pretexto da competitividade, da internacionalização, da abertura à sociedade

civil e de outras ideias que têm aparecido por aí, esses dois princípios basilares, o princípio da autonomia e o princípio da participação democrática, devemos corrigi-los, devemos aperfeiçoá-los, mas não pô-los em causa.

Digo isto com alguma preocupação, porque na intervenção que o senhor Ministro fez há dias aqui no Conselho Nacional da Educação há alguns passos que me deixam de novo preocupado, na medida em que parece que haveria os órgãos de topo, depois uma concentração, uma espécie de centralismo democrático dentro das universidades, mas amplamente aberto à sociedade através da cooptação e, por fim, toda a gestão seria uma gestão profissionalizada, etc., etc.

Outro ponto, que há pouco não referi. Não nego que muitas vezes um professor não se sente muito capaz de ser gestor. Mas, apesar de tudo, nestes trinta anos de experiência do sistema democrático de Cardia, não me consta que tenha havido graves disfunções na gestão universitária, quer a nível de faculdades, quer a nível de universidades. E já que se fala tanto em corrupção, não me consta que alguma vez, ao contrário do que se passa noutras áreas, noutras zonas da vida pública portuguesa, alguma vez tenha havido casos de corrupção a nível de gestão universitária. Acho que este é um ponto que também deve ser lembrado, no momento em que se fala tanto em corrupção. A nível de universidade isso nunca se verificou, nunca se verificou! Nem sempre os professores terão sido os melhores gestores, mas certamente terão sido gestores honestos, gestores sérios. Por outro lado, também vejo com alguma dificuldade como é que haveria gestores profissionalizados colocados nas universidades, assumindo toda a gestão financeira e com um estatuto financeiro de vencimento largamente superior ao estatuto de vencimentos dos professores universitários. Vejo com muita dificuldade essa diarquia que seria criada a nível de universidades entre os gestores profissionalizados, designados de qualquer forma, e os presidentes dos conselhos directivos, os directores da faculdade ou os reitores, baseados na eleição democrática.

Finalmente, quanto ao estatuto jurídico das universidades. Resulta já daquilo que disse que as universidades entram na administração autónoma, e entram na administração autónoma como categoria específica. Não vejo

nenhum interesse em estar-se a procurar reconduzir as universidades a fundações ou entidades públicas empresariais, como também já ouvi dizer, não vejo qualquer interesse nisso. Pode ser que noutros países esses sistemas tenham funcionado bem, tenham dado bons resultados, mas em Portugal vejo com dificuldade que isso possa acontecer. A meu ver, o que há que aproveitar é as virtualidades que a lei da autonomia, susceptível de eventual revisão (eu próprio, já uma vez fiz um projecto de alteração da lei de autonomia), dá às universidades. As universidades públicas, como categoria, são sempre uma categoria específica, autónoma, de pessoas colectivas de direito público, a par das autarquias locais e das associações públicas dentro da administração autónoma do Estado. Isso tem uma dupla vantagem: por um lado, a ligação directa ao Estado, evitando os riscos de privatização das universidades públicas, riscos esses que também parece que não são tão longínquos quanto pode supor-se mas, por outro lado, dando às universidades uma muito maior margem de liberdade e flexibilidade.

Há uma coisa que o senhor Ministro diz neste texto, com a qual posso concordar, mas isso é só uma ideia que já tenho há muito tempo: os professores, os funcionários das universidades não deveriam ser funcionários do Estado, deveriam ser funcionários das universidades. Tal como há os funcionários das autarquias locais, que não são funcionários do Estado, são funcionários das autarquias locais. Deveria haver depois, naturalmente, um estatuto jurídico adequado para os professores e funcionários das universidades em razão da sua situação. Não é necessário que sejam funcionários do Estado, mas devem ter sempre um determinado vínculo à função pública, em termos paralelos com o vínculo dos funcionários das autarquias locais. Também aqui há um convite à imaginação, à criatividade dos juristas e à ponderação das situações concretas.

Portanto, a meu ver, é nessa linha de universidades públicas como categoria autónoma, dentro da administração autónoma, que se deveria trabalhar e não pura e simplesmente importar modelos estrangeiros, ou modelos que utilizados noutros sectores poderão dar bons resultados, por exemplo, as entidades públicas empresariais. Pode-se compreender num hospital uma entidade pública empresarial, ou com a mesma redução à

empresa, porque no hospital não se pode falar numa comunidade, deve-se liberar os médicos, os enfermeiros ou os funcionários e essencialmente os doentes que estão numa situação transitória, numa situação de dependência, de necessidade. Mas nas universidades há uma comunidade: há uma comunidade de docentes, há uma comunidade de alunos e há uma comunidade que os integra a todos. Como é que um estatuto empresarial pode ser transplantado para a organização universitária? Tenho as maiores dificuldades em compreender como é que isso possa vir a ser feito.

Conclusão

Vou terminar só com algumas reflexões ainda muito necessitadas de ponderação e de debate, naturalmente estão abertas ao debate, mas gostaria de frisar novamente três pontos: por um lado, temos determinados princípios constitucionais que não podemos pôr em causa, princípios da autonomia e da participação democrática. Nenhuma reforma legislativa no domínio da governança das universidades pode ser feita contra estes princípios constitucionais. Estes princípios constitucionais não devem ser entendidos de forma rígida, no sentido de manter o esquema dos diplomas de 1976 e de 1988. Pode-se fazer uma evolução, particularmente no sentido da maior abertura à sociedade, da participação de instituições sociais, de autarquias locais, comunidades científicas, comunidades empresariais, por exemplo no senado, ou então até através de conselhos consultivos junto das universidades.

Também a nível do estatuto dos docentes e funcionários universitários é perfeitamente possível, e até é mais de acordo com a ideia da administração, que passem a ser funcionários das universidades, embora com as garantias inerentes ainda à função pública. Mas isso não impede, no entanto, que possa haver alguns funcionários em regime de contrato individual de trabalho. Se na função pública, em geral, já hoje se admite o regime de contrato individual de trabalho, também não me chocaria que possa haver esse contrato individual de trabalho nas universidades, a par do regime de função pública. Mas o regime de função pública deveria

manter-se. Não vamos agora naturalmente entrar na discussão do regime da função pública, isso seria outro tema e estranho totalmente a este debate.

Concluindo, agradeço a atenção com que me ouviram e peço desculpa por ter excedido largamente os vinte minutos que deveria ter usado. Certamente que há muito a fazer, há grandes desafios, aqueles que o Professor Alberto Amaral apontou, mas não devemos pôr em causa aquilo que foi adquirido positivamente nos últimos trinta anos e devemos ter consciência das particularidades do nosso País.

Estatuto Legal das Instituições de Ensino Superior

Vital Moreira¹

Introdução

Quero agradecer o convite para fazer a introdução ao tema desta sessão e a oportunidade que me foi dada para aqui estar. O tema é o Estatuto Legal das Instituições de Ensino Superior. Vou falar naturalmente como jurista, que é a minha formação e a minha profissão.

Penso que podemos dividir este campo em três tópicos:

- 1.º- A natureza institucional dos estabelecimentos de ensino superior públicos.
- 2.º- A autonomia das instituições face ao Estado, e face ao exterior em geral.
- 3.º- O sistema de governo ou os sistemas de governo das instituições: os órgãos, a forma da sua designação, os seus poderes e as relações entre eles.

A natureza institucional das IES

Quanto à natureza institucional, a tradição europeia continental é de que as instituições de ensino superior públicas são estabelecimentos públicos. São institutos públicos de base institucional, pertencentes ao Estado, mas com uma autonomia jurídica, ou seja, personalidade jurídica própria, e outros tipos de autonomia, que já vamos enunciar.

Embora pertençam ao Estado, as instituições de ensino superior não são Estado em sentido próprio, não são uma direcção-geral, não pertencem à administração directa do Estado. Tendo personalidade jurídica, elas são

¹ Universidade de Coimbra

sujeitos de direito autónomos, em termos patrimoniais, em termos de pessoal, em termos de contratos, em termos de responsabilidade civil, sendo isso que significa autonomia institucional, ou autonomia jurídica, em sentido estrito. É o que acontece entre nós, onde as universidades foram historicamente dos primeiros estabelecimentos a serem dotados de personalidade jurídica separada do Estado.

O Estado Liberal do século XIX não conhecia pessoas jurídicas fora do Estado. Ao contrário da ideia corrente, o Estado Liberal era altamente centralizado e não admitia fragmentação da personalidade jurídica pública. As instituições públicas eram o Estado, sendo impensável qualquer ideia de entes públicos dotados de autonomia patrimonial, de autonomia contratual, de responsabilidade civil própria, etc. No século XX, porém, com a ampliação das tarefas do Estado e o crescimento da organização administrativa, deu-se uma grande fragmentação institucional do Estado, tendo sido criados numerosos entes administrativos com relativa autonomia, através da atribuição de personalidade jurídica a serviços, estabelecimentos e fundos públicos. As universidades são uma das categorias mais importante desse universo, aliás dotadas em muitos países, entre os quais o nosso, de ampla autonomia, incluindo formas mais ou menos avançadas de autogoverno.

Em todo o caso, na generalidade dos países, pelo menos da Europa continental, as universidades mantiveram a sua natureza de entidades de direito público, sujeitas ao direito administrativo, incluindo o regime da função pública dos seus docentes e a submissão às regras da gestão pública (finanças, etc.). Hoje em dia, porém, e desde há algumas décadas, este modelo de estabelecimento público e de gestão pública das universidades está a ser posto em causa em vários países, em favor de formas de direito privado, de tipo fundacional ou mesmo empresarial.

É certo que, desde há muito, nos países anglo-saxónicos, onde a distinção entre direito público e direito privado é bastante mais complicada do que na tradição europeia continental, assistimos ao nascimento de universidades com estatuto de direito privado (as *charities* britânicas, por exemplo) e mais modernamente às universidades-fundação e às universidades-empresa, bem como à substituição do estatuto de direito

público pelo estatuto de direito privado. Idêntico fenómeno se passa hoje em alguns países da Europa Continental, que têm a tradição do estabelecimento público. Na Alemanha, temos vindo a assistir nos últimos anos ao nascimento das universidades-fundação, e noutros países existem também, há vários anos, exemplos relativamente singulares de universidade-empresa.

O que é que isto significa? Significa normalmente o abandono da forma de estabelecimento público ou a criação de uma entidade jurídica de direito privado detentora do estabelecimento, propriamente dito. O estabelecimento deixa de ser do Estado e passa a ser propriedade de uma empresa ou de uma fundação, que o detém, como entidade instituidora e gestora. Isso normalmente vem acompanhando de uma mudança do regime jurídico dos estabelecimentos universitários, que abandonam, pelo menos em parte, muitas vezes no todo, o regime jurídico de direito público, passando a reger-se por normas de direito privado. Abandonam o regime da função pública, adotando o regime de contrato de trabalho; deixam o regime da contratação pública, abraçando o regime de contratação privada. Portanto, passam a ser estabelecimentos de direito privado, embora continuem públicos quanto à sua propriedade e à sua missão.

Estas mudanças traduzem uma mudança paradigmática na gestão pública. Não tem a ver apenas com as escolas de ensino superior públicas, mas sim com a administração em geral. É o chamado movimento da "nova gestão pública" (*New Public Management*), que, reduzindo a complexidade de tudo isto, tenta replicar no sector público os modos de gestão do sector privado. Ou seja, substituir o direito administrativo pelo direito civil, pelo direito laboral, pelo direito comercial. Depois, há a preferência por formas de gestão baseadas na autonomia de gestão, na responsabilidade dos gestores, na remuneração de acordo com o desempenho, na utilização do contrato de trabalho. Tudo o que conhecemos no paradigma da gestão privada tenta-se reproduzir, até onde for possível, na gestão pública. Isso implica, muitas vezes, a mudança da própria natureza institucional. É por isso que estamos a assistir em Portugal, e não só (nisso normalmente não somos originais, limitamo-nos a copiar o que os outros fazem...), ao movimento da empresarialização em vários sectores (por exemplo, nos hospitais públicos).

Em vez da forma empresarial, pode ser preferida a forma fundacional. Por exemplo, nós utilizámos a empresa para os hospitais públicos, os espanhóis utilizaram a fundação. São modelos alternativos, tendo, no entanto, em comum o seguinte: abandonar o modelo do estabelecimento público, afastar o direito público, pelo menos em grande parte, e introduzir formas de gestão privatista no sector público.

O recente relatório da OCDE sobre o ensino superior entre nós sugere explicitamente a experimentação de um modelo fundacional para os estabelecimentos de ensino superior públicos. Não é, porém, muito conclusivo; se lermos atentamente o relatório é bastante cauteloso, mas não é por acaso que o modelo fundacional está lá. Não basta dizer que uma parte dos relatores eram anglo-saxónicos e outro holandês, que é o mais próximo que há dos modelos anglo-saxónicos, para justificar a sugestão do modelo fundacional. Porque a verdade é que o modelo fundacional, se hoje tem uma pátria de eleição, é a Alemanha, onde o modelo tradicional de estabelecimento público, ou de "corporação pública", era o mais enraizado. Se havia um modelo europeu de universidade como instituição pública, além do francês, era claramente o alemão. Ora, hoje vemos espalhar-se exactamente o modelo fundacional na Alemanha.

Apesar da sugestão do relatório da OCDE, parece que o Governo não vai impor o modelo fundacional. Isto, a ter em conta o discurso do Primeiro Ministro na Assembleia da República, a apresentar as principais linhas da reforma, e a comunicação que o próprio Ministro aqui fez no Conselho Nacional de Educação. Estes são os elementos autorizados que tenho para tirar a conclusão de que nesse aspecto parece que não vai haver nenhuma revolução. Opta-se por uma postura cautelosa, não mexendo imperativamente na natureza institucional das escolas de ensino superior. Isto é, as escolas de ensino superior vão continuar em geral a ser estabelecimentos públicos, como até aqui, dotados de personalidade jurídica própria, de autonomia patrimonial, de autonomia contratual, com responsabilidade civil própria, etc. Mas sem mudança obrigatória de natureza institucional e jurídica.

Note-se que a Constituição é neutra quanto à natureza institucional das escolas de ensino superior, não havendo nenhuma limitação quanto a esse

aspecto. Portanto, aqui o Governo é livre de manter o que está ou de alterar a situação.

Gostaria de chamar a atenção para um ponto específico. Embora o Relatório da OCDE aponte claramente para o fim do regime da função pública nas instituições de ensino superior, o Governo até agora não disse nada sobre essa matéria. Mas o Governo, através do Secretário de Estado da Administração Pública, já disse claramente que o regime geral de emprego no sector público administrativo vai ser o contrato de trabalho, embora com um regime especial. Isto é, o tradicional regime da função pública, baseado na nomeação vitalícia, está em vias de desaparecer, ou quase, entre nós. Resta saber se as instituições de ensino superior, mesmo mantendo-se como estabelecimentos de direito público, vão alinhar pelo modelo contratual, incluindo quanto ao pessoal docente.

A autonomia

A autonomia tem a ver com a relação dos estabelecimentos com o Estado, por um lado, e a sociedade, por outro, de modo a assegurar uma ampla esfera de independência. E esta autonomia está entre nós garantida constitucionalmente, pelo menos em relação às universidades, pelo que a margem de liberdade legislativa é mais reduzida.

A Constituição não é neutra, mas antes muito afirmativa em matéria de autonomia das universidades públicas. De facto, embora a Constituição não discrimine, a doutrina estabelece claramente uma distinção entre as escolas públicas e as escolas privadas quanto a esse aspecto. Quando a Constituição se refere à autonomia estatutária, à autonomia disciplinar e a tudo o mais, está a referir-se, em primeira linha, às universidades públicas, não às universidades privadas que têm uma entidade instituidora, à qual nem o Governo nem a lei podem impor essas formas de autonomia, pelo menos além de certo ponto.

As universidades gozam de autonomia estatutária, pedagógica, científica, financeira, administrativa e disciplinar. A autonomia estatutária reconhece às universidades o poder de definirem, elas próprias, a sua

organização e funcionamento, no quadro das opções definidas na lei. A autonomia pedagógica e científica, essas são liberdades tradicionais das universidades, garantias da liberdade académica. A autonomia financeira, administrativa e disciplinar são as outras que a Constituição menciona, tendo a ver com a gestão dos estabelecimentos.

Contudo, a autonomia está garantida "nos termos da lei", o que quer dizer que a Constituição admite restrições e qualificações da mesma. Não há autonomia absoluta das universidades. Tudo isso tem a ver com a concretização da autonomia, que as leis - no nosso caso, actualmente a Lei de Autonomia universitária, por um lado, e a Lei do Ensino Politécnico, por outro lado - estabelecem em modos relativamente diversos para cada um dos tipos de escolas de ensino superior. Quais são as questões que aqui se suscitam? Primeiro, a questão de autonomia científica e pedagógica, que aparentemente não pode estar em causa, por ser uma garantia da liberdade académica, mas que pode estar, pelo menos com o entendimento larguíssimo que lhe damos, abrangendo por exemplo a liberdade de criação de cursos. Isto é, afastámos o Governo de muitos aspectos que hoje pode questionar-se se cabem dentro de um conceito menos amplo de autonomia pedagógica.

A minha Faculdade, por exemplo, acaba de mudar o nome de uma licenciatura que se chamava Administração Pública para Administração Pública e Privada. Essa denominação não existia na nomenclatura dos cursos de ensino superior, sendo, salvo erro, totalmente inovatória. Isto faz sentido? Acrescentou-se mais uma denominação às centenas que já tínhamos. Em muitos países, que não podemos acusar de falta de autonomia universitária, isto não seria possível. Há uma nomenclatura legal de formações de ensino superior e as universidades podem ser livres de ministrar umas e não outras, mas não podem inventar livremente mais uma denominação aos cursos de ensino superior. Mas a verdade é que, a coberto de um entendimento latitudinário de autonomia e da demissão clara do Estado nesta matéria, temos elevadíssimos níveis de autonomia pedagógica, pelo menos neste conceito amplo, mas temos um real défice de autonomia administrativa e financeira, onde muitas decisões correntes das escolas de ensino superior ainda dependem de autorização ministerial.

E é aqui que penso que pode haver inovações. É de esperar um alargamento da autonomia das instituições quanto à gestão administrativa e financeira. Isso está nos discursos oficiais que já referi, e a minha leitura é a de que o Estado deve deixar de se imiscuir na microgestão corrente das escolas de ensino superior. Elas têm o seu espaço de autonomia de gestão, devendo utilizar com maior liberdade o pacote financeiro do Estado e as receitas próprias de que dispõem, desde que observem as regras gerais relativas aos limites das despesas com pessoal, etc..

Esse é um dos temas que valia a pena reflectir um pouco: em que medida é que a situação actual pode ser aperfeiçoada a favor de uma maior autonomia de gestão das escolas de ensino superior, que elimine as teias, os limites, a burocracia que ainda hoje rege a sua gestão administrativa e financeira?

Deixo de lado a questão do autofinanciamento, porque penso que aqui, mais uma vez, o Governo é conservador. Não vai mexer na fórmula das propinas, que se limita a actualizar automaticamente com o salário mínimo nacional (que, aliás, garante às universidades, este ano, uma subida relativamente significativa, uma vez que o salário mínimo vai ser mais aumentado do que o habitual). Por conseguinte, para além das demais receitas próprias, as instituições de ensino superior vão continuar a depender essencialmente de transferências orçamentais. Indubitavelmente um factor que não ajuda a consubstanciar uma efectiva autonomia.

O sistema de governo

Penso que o sistema de governo das instituições de ensino superior é a grande área onde as reformas anunciadas podem ser mais profundas. Até que ponto o serão, isso depende da implementação das directivas que foram anunciadas pelo Primeiro Ministro na Assembleia da República e pelo Ministro do Ensino Superior noutros fóruns, inclusive aqui.

Qual é o estado actual? Todos nós o conhecemos, com pequenas diferenças: vivemos em autogoverno, escolhemos os órgãos de governo e a sua composição, dentro da larga margem que a lei de autonomia

universitária e a lei dos politécnicos nos concede. Elegemos muitos órgãos, pois há uma electividade quase absoluta no actual sistema de governo das universidades. Elegemos muita gente, pois há muitos órgãos colegiais, nutridos quanto à sua composição, com a ineficiência de funcionamento que muitas vezes isso causa: faltas de *quórum*, duração de reuniões, etc., etc. Além disso, em muitas universidades há um sistema quase paritário, que dá aos estudantes um peso único, sem paralelo em qualquer país que conheço, na gestão das escolas de ensino superior.

Em contrapartida, há um claro défice de participação externa nas universidades e escolas politécnicas, mais nas primeiras do que nas segundas, porque a lei dos politécnicos impõe-lhes, apesar de tudo, regras de participação externa que as universidades não têm. Essa "endocracia" gera um sistema de clara irresponsabilidade perante o exterior: autogoverno igual a irresponsabilidade. Nós não prestamos contas perante ninguém, nem perante o Governo, dada a autonomia, nem perante outra instância externa. Ou melhor, os professores respondem perante os professores, os estudantes perante a associação académica, os funcionários perante os sindicatos.

Tendo em conta o relatório da OCDE e as orientações que o Governo já anunciou, parece que aqui é que vai haver alterações substanciais. Entre elas são de esperar uma maior abertura a elementos externos e maior responsabilidade perante o exterior, embora não perante o Governo; diminuição dos órgãos colegiais; redução do peso dos estudantes e dos funcionários na gestão universitária.

Antes de mais, importa sublinhar que a Constituição deixa ampla margem para a configuração legal do sistema de governo das instituições de ensino superior, ressalvadas duas condições: primeiro, reservar um espaço relevante para o exercício da autonomia estatutária, constitucionalmente garantida, no caso das universidades; segundo, assegurar a participação de professores e de estudantes no governo das instituições, igualmente garantida na Lei fundamental.

Curiosamente, porém, a Constituição não garante explicitamente o autogoverno, ou seja, o governo por órgãos próprios saídos das próprias instituições. É claro que o autogoverno pode ser deduzido, até certo ponto,

da autonomia estatutária e da autonomia universitária em geral. Mas a falta do seu reconhecimento expresso confere ao legislador uma liberdade de decisão que de outro modo poderia não ter.

Várias coisas parecem firmes nos projectos governamentais:

- 1.º - O órgão central da gestão das escolas de ensino superior vai ser um órgão de composição mista e não apenas um órgão endógeno às escolas, ou seja, vai ter uma participação qualificada de personalidades de fora;
- 2.º - O reitor deixa de ser eleito por um grande colégio tripartido, como actualmente, passando a ser designado pelo referido conselho de representação mista, previsivelmente muito mais pequeno.
- 3.º - Os professores vão ter a maioria nos órgãos colegiais.

Portanto, diria que teremos menos órgãos, menos eleições, menos estudantes, menos colegialidade, mais participação externa, mais responsabilidade perante o exterior. Se alguma coisa vai mudar profundamente com a reforma é claramente o sistema de governo.

Comentários finais

Penso que estes serão os tópicos que vale a pena discutir, porque vão ser esses que vão estar na agenda política do Governo e do Parlamento. O Governo já se comprometeu a apresentar os projectos dentro de três meses na Assembleia da República e a ter o pacote legislativo pronto até Junho. O que quer que instituições como esta, as universidades e demais escolas possamos fazer no sentido de aprofundar o debate sobre a reforma é bem vindo.

Apesar de serem conhecidas algumas linhas da reforma que o Governo propõe, elas são suficientemente fluidas neste momento para admitirem várias formulações. Esta foi a mensagem que também li no discurso governamental. Tem linhas de orientação muito claras, mas a sua

implementação concreta ainda é susceptível de várias modelações e especificações. Penso que são estes temas que nos devem interessar mais detidamente, para termos alguma influência nas opções legislativas em preparação.

Quanto ao modelo de governo das escolas, devo dizer que, embora concordando com muitas ideias anunciadas para a sua reforma, sempre defendi um modelo diferente daquele que o Governo agora vem propor. Isto é, sou adepto de um "modelo dualista", composto por um órgão de governo interno das instituições, de origem exclusivamente académica, que respondesse perante um órgão de supervisão, de origem externa, para permitir uma clara distinção de responsabilidades e uma relação de fiscalização e de controlo externo independente. Claramente, o Governo não vai por aí, querendo um órgão único, em que estão simultaneamente as duas partes: os professores e os estudantes, por um lado, e os elementos exteriores, por outro lado, participando estes em pé de igualdade na escolha do reitor, na definição das orientações da instituição, na aprovação dos planos e dos orçamentos, etc., etc.

Este modelo de cogestão integrada parece resultar claramente do discurso do Ministro do Ensino Superior, sendo aliás também sugerido no relatório da OCDE. Não é modelo que eu favoreça, continuando fiel a uma solução dualista. No entanto, vale a pena ver quais são os méritos e deméritos dessa solução unitária, que passa por um órgão colegial representativo único, com funções de definição estratégia e de governo. Haverá vantagens relativas nesse modelo? Não sei se o Governo ainda é susceptível de ser convencido que esta proposta não é a melhor, mas vale a pena pelo menos analisar as vantagens e desvantagens do modelo apresentado.

Se leio bem, o que resulta da proposta do Governo é o seguinte: aquilo que hoje é o senado, com esse nome ou outro qualquer, passa a ser um órgão mais pequeno, com maioria de professores, com menos estudantes e com uma representação qualificada externa, em proporção ainda a determinar. Passa a ser um órgão decisivo, não apenas porque mantém os poderes que hoje já tem o senado, passando também a designar o reitor. Portanto, passa a ser simultaneamente um órgão de governo e um órgão de abertura ao

exterior. É por aí que passará o fim da endogenia atávica das escolas de ensino superior entre nós.

O que é que resta para decidir neste modelo? As opções políticas fundamentais parece que estão tomadas. Podemos criticá-las, mas se queremos participar na formação das soluções que hão-de vingar, penso que é um exercício relativamente ocioso dedicarmo-nos agora à defesa de modelos alternativos radicalmente diferentes. Todavia, o que está em aberto é ainda muito. Porque, de facto, se virmos bem, a concretização deste modelo admite várias versões. Por exemplo, devendo os professores e investigadores ter a maioria no órgão representativo central, qual deverá ser a quota de representação dos estudantes e dos elementos externos? E os funcionários devem continuar a ter alguma participação? E a participação exterior cabe a quem? Deverão esses elementos ser cooptados pela própria instituição ou devem ser indicados por outras instituições (sindicatos dos professores, ordens profissionais, associações empresariais, câmaras municipais, associações de estudantes, associações de antigos estudantes, etc.)?

Portanto, há ainda muita coisa por decidir. Muitas vezes, as grandes reformas não consistem somente na sua arquitectura geral mas também nos pormenores e na sua delimitação concreta.

Comentários do Prof. Vital Moreira em resposta

Dr. Jorge Carvalho

Uma nota a propósito do abandono por parte do Governo do modelo fundacional. Aquilo que aqui foi dito pelo senhor Ministro é que admitia ter um quadro aberto, que permitisse que as universidades o adoptassem, com consequências também ao nível do próprio regime de contratação de pessoal. Portanto, tanto quanto percebemos, haverá um quadro que permite que as instituições que queiram avançar para um modelo fundacional o possam adoptar.

Prof. Vital Moreira

Juridicamente, vejo isso em termos um pouco complicados. Essa abertura pode não ter grande viabilidade prática. Penso que se o modelo fundacional não for legislativamente imposto, a possibilidade de as escolas de ensino superior o adoptarem é muito reduzida. Portanto, será uma hipótese legal, apenas para dizer que fica em aberto a adopção desse modelo. Resta saber se virá a vingar em termos voluntários, tendo em conta o nosso conservadorismo institucional.

Quanto à questão do regime de pessoal, a verdade é que o Ministro do Ensino Superior não disse nada sobre esse ponto, mas o Secretário de Estado da Administração Pública até agora não excluiu as universidades e as escolas de ensino superior em geral da utilização do contrato individual de trabalho. É óbvio que a adopção do regime fundacional tornaria isso inevitável, pois se é uma fundação de direito privado, por natureza, deixa de ter regime de emprego de direito público. Mas, mesmo mantendo-se a natureza institucional de estabelecimentos públicos, a direcção governamental, nesta matéria, aponta para o abandono do tradicional regime da função pública. O regime de nomeação ficará reservado para alguns sectores onde o Governo não admite um regime contratual, como os militares, polícias, inspectores e pouco mais.

Não vou fazer um juízo sobre isso. Há muito tempo que defendo o abandono do regime da função pública, embora com especiais cautelas quanto ao regime específico do contrato de trabalho na Administração Pública; não me repugna nada abandoná-lo nas universidades e noutras instituições de ensino superior, incluindo quanto ao pessoal docente e de investigação. Mas quanto ao pessoal docente, importa manter a *tenure*, ou seja, um quadro de professores com garantias fortes de segurança profissional, como condição da independência académica das instituições. Penso que a *tenure* é essencial para a autonomia das universidades. E para isso não é preciso o regime da função pública, bastando ter um regime de contrato de trabalho com segurança reforçada, pelo que não me causa muita preocupação.

O problema da função pública tem também uma dimensão constitucional. A Constituição garante o regime da função pública como "garantia institucional", ou seja como instituição que não pode ser abolida. Portanto, a não ser que se reveja a Constituição, não se pode acabar com o regime da função pública, que vai ter de se manter com um mínimo de expressão. Todavia, a adopção de formas contratuais de emprego vem-se impondo no sector público desde há muito. Isso já estava patente na lei do contrato de trabalho na Administração Pública de 2004, do Governo Durão Barroso, que só reservava para a função pública as funções de autoridade. Portanto, este Governo não está a fazer nada de essencialmente novo. Agora, porém, a figura do contrato deixa de ser facultativa e passa a ser obrigatória. Isto é, todos os serviços públicos, fora as excepções indicadas, passam a ter, como modelo único, o contrato de trabalho, embora com um regime específico de direito administrativo.

Sejam-me permitidas algumas notas adicionais.

Nas áreas em que deva haver autonomia institucional, sou desde há muito adepto da regulação por entidades independentes, em substituição do controlo governamental. Suponho ter sido uma das primeiras pessoas em Portugal a propor a criação de uma entidade reguladora para o ensino superior, quando isso era uma espécie de heresia e corria o risco de ser interpretada como um atentado contra a autonomia universitária. A meu ver era o contrário; como já aqui foi dito e muito bem, não há autonomia sem regulação. E das duas uma: ou a autonomia é desregulada, que é o que tem acontecido em geral até agora, ou a autonomia é regulada pelo Governo, pondo em risco a autonomia. Se há alguma coisa débil no actual discurso governamental sobre a reforma das instituições de ensino superior é uma ideia bastante deficitária sobre a regulação do sistema. Eu sou partidário de uma regulação efectiva, com competências muito bem definidas, e com poderes vinculativos. E o Prof. João Filipe Queiró, com quem tenho um diálogo já há bastantes anos sobre esta matéria, elencou uma série de temas, sobre os quais a entidade reguladora deveria funcionar com poderes vinculativos. Mas não era isso que estava no nosso mandado de hoje, sobre o tema do Estatuto Legal das Instituições de Ensino Superior – autonomia, responsabilidade e governança.

Voltando aos temas que abordei, gostaria de recompilar as minhas ideias.

1.º – Natureza institucional.

Não creio que o modelo de estabelecimento público esteja esgotado, continuando a ser o dominante na Europa quanto às universidades públicas. Mas o modelo fundacional, sobretudo na sua versão alemã, que é aquela que melhor conheço, tem a virtualidade de estabelecer uma separação entre o estabelecimento propriamente dito e uma entidade de suporte, que é a fundação, além de arrastar a adopção de modos de gestão de direito privado, mais ágeis e eficientes. Por isso, hoje sou adepto do modelo fundacional.

A ideia essencial do modelo fundacional é as universidades terem um "dono" que não seja o Estado, ele mesmo. No modelo tradicional, que é o nosso, o dono das instituições é o Estado; mas como o Estado, para garantir a autonomia, não pode funcionar como dono, as universidades não têm dono. No caso do modelo fundacional, os estabelecimentos propriamente ditos só têm de ter autonomia pedagógica e científica, podendo o resto, nomeadamente a gestão administrativa e financeira, ficar a cargo da fundação. Isto é, aquilo que se tem discutido a propósito da contratação de pessoal, da autonomia financeira, da autonomia administrativa, etc., deixa de pertencer ao estabelecimento, passando a ser atribuição da fundação.

Por outro lado, a questão da separação entre o órgão de governo e órgão de supervisão, que constitui a vantagem do modelo dualista de governo, poderia também deixar de existir, uma vez que a fundação passaria a ser o supervisor do seu estabelecimento ou estabelecimentos, tal como sucede hoje nas universidades privadas de tipo fundacional, em que a fundação, sendo a dona da universidade, controla o seu estabelecimento em termos financeiros e administrativos.

Mas é evidente que as universidades não podem auto-transformar-se em fundação. Só o Estado tem poderes de instituir fundações. O acto de fundar tem de ser sempre um acto estadual e um acto público. Só a lei directamente ou um acto do Governo podem reconverter estabelecimentos públicos em fundações públicas, ainda que de direito privado. O que

poderíamos era permitir que as universidades que o desejassem pudessem propor ao Governo ser transformadas em fundações, e assumir as respectivas implicações. Permitir que as universidades se "autofundem", isso não pode ser, nem em termos constitucionais nem em termos sistémicos

De resto, em alguns países, as próprias universidades privadas só podem adoptar o modelo fundacional, não é o caso em Portugal, onde podem ter qualquer modelo de entidade privada. Nesse caso, as universidades privadas são necessariamente fundações, até para as pôr fora da lógica lucrativa, para lhes criar também uma ética fundacional e garantir uma série de valores que todas as universidades, mesmo as privadas, a meu ver, devem ter. Não se evoluiu para aí em Portugal, embora o modelo fundacional esteja testado entre nós. Se se for para o modelo fundacional nas universidades públicas, talvez seja também de encarar uma preferência pelo mesmo modelo institucional nas universidades privadas.

2.ª Questão - Autonomia

Penso que a autonomia ainda está por realizar nos aspectos administrativos e financeiros. Não há motivo nenhum para que certos actos administrativos e financeiros careçam ainda de despacho do Ministro, devendo prevalecer a autonomia e a inerente responsabilidade. O problema é que até agora, como não temos responsabilidade, também não temos tido autoridade para reivindicar mais autonomia. Esta conexão está hoje bem estabelecida na teoria da "nova gestão pública". Essas duas coisas têm de ser assumidas em conjunto. Até agora temos tido uma autonomia deficitária e, em muitos casos, ineficiente, porque não temos tido, por um lado, responsabilidade externa, nem por outro lado, temos tido regulação. Penso que esta pode ser a oportunidade de ouro para avançarmos nessas duas frentes.

3ª questão - Órgãos do governo

Se se enveredar pelo modelo fundacional, o governo da instituição passa a pertencer à própria fundação. A universidade tem os seus órgãos pedagógicos e científicos: terá um reitor, um conselho científico, conselho

pedagógico, mas tudo o resto é com a fundação. Toda a gestão financeira, de pessoal e patrimonial será da fundação, que é a "dona" do estabelecimento. Resta obviamente saber como se constitui o órgão de governo da fundação e quem designa os respectivos membros, bem como as relações da fundação com os órgãos do estabelecimento. Está aqui a parte mais problemática do modelo fundacional.

Mantendo-se o estatuto de estabelecimento público, então é o próprio estabelecimento que é a pessoa jurídica, que tem de gerir o seu património, as suas finanças, a sua administração, o seu pessoal, os seus serviços sociais, etc.

Uma das coisas adquiridas da civilização do Estado de direito democrático é a separação de poderes. Carecemos de uma melhor separação de poderes a nível universitário. Devia haver um órgão deliberativo, um órgão de supervisão e um órgão executivo. O órgão executivo, claramente deve ser o reitor, os vice-reitores e a sua equipa. O órgão deliberativo, na proposta dualista que defendo, deveria ser exclusivamente académico: professores, investigadores, estudantes, eventualmente alguma representação de funcionários para as questões administrativas e do pessoal. E o órgão de supervisão, de composição externa, teria intervenção na escolha do reitor, na aprovação do plano estratégico, do plano de acção, do orçamento, das contas e do relatório de gestão do conselho de governo da universidade.

Como vimos, o Governo tem outra ideia de um órgão misto. Resta saber se vai resultar. Já hoje várias universidades têm senados mistos, mas em geral não funcionam bem. As pessoas deixam de aparecer, quer porque as reuniões são frequentes, quer porque têm poderes de decisão sobre questões de gestão que as personalidades externas não podem dominar. A composição mista num órgão único não cumpre, também, uma das exigências fundamentais que, a meu ver, o actual sistema carece, que é a distinção entre a responsabilidade de governo e a função de supervisão.

Quanto ao reitor, a solução do Governo parece ser firme. O reitor deixa de ser eleito, passando a ser contratado por concurso. Não há uma eleição propriamente dita. Vai haver um concurso de acordo com certos requisitos, cabendo a escolha ao órgão colegial misto previsto na proposta do Governo. Os reitores passam a ser escolhidos de acordo com certos requisitos. Tecnicamente não é uma eleição, mas é uma selecção concursal. Nas eleições não há requisitos de selecção, salvo os de elegibilidade. A diferença essencial entre o concurso e a eleição é que aquele tem de respeitar determinados requisitos, objectivamente verificáveis, ganhando o concurso quem melhor preencha os requisitos. A eleição está sujeita a um processo de avaliação essencialmente subjectivo, individual, secreto e insindicável.

Seja como for, o reitor deveria assumir plenamente a função executiva, e o senado devia perder funções executivas, passando a haver uma distinção entre o órgão deliberativo e o órgão executivo, sendo este composto pelo reitor e a equipa reitoral. Essa distinção, a meu ver, é essencial para a racionalidade do governo das instituições. Não há razão nenhuma para que as universidades, como grandes organizações que hoje são, não cumpram as regras que desde o século XVIII estão estabelecidas para a governação democrática, ou seja, separação de poderes e responsabilidade. Essa separação de poderes é essencial no novo sistema de governação.

Salvo a questão do reitor, que me apreze "fechada" pelo Governo, creio que as propostas que aí temos são, apesar de tudo, ainda suficientemente abertas para permitir algum espaço de discussão e de aperfeiçoamento. Desde que identifiquemos bem os problemas e as alternativas. Um órgão com a responsabilidade do Conselho Nacional de Educação deveria contribuir de forma construtiva para a reforma em curso. Até porque não tem a ver apenas com o ensino superior e, portanto, não pode ser acusado de ter interesses institucionais ou corporativos directos, o Conselho poderia preparar e defender propostas concretas e práticas para uma melhor lei de organização das instituições do ensino superior.

Nota Síntese do Workshop¹

O seminário foi organizado em duas sessões: na sessão da manhã foram apresentadas comunicações sobre o tema pelos Professores Alberto Amaral e Jorge Miranda e pelos especialistas estrangeiros Guy Neave, da Associação Internacional de Universidades (IAU), e Peter Maassen, da Universidade de Oslo; na sessão da tarde teve lugar um *workshop* que contou com a participação de um conjunto alargado de personalidades ligadas aos vários sectores do ensino superior.

Apresenta-se, de seguida, a síntese das intervenções no *workshop*. Foi moderador o conselheiro Jorge Carvalhal e a introdução ao tema esteve a cargo do Prof. Doutor Vital Moreira. António Magalhães, investigador do CIPES, fez o relato da sessão da manhã no início do *workshop*. Estiveram também presentes:

- Ana Maria Vaz (IP de Castelo Branco)
- Artur Santos Silva (BPI)
- Diamantino Durão (Universidade Lusíada)
- Fernando Bico Marques (Centro de Investigação em Materiais Cerâmicos da Universidade de Aveiro)
- Henrique Neto (Ibermoldes)
- João Filipe Queiró (Faculdade de Ciências e Tecnologia da UC)
- José Alves (Escola Superior de Desporto de Rio Maior)
- José Neves Adelino (Faculdade de Economia da UNL)
- Luís Soares (IP do Porto)
- Luísa Leal Faria (Universidade Católica Portuguesa)
- Luísa Veiga (IP de Coimbra)
- Maria do Carmo Fonseca (Instituto de Medicina Molecular da Faculdade de Medicina da UL)

¹ Teresa Gaspar – Conselho Nacional de Educação

- Nuno Guimarães (Faculdade de Ciências da UL)
- Pedro Moradas Ferreira (Dep. de Biologia Molecular do Instituto Abel Salazar)

Na sua introdução ao tema, o Prof. Vital Moreira abordou três tópicos:

- 1) a natureza institucional dos estabelecimentos de ensino superior público;
- 2) a autonomia face ao Estado e face ao exterior em geral;
- 3) o sistema de governo (órgãos, divisão de poderes, modelos de organização).

Na tradição europeia, as escolas de ensino superior são estabelecimentos públicos com personalidade jurídica própria. Este modelo tem vindo a ser alterado em alguns países com a criação de entidades privadas, fundações ou empresas, que passam a ter a propriedade das instituições, abandonam o regime de direito público e passam a reger-se por normas do direito privado, o que significa introduzir formas de gestão privatista no sector público. O relatório da OCDE sugeriu a experimentação de um modelo fundacional para as universidades portuguesas.

Quanto à autonomia das instituições ela está garantida constitucionalmente e tem a ver com a relação do estabelecimento, dotado da sua personalidade própria, com o Estado, por um lado, e com a sociedade, por outro. Trata-se, porém, de uma autonomia com limitações, excessiva em matérias pedagógicas e exígua em termos administrativos e financeiros. Neste aspecto, deverão ser introduzidas alterações com vista ao alargamento da independência de gestão das instituições, o que se prende com o sistema de governo que vier a ser definido.

O sistema de governo das instituições será objecto de reforma profunda. As instituições gozam de autonomia de governo, vivem em autogoverno, elegem os seus órgãos, mas o excesso de colegialidade dos seus órgãos, o peso dos estudantes na gestão das escolas de ensino superior, a fraca representatividade externa, conduzem a uma situação de irresponsabilidade na gestão universitária que terá de mudar. O MCTES anunciou algumas linhas: o reitor deixa de ser eleito universalmente; o órgão central da gestão das escolas deverá ter uma participação qualificada externa; os professores vão ter a maioria nos órgãos colegiais. Tal aponta

para um modelo unitário, onde o senado passa a ser simultaneamente um órgão de governo e um órgão de abertura ao exterior, que designa o reitor.

Aberto o debate, vários dos presentes criticaram o excesso de endogamia que caracteriza não só a gestão das instituições de ensino superior, mas também a própria política de formação e vinculação dos seus recursos humanos. O Prof. Neves Adelino foi, porém, de opinião que tal não decorre do sistema de governo vigente, mas sim do modo como a gestão das universidades tem sido feita, lembrando o caso da Faculdade de Economia da UNL que com o mesmo quadro legal sempre recrutou professores estrangeiros, tem dez nacionalidades representadas no seu Conselho Científico, 60% das suas aulas ao nível de licenciatura são leccionadas em Inglês e está acreditada por agências internacionais.

Ao nível do ensino politécnico, a presença de entidades externas nos conselhos coordenadores foi considerada globalmente positiva.

Relativamente ao modo como os laboratórios associados se relacionam com as instituições em que estão sediados foi referida a existência de algumas dificuldades: por um lado, as unidades de investigação beneficiam de algumas condições oferecidas pelas instituições, mas estão alheadas da participação nos órgãos de gestão das escolas; por outro lado, as actividades de ensino pouca cooperação estabelecem com as actividades de investigação.

Para o Prof. João Filipe Queiró o principal problema que afecta todo o ensino superior é a desregulação do sistema, que é função do Estado, caracterizada pelo insuficiente planeamento e segmentação da oferta, bem como pela insuficiente distinção entre universidades e politécnicos, pela ausência de mecanismos de garantia de qualidade, corpo docente desqualificado, caos nas designações das formações, financiamento pelo número de alunos (o que está a provocar distorções nas disciplinas exigíveis para o ingresso nos cursos que deixam de exigir disciplinas básicas para o prosseguimento das formações), e até mesmo o modo como foi aplicada a reorganização de Bolonha, são exemplos do défice de regulação que compete ao Estado exercer. A situação é de tal modo grave que a OCDE propõe que seja criado um conselho de regulação do sistema, presidido pelo

próprio Primeiro-Ministro. Antes de avançar para mudanças, é preciso reconhecer que o sistema actual permite muita coisa e que, antes de tudo, devem ser corrigidas as disfunções existentes e reforçado o enquadramento legal.

Esta ideia foi igualmente reforçada por outros participantes. Outro aspecto focado foi o do financiamento das instituições, tendo sido considerado que a evolução do sistema de ensino superior exige recursos acrescidos, numa situação em que não é previsível maior investimento do Estado nem das famílias através do aumento de propinas. Assim sendo, torna-se imprescindível uma maior participação do tecido empresarial nas actividades de investigação e desenvolvimento, devendo o Estado encontrar dispositivos de apoio a essa participação.

No final, o Prof. Vital Moreira retomou os seus tópicos iniciais, defendendo que quanto à natureza institucional dos estabelecimentos de ensino superior deveria ser dada a possibilidade de as universidades que o desejassem se instituírem como fundações, passando a existir uma clara distinção entre entidade proprietária e estabelecimento de ensino. Relativamente à autonomia das instituições, reconheceu a necessidade de instrumentos de regulação que promovam a sua responsabilização, considerando que o momento presente pode ser a oportunidade para avançar na sua concretização. Quanto aos órgãos de gestão, e caso não seja adoptado o modelo fundacional, seria importante estabelecer uma clara separação de poderes através da criação de um órgão deliberativo, um órgão de supervisão e um órgão executivo. O órgão executivo corresponderá ao reitor e sua equipa; o órgão deliberativo responsável pelas questões académicas e com a participação de professores, investigadores, estudantes e outros corpos sociais da escola; o órgão de supervisão deveria ser um órgão externo, responsável pela escolha do reitor, pelo plano de acção e orçamento da instituição.