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THE PUBLIC REGULATION OF HIGHER EDUCATION QUALITIES: RATIONALE, PROCESSES, AND OUTCOMES

1. INTRODUCTION

This chapter[1] examines the rationale, processes, and outcomes of the public regulation of higher education qualities. At one extreme, all higher education relationships could, in principle, be governed by the state; at the other, by private negotiation between the principal parties such as universities and their students, although this latter would take place under the relevant general law of contract, arbitration law, and so on. All governance arrangements in practice will have consequences (some intended, others unintended) for the nature of the relationships which define higher education including termination of relationships as occurred recently, for example, in South Africa when state registration of certain MBAs was withdrawn. From a general equilibrium perspective, these consequences may impact significantly on the dimensions of many other relationships outside the higher education industry. In public policy terms, a government selects which higher education relationships it will regulate, and how such regulation will be effected. The reasons for such choices, as well as their consequences, all of which can differ across place and time, occupy a prominent position on the agenda of research into the public regulation of higher education attributes and standards.

The notion of standards necessarily underpins measures of quality such as perfection; excellence; value for money; fitness for, and of, purpose; and transformation (these are the Harvey and Green (1993) measures). These (and other) quality measures can, in principle, be applied to each quality of higher education. This can be illustrated by a hypothetical example whereby a government announces that it will take steps to assure itself that the quality it requires (say, perfection: 100% of exam questions are answered correctly by each candidate) has been achieved in university calculus education (a characteristic, an attribute, or a quality of higher education). In this case, analysis of the quality of one of the qualities of a higher education system is the object of the exercise.

Two examples from recent experience in the United Kingdom and Australia are also illustrative. One of the qualities of higher education has to do with the publicly available information about systemic, and/or institutional, activities and performance. Since 2004, public policy in the United Kingdom has defined the standards (quality) of information availability (a quality of the system) in higher education. In the final analysis, the UK government also requires assurance that these standards have been

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met (Quality Assurance Agency for Higher Education 2005). The essential qualities of all universities since World War II furthermore include a 'teaching' and a 'research' quality. Recent debates in Australia suggest that government is, however, giving serious thought to altering these fundamental characteristics by regulating the public higher education system in a way that will create 'teaching-only' universities. In this case, the 'research' quality would be removed from certain institutions.

This chapter argues that when governments regulate any aspect of higher education, a process of qualities' assurance is necessarily involved. When governments, in other words, regulate matters of higher education, they are, explicitly or implicitly, thinking in terms of standards with respect to some or all characteristics of the system (or its components) against which assurance of adequate performance is subsequently sought. It is this process of identifying characteristics (qualities), defining required performance standards (desired quality) for each, and monitoring of performance (actual quality) which can be conceptualised as 'qualities' assurance'. This chapter uses both 'qualities' assurance' and 'quality assurance' to denote this process[2] (for an assessment of the utility of the term 'quality assurance', see Westerheijden 1999: 235). Given the definition of both these terms employed in this chapter, it is argued that public policy with respect to this process in higher education can be fruitfully analysed in terms of the economics of public regulation.

The terms qualities' assurance and quality assurance are employed here in a value-neutral sense. They can describe a process whereby, for example, a government sets a very high standard for university teaching and seeks assurance that it had been met. They can, by the same token, also describe a process whereby a government reduces a prevailing standard of, say, academic freedom and seeks similar assurance. This latter would occur, for example, if a diminution of an existing freedom of individual universities to design their own academic programmes occurred as a result of steps taken by a government to ensure that a higher education system exhibited a certain level of responsiveness to community demands with respect to its course offerings.

Governments in the final analysis regulate, in higher education and elsewhere, in pursuit of objectives which they accept as appropriate. Positive, inductive analyses may reveal significant regularities in, for example, the nature of the higher education relationships which are selected for public regulation; in the methods and/or instruments employed; in the reasons advanced for such choices; and in their effects (see e.g. Crozier, Curvale, and Henard 2005). A note of methodological caution may be appropriate here. The fact that a government has required, for example, universities to provide nominated information on their websites is not, by itself, sufficient evidence that such regulation was motivated by, in this case, considerations of market failure arising out of incomplete and/or asymmetric information. There may have been other reasons (e.g. assisting the information technology industry and/or subsidising low income students) which could be discovered only by a thorough analysis of the primary sources relevant to the particular case. Failure to conduct such research could result in an improper attribution of motives to governments.

This chapter does not claim to be comprehensive. It does not examine all of the reasons advanced for, and all of the methods and instruments used in, all of the processes by which governments conduct qualities' assurance in higher education. Rather it provides examples and suggests some directions for further research. The

chapter consists of three sections: section 2 asks why governments engage in the public regulation of higher education qualities; section 3 discusses some of the methods and instruments which governments can employ in public higher education quality assurance; and section 4 reviews some possible and, very briefly, actual consequences of the public regulation of higher education qualities. Concluding remarks follow.

2. WHY MIGHT GOVERNMENTS IMPOSE CERTAIN CHARACTERISTICS ON A HIGHER EDUCATION SYSTEM AND REQUIRE ASSURANCE THAT EACH IS IN EVIDENCE TO THE REQUIRED EXTENT?

The quality of each and every conceivable characteristic of higher education is, in principle, potentially subject to some form of public determination in terms of the development and application of explicit and/or implicit minimum performance standards (the reality is, of course, much more complicated). Thus, for example, student fees may be governed in part by reference to certain standards of equity; the costs of university operation may be subsidised by tax relief and/or public funding of certain types of research which enjoy national priority (determined against certain criteria); enrolment limits in some courses may be decided against national labour supply benchmarks; legislated ethical standards may constrain certain research activities; the size and structure of, for example, a bachelor's degree may be determined nationally against certain standards; certification may be regulated against technical minimum standards associated with the ease of document forgery; teaching of some courses may be restricted to people who possess at least certain nominated qualifications; principles of universality and/or economies of scope may inform standards which regulate the use of the term 'university'; and the size of university governing bodies may be determined in terms of principles derived from the sociology and economics of committees (or, perhaps, on the basis of some rough and ready notions of 'what works' based on experience; even this, however, involves thinking in terms of some standards).

Governments typically conceptualise quality in whatever they mean by higher education (this meaning varies internationally) in terms of the extent to which minimum performance standards are met in respect of each characteristic of the system (and/or its components) that is of interest to them. The characteristics of interest to the government, for example, in the 1990 reforms to higher education in New Zealand included institutional autonomy, accountability, resource use, responsiveness to the community; governing councils; credit transfer; the structure of the higher education system; and relationships between qualifications. The government set broad expectations in respect of each of these but left the detail of standards' setting, and the monitoring and reporting of outcomes, to the Ministry of Education and the New Zealand Qualifications Authority (Minister of Education, New Zealand 1990). Ko Scheele, furthermore, has discussed public policy in Europe towards accreditation as a form of public regulation of higher education qualities: the defining feature, for example, of the east European approach "is the achievement of the minimum quality standard" (Scheele 2004: 19).

In this context, it is important to ask why governments might wish to influence the pace and direction of change, through a process of establishing minimum standards and monitoring or enforcing compliance, in some or all of the qualities and characteristics of higher education. Motive and method clearly cannot be separated analytically, but the emphasis in this section will be squarely on motives. Methods that may be used to regulate higher education qualities will be discussed in more detail in section 3.

The dynamics of electoral politics largely explains why governments in most countries seek to regulate higher education attributes and performance. From a more disaggregated perspective, governments may decide to influence the quality of certain characteristics of higher education for reasons concerning, say, economic development, equity, accountability, public opinion, market failure, and the activities of interest groups. These are not, of course, mutually exclusive categories. Public opinion, for example, on matters regarding market failures in higher education may stimulate government interest in system performance. Selected issues with respect to each of these categories are analysed seriatim.

2.1. Economic Development and Equity

Since World War II a consensus has arisen in most countries that improvements in human welfare depend in no small measure on the rate of growth of real, per capita national product and its distribution within communities. This consensus includes the view that government policies can have a major bearing on growth rates and on the pattern of income distribution. The last quarter of a century or so has also seen significant changes in the composition of output in many countries in favour of the production of a relatively greater proportion of services, as opposed to tangible commodities, and the associated increases in the demand for, and supply of, various types of information and knowledge. The relative economic importance of the 'knowledge production' industries, including higher education, has grown under these circumstances to the point where variations in their performance can have significant macroeconomic consequences. In certain countries, moreover, these consequences can, in part, be transmitted through the mechanisms of international trade. Income from the export of higher education services has a major impact on, for example, Australia's balance of payments and on the rate of growth in Australia's national income.

In this context, governments are typically not indifferent to the nature and performance of national higher education systems. A recent study of higher education 'quality convergence' in several European countries drew attention to "the State's strategic interest in developing a 'knowledge economy' which would be favourable in terms of employment, economic development and international recognition" (Crozier, Curvale, and Henard 2005: 17–18). The characteristics of higher education systems favoured by public policy under these circumstances would obviously include those of adding value to economic development and to internationalisation.

This study also provided insights into the character of the equity foundations of government interest in the characteristics of higher education. In Norway, for

example, there is evidence of "the State's growing interest in maintaining the employability of its students" (Crozier, Curvale, and Henard 2005: 19). Equity considerations played a major role, moreover, in explaining, for example, the African National Congress government's interest in reshaping South African higher education: "to serve our new social order, transformation of higher education must meet pressing national needs and respond to new realties and opportunities, but importantly it must also redress past inequalities" (Minister of Education, South Africa 1997: 5559). One of the qualities the South African government required of the higher education system after 1994 was that its previous apartheid attributes yielded totally to the non-racial, non-sexist, democratic values of the new dispensation. The government, moreover, established processes designed to provide assurance that this new quality was, in fact, embedded appropriately in the new system. Politicians, furthermore, may also be persuaded that it is 'unfair' for students to pay some or all of the costs of their higher education. Governments may thus believe that this justifies a public policy (usually financial) response, in which case redistributive taxpayer-funded fee subsidies will become a characteristic of the higher education system. Assurance that this quality was present to the desired extent would typically be provided by an auditor-general.

2.2. Accountability

Accountability considerations may motivate government interest in the characteristics and performance standards of higher education systems. The New Zealand government, for example, introduced significant changes in public policy towards higher education in 1990. It stressed:

> the need for accountability by institutions and … the proper use by institutions of resources allocated to them. Accountability is essential. No institution … should be beyond review of its integrity, and the efficiency and effectiveness with which it uses public resources. (Minister of Education, New Zealand 1990)

More generally, governments may simply lose political support if they provide, for example, taxpayer-funded subsidies to students and/or universities unconditionally and in the absence of any external accountability processes, the results of which are publicly available. In some countries, adequate performance (determined through audits) is a precondition for universities to receive public funds (Crozier, Curvale, and Henard 2005: 18; for recent developments in Japan, see Hara 2005).

2.3. Public Opinion

Public opinion may be a powerful force in motivating governments to seek to shape a variety of production and consumption systems including higher education systems. Historically, public concerns over issues related to the adulteration, safety, and effectiveness of food and drugs, road safety, and environmental pollution, for example, have stimulated government interest (Gruenspecht and Lave 1989: 1509–1510). Recently, public disquiet, for example, over certification fraud and grade inflation in higher education has produced a similar response in the sphere of higher education

(Buscall 2005a; Maslen 2005). Governments may also seek assurance that the potential for conflicts of interest in the production of qualifications, especially at the delivery/assessment interface, is not realised to the extent that it compromises system performance unduly. Such conflicts may arise if the same people who deliver the curriculum also assess student performance – they are, in a sense, pronouncing judgments on themselves. Public concern, and perhaps a political response, over assessment (and certification) processes may arise on this account.

2.4. Market Failure

Governments may be persuaded that market failure provides grounds for public policy with respect to the performance of higher education systems. Market failure is a concept associated in the first instance largely with welfare economics. Broadly speaking, this theory postulated that consumer preferences could be satisfied to the greatest extent, given a relative scarcity of resources and a given pattern of income distribution, by means of a perfectly competitive market economy operating in the absence of increasing returns to scale. The marginal conditions for optimal outcomes in production and consumption were satisfied under such conditions. Any deviations from the composition of output determined under these conditions were conceptualised as efficiency losses and explained in terms of the absence of at least one of the optimality requirements. Such failures, collectively known as market failures, could arise on account of the existence of a degree of monopoly (in production and/or consumption); public goods, externalities, and impaired information. This is a very broad outline: some refinements to the concept of market failure will be discussed at appropriate points in the following analysis.

2.4.1. Monopoly

Market failures[3] can arise in higher education. In many countries, for example, a largely unorganised and rapidly changing student body enters into educational and other contracts with single universities some of which possess regional and/or other types of monopoly power. For certain purposes, moreover, universities as a whole may be organised in cartel-like groups. Governments may not necessarily always be indifferent to the consequences of such arrangements which may relate, for example, to the level of tuition fees, and to protective behaviour in matters such as credit transfer (close parallels can be found in the strategic manipulation of interconnection quality (analogous to credit transfer) in various network industries; see Sappington 2005: 129–130).

2.4.2. Public Goods

Pure public goods are commodities or services which, once provided, can be consumed by people in equal measure, and with respect to their consumption it is too expensive to exclude those who refuse to pay for them. Voluntary exchange through private markets cannot organise the production and consumption of such

goods and services. Private markets must necessarily operate in terms of the exclusion principle whereby those who do not pay for a commodity or service can be excluded from owning it. If public goods are to be produced at all, such provision necessarily must be financed by means of taxation. It is, however, difficult enough to offer practical examples of public goods in general, and extremely difficult to identify examples in higher education since the exclusion principle can be applied across the board in this case.

2.4.3. External Effects

There may, by the same token, be various external effects associated with the production and/or consumption of higher education services which have a public goods' dimension to them and which may be of interest to governments. The reputation of a national higher education system may provide a relevant instance. Thus, the contributions which one university makes to enhancing its reputation will, at the same time, increase the reputation of the system to which it belongs, and of the other individual universities, students, and graduates that constitute this system: the 'reflected glory' effect. The reputation-enhancing university cannot, however, require the others who gain from its action to pay for these benefits. It *may*, on this account, be tempted to reduce its investments in reputation (a somewhat analogous situation can be found in network industries such as telecommunications; see Sappington 2005: 129). The other side of this coin is, however, perhaps of greater analytical interest.

A university may engage in actions which reduce its reputation. The effects of this will, however, extend to the other universities, to their students and graduates, and to the reputation of the system. The affected universities, students, and graduates, however, are unlikely to be able to extract voluntary compensation from the offending institution. Such uncompensated damages reduce, *ceteris paribus*, the resources available to each university, its students, and its graduates and may, furthermore, encourage the original institution to continue, at least to an extent, with its reputation-damaging activities.

It may be argued that no university would act in a way that reduces its reputation. A counterargument suggests that students may attend universities in a given system because of perceptions that the *system* is of high quality and enjoys a high reputation. What might be called a demand externality arises in this way. There may, under these circumstances, be an incentive for a university to 'freeride' on this system reputation by underinvesting in internal quality assurance processes. The other universities, assuming that they can identify such threats to system reputation (information costs will be a key variable), will have an incentive to devise a correction lest the value of the system's reputation deteriorates to individual and collective disadvantage. Such a private response may not, however, be feasible for a multitude of reasons concerning incomplete and/or asymmetric information, credibility,[4] and deficiencies in enforcement powers. Given these conditions, universities may collectively approach government to address the matter by deploying its superior information-gathering and enforcement powers (government

may become independently aware of this matter and may act accordingly). A variation on this theme occurs if a government discovers that universities "oscillate quality in cycles of building and milking a reputation" (Gruenspecht and Lave 1989: 1528).

External effects of a cultural nature may also excite government interest in higher education. Especially controversial curriculum content may produce a widespread and politically significant community reaction. The cultural components and assumptions in, say, degree programmes exported from one country to another may attract the attention of the government in the importing country if, for example, the language preferences of many in the receiving community are offended (this observation was stimulated by some brief comments made by Williamson 1985: 293). Communities, or at least influential sections, may furthermore wonder about the wisdom of public subsidies that are made available to support the production of, for example, some of the extreme versions of postmodernism, especially those which inform societies that there is no such thing as reality but only 'fictional discourse' (in which case taxpayers might well ask why they should pay for something which does not exist: their taxes seem real enough!; see Wheen 2004: ch. 4).

2.4.4. Information Asymmetry: Consumer Protection

In very broad terms, a government may develop an interest in higher education because it becomes concerned that the information available to some or all of the participants is somehow impaired to the extent that inappropriate decisions are taken (on information asymmetries in higher education, see Dill 2001: 3, 11, 15, 18, 19). Considerations of transparency can arise here: 'truth in advertising' is one of them (Gruenspecht and Lave 1989: 1527). In this regard, governments may become concerned that various claims made, for example, by universities about the qualities and standards of their qualifications are, at the very least, contestable. Governments in this instance may not be prepared to allow caveat emptor to govern choices about appropriate courses of study.

Government interest may be aroused if it discovers that significant problems of adverse selection – the 'lemon effect' – are encountered in a higher education system. In his famous paper, George Akerloff (1970) demonstrated the possibility that "the consumers' inability to distinguish 'lemons' from good cars drives good cars out of the used-car market" (cited in Gruenspecht and Lave 1989: 1527). David Sappington (2005: 129) has expressed the point more formally:

> If consumers are completely unable to distinguish high quality products from low quality products, and only purchase the product in question once, the equilibrium price for the product may not vary with quality and may reflect the average quality of products sold in the market. In this case … producers of high quality products may withdraw their products from the market altogether.

A report in the *Times Higher Education Supplement* News Round-up (2003) to the effect that "a fifth of company finance directors [in a survey] … said that 'dumbed down' degrees in less traditional subjects could harm the market value of university qualifications" provides a partial illustration of the adverse selection issue.

Governments may, on this account, remove certain qualifications (referred to as 'basket weaving' courses in some political cultures) completely from those available to students, thereby altering the nature of the 'product range' characteristic of the system in question.

Consumer protection considerations may draw government attention to the performance of a higher education system (Williamson 1985: 205). Students and/or employers may experience severe problems in obtaining and/or processing information about, for example, graduation rates, postgraduation earnings and employment opportunities associated with certain qualifications, the pattern of student complaints about aspects of provider performance, the 'true' bundle of qualities which characterises each qualification, the authenticity of degree certificates, graduate and employer opinions on the worth of certain degrees, and so on. Broadly speaking,

> the nature of the provision of services and the direct contact involved between producer and consumer generate significant problems and risks, as well as consequences that are not easily reversible for consumers who lack information about the skill of their service provider. (Findlay 2000: 10)

These problems and risks may be magnified to the extent that any of the parties are given to opportunism. Potential consumers of higher education, for example, may suffer if graduates of a particular programme do not reveal, frankly and completely, information about it when asked, say, in surveys of graduates' opinions. But graduates who had grave reservations about any aspects of their higher education experience and/or knowledge that employers had concerns over the value of their qualifications would have an incentive to conceal this information (or to make different, favourable representations about it) to protect their investment. Matters of moral hazard arise in this way (Williamson 1985: 47–51; Blackmur 2004: 106). More generally, as Williamson showed in his work on transaction costs economics, contracting difficulties can arise under certain combinations of small numbers bargaining, uncertainty, incomplete information, and opportunism (see e.g. Williamson 1985; Menard and Shirley 2005).[5] Some form of government response may be forthcoming to address the sources of these difficulties if the government wishes to act in the interests of securing the maximum possible gains from trade, or if appropriate political pressures are brought to bear. Paternalism may also play a role in explaining government interest in the character of higher education. Individuals may be thought to lack relevant information for whatever reasons and/or the capacity to interpret it meaningfully. Governments may simply claim that they are "concerned with overriding private decisions in order to protect individuals from themselves" (Gruenspecht and Lave 1989: 1512).

2.4.5. Socially Suboptimal Range of Qualifications and other Higher Education Outputs

A higher education system may, under certain conditions "offer [a] socially suboptimal selection of products and qualities" (Laffont and Tirole 1993: 537). This type of market failure may invite government concern, especially if it were convinced that, say, national economic development required a particular qualification which the

system was not providing. In 1997, the South African government was determined that the academic programmes of higher education institutions would be "transformed so that the human resource, economic and developmental needs of [South Africa] … are met" (Minister of Education, South Africa 1997: 5564).

2.4.6. Slow Adjustment to Changing Conditions

Markets can also fail in the sense that the time taken for them to adjust to changed conditions does not satisfy the expectations of governments, consumers, and/or producers. In a somewhat exasperated turn of phrase, Gruenspecht and Lave (1989: 1512) have opined that "almost all people, except economists and some 'Chicago' lawyers … fail to see how economic incentives will call forth desired behaviour as quickly and comprehensively as command-style regulation". This is a contestable position: there is an argument to the effect that such extra speed and comprehension may be purchased too dearly. Be that as it may, it is unlikely that community preferences regarding the pace of change in higher education (as well as elsewhere) would always remain unnoticed by governments. Alterations to the 'responsiveness' characteristic of a higher education system and its component institutions might thus occur through public intervention in existing bilateral arrangements.

2.4.7. Non-existent Markets

Markets may also fail in the sense that they simply do not exist for certain activities. Students, for example, invest in obtaining qualifications, but they cannot insure themselves against the risk that the labour market may ultimately discount the value of the qualification in some way, or that a university may offer substandard teaching and/or research facilities. Insurance markets for these forms of higher education risk simply do not exist, largely for reasons associated with informational inadequacies and costs, moral hazard, and associated difficulties in setting premiums (Joskow and Noll 1981: 26).[6] Under these circumstances, political considerations may motivate governments to assume a de facto role as an insurer (the insurance would be provided largely by regulation).

2.5. Interest Groups: Public Choice

Governments internationally may seek to determine the pace and direction of change in higher education systems because various interested parties may be able to convince them that some or all existing attributes and standards in higher education are undesirable (such as, say, market failure or the allocation of national research grants by means of open competition and peer review), and that better outcomes can be secured through the use of certain nominated regulatory instruments (Rowley and Elgin 1988: 286–288; Laffont and Tirole 1993: 1–6, 596).

2.5.1. Lobbying over Attributes and Standards

Existing students, for example, who cannot get satisfactory responses from universities to their complaints over contract execution will not necessarily rely on exit as a strategy (or on the courts) but may, rather, approach government to devote taxpayer funds to alleviate their concerns. Potential students, furthermore, have a selection problem: How can they predict at acceptable cost the performance of universities? What screening devices are feasible?[7] Students, aware that they lack access to certain information pertinent to their educational choices, may lobby governments successfully to finance the provision of this information through taxpayer funds (rather than pay for it out of their own pockets). Employers may act in a similar fashion: in 1997, UK employers, argued the case for public (taxpayer) provision of information on qualifications before the National Committee of Inquiry into Higher Education (Quality Assurance Agency for Higher Education 2005). And, as already noted, students are typically able to convince governments in many countries that the taxpayer (rich and poor alike) should subsidise, either partially or completely, the costs of their university education. Any such interventions involve government in altering the characteristics and performance expectations of a higher education system.

2.5.2. Rent-seeking and Higher Education Quality

The public choice literature, arising out of Chicago and Virginia traditions of political economy, argues that industries in particular, far from having public regulation imposed on them, may actively seek it (brief but useful summaries can be found in Braeutigam 1989; and Gruenspecht and Lave 1989: 1530–1531). The theories emanating from both Chicago and Virginia reject the assumptions of the new welfare economics that government is essentially benevolent and acts to secure 'the public interest' or, in other words, to maximise social welfare. Welfare economics posits that governments would necessarily address the inefficiencies attendant upon monopoly, public goods, externalities, and information incompleteness and asymmetries by the most efficacious measures and instruments. In his seminal article on regulation, George Stigler (1971: 3) disputed this analysis, and argued that "regulation may be actively sought by an industry, or it may be thrust upon it. … As a rule, regulation is acquired by the industry and is designed and operated primarily for its benefit". Stigler (1971: 4) amplified this proposition:

> The state has … the power to coerce. The state can seize money … by taxation. The state can ordain the physical movements of resources and the economic decisions of households and firms without their consent. These powers provide the possibilities for the utilization of the state by an industry to increase its profitability.

The Virginia School sees the state largely as a creator and defender of a class of special privileges which has negative consequences for economic development:

> The opportunity to effect wealth transfers, through the machinery of government, on at least a partially coercive basis, encourages lobbying and counter-lobbying of a negative sum nature as individuals and groups invest resources in attempting to obtain a transfer or to resist a transfer away from themselves. (Rowley 1988: 18)

Stigler (1971: 4–5) argued that an industry (or an occupation) would seek some or all of four broad categories of policies from the state: price controls; the suppression of substitutes and the encouragement of complements; control over entry by new rivals (and/or retardation of the growth of new firms which had managed to enter the industry); and financial subsidies. On this last point, Stigler (1971: 4) observed that "the education industry has long shown a masterful skill in obtaining public funds" (contemporary vice chancellors in many countries may wish that these days would return). On the matter of barriers to entry, some of the literature on regulation suggests that the existing members of an industry may seek entry restrictions because they wish to prevent or slow down innovation (Tullock 1988: 61), and/or to prevent 'cream skimming' whereby new entrants, say private postgraduate business education providers, compete with existing institutions for high-demand customers (Laffont and Tirole 1993: 273). Universities may, moreover, lobby governments to empower some form of third-party governance in the interests of assisting them to identify and contain self-serving actions and arrangements – 'informal contracts' – jointly entered into by various internal university managers in pursuit of their personal goals (Faith, Higgins, and Tollison 1988: 317–319). Lobbying of governments may also occur in order to secure public funding of measures to police various franchising agreements which universities sometimes make with organisations in other countries.

A significant insight of the rent-seeking public choice theory of public policy is that governments will not, as a matter of course, address market failures. Whether, and how, this may occur depends significantly on the net impact of the pressures which groups interested in market failures can bring to bear on the political process. Market failures, for example, could persist, in higher education and elsewhere, if interested parties could persuade governments to this course of action. Market failures of one sort or another could thus constitute a potentially permanent characteristic of a higher education system as a deliberate matter of public choice for reasons over and above the possibility that to address them beyond a certain point may be inefficient (see notes 2, 4, and 7).

The theory of rent-seeking has its critics. Laffont and Tirole, for example, have criticised the Chicago and Virginia models for a failure to include 'informational asymmetries' in the analytical framework, and for an overemphasis on the demand for regulation as opposed to the supply: "all the action takes place on the side of interest groups" (Laffont and Tirole 1993: 476). Douglass North (1986) had earlier criticised the models for implicitly assuming that transaction costs were zero (for a response, see Rowley 1988: 21–24). And it could be argued that existing universities may lobby governments to prevent the entry of certain new qualifications into the higher education market on the grounds that the proposed qualifications were significantly deficient in certain respects. 'Altruistic', public interest considerations may motivate such lobbying, not the narrow, self-seeking motives typically attributed in the public choice literature. It is not, however, the purpose of this chapter to delve into these debates. There is no need to do this since this chapter is only concerned with suggesting a range of possible motives for government interest in regulating higher education qualities. Research into the specifics of particular cases could, by the same token, be guided fruitfully by these findings.

3. HOW DO GOVERNMENTS INFLUENCE THE CHARACTERISTICS OF HIGHER EDUCATION AND THEIR QUALITY?

This section discusses methods of public higher education qualities' regulation, although the 'what, why, and how' issues are clearly interrelated. These inter-relationships are emphasised in all branches of regulatory scholarship. The public choice literature suggests that parties with something to gain from government intervention in the form of 'rents' will be especially interested in drawing government attention to certain higher education issues and, moreover, in proposing how government ought to respond to them through the imposition of particular qualities and standards. Existing universities may be one such party. Minimum quality standards (MQS), for example, constitute a regulatory instrument used widely in higher education. It can, however, preclude or inhibit

> the operation of firms that could provide meaningful discipline on incumbent suppliers. To limit such discipline, incumbent suppliers in regulated industries may lobby for the imposition of stringent MQS, particularly when the stringent standards raise the operating costs of potential rivals more than they raise the incumbents' costs. (Sappington 2005: 133)

The public interest or efficiency approach, furthermore, has been captured in David Dill's (2001: 18) argument that many of the regulatory initiatives which governments have taken in higher education since the 1980s implicitly assume

> that the transaction costs involved in student selection of an academic programme warrant an intermediary body … supposedly acting on behalf of the public interest, to formally contract with universities … for academic programmes of a given quality, and to monitor academic quality through assessment of academic processes or outcomes. (For a detailed analysis of the efficiency perspective on regulation, see Spulber 1989)[8]

It is, however, not obvious from an efficiency perspective why taxpayer resources ought to be devoted to economising on the higher education transaction (and other) costs of actual and potential students, many of whom, moreover, may currently (or will likely) enjoy relatively affluent circumstances.

There are, moreover, some international differences in which qualities and standards of higher education are regulated publicly. Third-party intervention in the recruitment of university teachers, for example, seems to obtain in France. In the United Kingdom, on the other hand, market-determined, bilateral arrangements prevail. In one case, a degree of public regulation is deemed necessary; in the other, private negotiations are regarded as adequate for the achievement of precisely the same objective in both cases of attracting "the most qualified, motivated and dedicated staff possible" (Crozier, Curvale, and Henard 2005: 15).

There is a significant literature on how governments choose (and should choose)[9] between various regulatory options. It is not, however, the purpose of this chapter to consider explanations of the regulatory choices made by governments with regard to higher education qualities.[10] Rather, aspects of some of the actual choices and some of the theoretical possibilities are discussed.

Public regulation of higher education attributes and standards can occur in a variety of ways which may complement, or substitute for, each other. Over time, furthermore, an objective may be pursued in different ways if governments become

dissatisfied with the outcomes of a particular process. Governments may issue advisory guidelines with respect to, say, the provision of information by universities to students. These may yield to more prescriptive declarations if the degree of voluntary compliance fails to meet government expectations.

3.1. Broad Legal Institutions and Frameworks

National constitutions may make explicit reference to higher education. The Constitution of the Republic of South Africa, for example, protects academic freedom. Unless specifically excluded,[11] higher education internationally is subject to a wide body of general law which includes criminal, labour, administrative, and commercial law. The law courts and other institutions such as the ombudsman, the auditor general, the competition authorities, and so on may play a central role in the regulation of higher education qualities. If the law courts become involved, this usually occurs on an *ex post* basis and in response to matters brought before them by parties (including governments) with appropriate standing. Students, for example, may sue a university on the grounds that it failed to execute teaching contracts satisfactorily. Governments may grant students access to legal aid funds to pursue such cases (see e.g. Buscall 2005b). The outcomes of such cases may well lead to changes in the characteristics and standards of a higher education system.

Institutions, furthermore, may seek court judgments with respect to government higher education policies as occurred recently in New Zealand where government efforts to regulate the structure of the New Zealand university system were challenged in the courts (Dye 2005). This serves as a useful reminder that government efforts to determine higher education qualities (in this case, the structural qualities of the higher education system) may sometimes be contested. In certain countries, furthermore, attempts by universities to amalgamate may be scrutinised and determined by the competition authorities, and student complaints may fall within the jurisdiction of the ombudsman. In the United Kingdom, a specialist ombudsman, the Office for the Independent Adjudicator for Higher Education, deals with student complaints. In these ways the shape (attributes and standards) of higher education systems can also be determined.

Certain state institutions may have the power to initiate enquiries into university performance on their own initiative, and to recommend or require changes. In 2002 the auditor general in the Australian state of Queensland decided to evaluate university governance and risk management processes (Illing 2002; for other examples, see Blackmur 2004: 105). This is obviously a form of public quality assurance. Recently, the Information Commissioner in the United Kingdom, exercising powers under the Freedom of Information Act, decided that universities must release the contents of certain secret reports when to do so would serve the public interest (Baty 2005). Governments may also provide other dispute complaints' handling mechanisms which can regulate higher education qualities. Voluntary or compulsory mediation, conciliation, and binding arbitration are possibilities. Moral suasion may also be used as a public regulatory device whereby

governments define and broadcast the nature of the values, ethics, and behaviour which they expect all the participants in higher education to adopt.

3.2. Specific Higher Education Statutes

Higher education is governed by specific statutes at both systemic and institutional levels.[12] This legislation typically regulates institutional governance by defining the structure and powers of university councils (and other internal bodies on occasions such as a university academic board). It may provide current and past consumers of higher education with a significant voice as a means of facilitating an exchange of information. Alumni representation may be of particular importance given that the university 'product' has delayed effects. Government interests may be represented directly by ministerial appointments to governing bodies, and legislation may also require universities to demonstrate that they are responsive to criticisms raised by parliamentary committees.

The structural features of a higher education system may be statutorily determined (in whole or in part), apart from rules regulating mergers, by legislative barriers to entry, definitions of a degree, and by public ownership of some or all universities. Governments may regulate franchising agreements which a domestic university has with international partners, possibly by requiring that the contract include provisions for 'hostages' to reduce the risk of adverse reputation effects (on hostage theories of exchange, see Williamson 1985: chs 7 and 8). Higher education regulation may, moreover, be imported by one country from another (others) in the form of arrangements which facilitate mutual recognition of qualifications.

3.3. Public Finance Methods of Determining Higher Education Qualities

Fiscal incentives are an obvious, and important, means by which the qualities of any higher education system are regulated and assured. The composition of a student body will be determined, in part, by the nature and extent of public subsidies (regulation of 'access' characteristics) which may, in turn, only be available for, say, study in programmes, the dimensions of which have met certain publicly mandated standards. Australian universities, moreover, are eligible for public funding from the Learning and Teaching Performance Fund to the extent that their teaching is adequately transformative (a Harvey and Green quality measure) in ways which include improving students' generic skills (Illing 2005). Public funding for university research internationally rarely comes with no strings attached. A government which is concerned that universities were not offering certain degree programmes could enter the higher education market directly as a purchaser. It could, in order to change the 'product range' characteristic, allocate taxpayer funds to the delivery, assessment, and certification of programmes which met its design requirements (in the 1990s, for example, purchaser/provider models were used in some public education systems to address what was argued were provider-dominated processes at the expense of student and national priorities).

3.4. Higher Education Regulatory Agencies

A government's efforts to determine the qualities of a higher education system typically require that it rely on public and/or private sector agents. Many characteristics and standards can be specified in legislation (e.g. the definition of a degree; the age of retirement for academic staff; codes of good teaching practice) but they need to be written, amended from time to time, and enforced. Third-party involvement which relies on some form of agency in all of these activities would seem to be unavoidable. Private professional bodies may be mandated by government to set regulatory objectives and/or methods within a framework of very broad enabling legislation (for European variations on this theme, see Schwarz and Westerheijden 2004: 34–35). Many attributes and standards of accounting, medical, and engineering tertiary education may be governed in this way. Occupational licensing may be delegated to private bodies, although state regulatory agencies perform such functions in many countries. In the field of higher education, third-party involvement in the regulatory process is frequently conducted by means of public monopolies[13] such as the New Zealand Qualifications Authority (NZQA), and the South African Qualifications Authority (SAQA) and Council on Higher Education, although other options are found in private accreditation bodies; student satisfaction surveys and/or audits conducted by private firms; and in the case of the Quality Assurance Agency of the United Kingdom (a private charity).

Examples of public regulatory monopolies abound. In the early 1990s, the New Zealand government maintained "that there are clear arguments in support of an across the board approach to maintaining high standards in the delivery of education of all kinds and in qualifications". It established a public regulatory body to determine and administer the relevant standards, and "to exert strong public pressure when grounds exist for believing that standards are not being maintained" (Minister of Education, New Zealand 1990). Recently, in parts of Europe, governments have "opted for a statutory system with a public quality mark that shows that education satisfies the criteria of basic quality" (Scheele 2004: 19; see also ENQA 2003; and Schwarz and Westerheijden 2004).

Subject to the provisions of enabling legislation, higher education regulatory agencies typically have significant discretion in determining and monitoring the qualities of higher education (restraints on the discretion available to regulatory bodies in an American context are discussed in Baron 1989: 1351; see also Laffont and Tirole 1993: 4–6). In the early 1990s, NZQA decided that one of the qualities which post-compulsory education had to have was that design, delivery, assessment, and certification be determined in terms of the 'unit standards' competency outcomes model. This was not required by the enabling legislation; rather it was an exercise of NZQA's considerable regulatory discretion. Regulation is, of course, a dynamic process and the extent of such discretion is ultimately negotiable given, amongst other things, systemic and/or community responses to the choices made by agencies. In the New Zealand case, these were strongly and bitterly contested over

more than a decade, and the debate continues to this day to the extent that the survival of NZQA as an organisation is on the public policy agenda (for some of the NZQA policy issues, see Blackmur 2003; for some of the recent issues surrounding NZQA, see State Services Commissioner, New Zealand 2005).

The responsibilities of agencies include determining certain qualities and their required levels, advising governments on higher education policy, the dissemination of information, and, in some cases, occupational licensing and complaints management. A wide variety of techniques are available to discharge these functions. It is not, however, the purpose of this chapter to discuss the detail of these arrangements. This is a major undertaking in its own right which has been skilfully conducted in recent publications that include the research findings contained in Schwarz and Westerheijden (2004) and in "Quality Procedures in European Higher Education" (ENQA 2003). Comment on some selected themes is, by the same token, offered in the rest of this section.

3.5. Examples of Specific Regulatory Techniques

3.5.1. Quality Standards

Regulatory techniques include the specification of desired characteristics and associated minimum standards, and financial and/or other rewards/penalties for acceptable/substandard performance. The efficacy of minimum quality standards relies, amongst other things, on qualities and performance being verifiable, and requires "substantial knowledge of the costs of supplying quality and the benefits that consumers derive from quality" (Sappington 2005: 133–134). These requirements place an especially heavy burden on the investigative, information-processing, and time capacities of the expert peer panels, which are an integral element of various state-approved higher education qualities' assurance models. It is, indeed, debatable whether the expert panel component of these models can bear the weight placed upon them, especially in view of the fact that, in some cases, the duration of site visits may not be more than 2 days (for a South African example, and a brief expansion of this argument, see Blackmur 2005: 97–98). Regardless of how eminent, distinguished, and important the members of expert panels may be, data gathering, information processing, and strategic considerations could for a priori reasons constitute the Achilles heel of these models (the deficiencies, however, in this case may not be fatal: a 'failed' four-stage process, like a 'failed' market, may produce net benefits). Qualities and standards of performance may simply not be capable of being verified, regardless of the extent of the resources devoted to the exercise, in the ways assumed in, for example, the four-stage models. If significant public faith is placed in the outcomes of such processes, it may for these reasons need to be alert to their limitations.

There are further noteworthy features of a standards-based approach to the regulation of the attributes of higher education. Joskow and Noll (1981: 27) have argued that

> [t]he regulation of product quality (including the banning of certain products) requires us to know not only that a public authority can collect and evaluate the relevant information more efficiently than can individual agents in the market, but also that the more efficient use of these results is to set a standard or ban rather than to provide the information directly to consumers. This is a difficult case to make.

Reservations such as this have not, however, deterred some regulators. The South African Council on Higher Education recently banned certain MBAs on the basis of performance against prescribed characteristics which were bureaucratically determined and which paid scant regard to student, graduate, and/or employer preferences (Blackmur 2005). Johnson (1989: 195) has argued that "the standard-setting approach to regulatory policy is not based on the principle of respect for [individual] autonomy, but on the principle of beneficence" (see also Gruenspecht and Lave 1989: 1523). Even where information is provided directly to consumers of higher education, say in the United Kingdom by means of the Teaching Quality Information site (http://www.tqi.ac.uk), the amount and type of information are presumably limited to that which has met the standard of having gained public regulatory approval.[14]

3.5.2. Risk Communication Strategies

An approach more consistent with the autonomy principle involves the notion of hazard warnings and other risk communication strategies. Viscusi (1989: 84) has argued that

> [f]rom a theoretical standpoint, hazard warning programs have much to recommend them. One of the major sources of market failure … has been a lack of information in situations in which individuals are making decisions under uncertainty. Because of this … individuals may buy goods for which they are not fully cognizant of the risks. … Hazard warning efforts can eliminate this source of market failure directly by eliminating the information gap.

In the higher education context, public agencies could issue hazard warnings, based on complaints and/or analysis against criteria and standards, in respect of, say, certain qualifications, research activity, and so on. Potential and current students, graduates, universities, and employers could respond to this information as they saw fit. Public information on the nature and pattern of the complaints, and the criteria and standards which underpinned these warnings, could assist interested parties to judge the integrity of the models and the analysis on which the warnings were based.

3.5.3. Barriers to Entry

Another instrument which is available to higher education regulators is to restrict entry of various parties to the system. NZQA, for example, has a statutory power to award the 'university' title in certain instances and to advise the Minister of Education on applications for university status. In South Africa, the use of the term 'university' is restricted to public, domestic institutions. Thus, a university such as Monash, despite the fact that it is a public university in Australia and has considerable international standing, is not allowed to use the 'university' title in respect of its South African operations. The South African university system

includes universities which cannot be called universities! A system of occupational licensing of, for example, university teachers, and restrictions on student access to universities, are other examples of barriers to entry in higher education which may be erected by public agencies in an effort to determine the characteristics of the system. A key requirement of licensing, designed presumably to protect students against the consequences of incompetent university teaching, is that lecturers be subjected to periodic examinations of their competence (Joskow and Noll 1981: 33).

3.5.4. Some Other Regulatory Methods

In principle, qualities' assurance agencies might be granted seats on university governing councils and/or academic boards as a representative of consumer interests and to monitor certain externalities. Their corporate memory, and information-gathering and information-processing capabilities, may attenuate the usual problems which can arise with consumer participation in governance (Williamson 1985: 308–311). A variation on this theme can be found in private sector practice whereby customers demand the right to have their own qualities' assurance staff located within a supplier which is able to exercise authority over matters of attributes and standards, as a condition of purchase.

3.6. Multiple Regulators

The analysis in this section shows that multiple regulators will almost certainly be involved in determining and assuring higher education qualities (for some issues regarding multiple regulators, see Baron 1989: 1434–1435; and Laffont and Tirole 1993: 655–668). The complexity, uncertainty, and costs of higher education regulation may be magnified considerably on this account. Even if only one regulator were involved, these considerations would be unlikely to be trivial. These and some other possible effects of the regulation of higher education qualities are discussed in Section 4.

4. POSSIBLE AND ACTUAL CONSEQUENCES OF THE PUBLIC REGULATION OF HIGHER EDUCATION QUALITIES

The effects of higher education qualities' regulation may be either those which were sought by government (for whatever reasons: a search for efficiency, the pursuit of personal agendas by politicians, paternalism, or a response to pressure groups)[15] and/or those which were not. Regulatory efforts to attenuate, say, market failure characteristics of a higher education system need to be considered in terms of Becker's (1989: 16) caveat: "Governments do not automatically solve the problems created by selfish behaviour in the marketplace primarily because bureaucrats, legislators, and voters also tend to be selfish, and seek to promote their own interests." Baron (1989: 1349) has noted that "incomplete information and limited observability create opportunities for strategic behaviour on the part of both the regulator and the regulated".

4.1. Principal/Agent: General Issues

The issues involved in exploring the effects of regulation can be understood to a significant degree within the principal/agent analytical framework. Broadly speaking, a responsible cabinet minister (the principal) may empower a public agency(ies) and/or use a private body(ies) (the agents) to effect the government's decisions regarding what ought to be the characteristics, and minimum acceptable standards for each, in a higher education system.[16] The agency may be required to pursue the government's objectives in the spirit of cost minimisation. The agency will, however, have discretion to decide the degree to which it meets the minister's objectives. The extent of this discretion is largely defined by the costs which the principal would have to incur in order to determine the degree of agency compliance and to correct detected deviations. The agent may thus pursue the government's mandate always, on some occasions, or never. From the government's perspective, the latter two possibilities will almost certainly be problematic.

4.2. Principal/Agent: Agent Capture

An agency may pursue these latter options for a variety of reasons. There may be, for example, difficulties in communication between government and agency, and/or the agency's budget may be inadequate to meet the government's expectations. The regulatory literature suggests a further explanation to the effect that the agenda and methods of the agency may be subject to some type of capture. This can take the form of capture by external interests which are able to pressure the agency to adopt their preferred objectives and/or methods, and/or by dominant coalitions within the agency's staff. Capture may involve the trading of favours (e.g. high-profile public support for the agency, promises of future employment for agency staff, financial and/or other rewards) for desired policies. Existing universities may, for example, use various means to convince a higher education regulatory authority to adopt measures which increased the compliance costs of potential new entrants to a greater degree than they increased the incumbents' costs. This may have the effect of deterring new entry and maintaining current structural characteristics which confer a range of advantages on the existing institutions. A form of collusion thus arises and a cartel is sustained through which rents are captured even though this outcome may not have been favoured or sought by government (Laffont and Tirole 1993: 538). In this regard, it has been argued that one of the effects of standards-based higher education regulation may be that the process is susceptible to capture. Joskow and Noll (1981: 28), in comparing this approach and that of information provision, have maintained that

> the standard-setting process is likely to be more easily captured by some particular interest group, whether a consumer group … or a producer group that can use the standards as a means to help cartelize an industry by making entry and product differentiation difficult.

The space created by information asymmetries, and the principal's monitoring and enforcement costs, could enable agency staff to pursue ideological preferences as to

the nature and performance requirements of a higher education system which are inconsistent with those of their principals. This is arguably also a form of rent-seeking and appropriation (of the non-pecuniary variety).

Capture may occur through agency governance processes. In some countries higher education regulatory agencies are governed by government-appointed boards. The membership of these boards is typically drawn from stakeholders. Capture can occur under these circumstances to the extent that individual board members act as representatives of the stakeholder interests from which they were drawn, as opposed to representing their principals' interests. A misunderstanding of corporate governance principles and best practice, or a deliberate pursuit of sectional interests, may explain such behaviour. Such attempts at capture may not necessarily succeed – this depends, amongst other things, on the motives and power of other board members. Efforts to sidestep this constraint may be made by individual board members by means of privately cultivating the support of a senior manager(s) within the regulatory body. Specific policy favours may not always be sought; rather, privileged access to information and/or an insight into the drift of organisational thinking on certain matters may be the objective. Regulatory agencies are particularly vulnerable to such capture when the ethical constraints on conflicts of interest and self-seeking on the part of board members are weak. For all these reasons, the objectives sought by government through higher education regulation (certain attributes and standards) are unlikely to be completely achieved in practice.

4.3. University Responses to Public Regulation of Higher Education Qualities

The reactions of regulators in the area of higher education may also contribute to this outcome and may take several forms. In the case of the 'fitness of and for purpose' regulation of MBAs in South Africa, potential students who prefer a different type of MBA, and thus seek to escape the effects of domestic qualities' regulation, may seek alternatives delivered by means of the Internet.[17] To the extent that this strategy is successful, this may perhaps provoke a further regulatory response whereby regulators seek, for example, to hinder Internet access to such degree programmes, to prevent students using public subsidies to pay for such programmes, and to declare that holders of such degrees are not eligible for private and/or public sector employment and/or to be involved in tenders for government contracts. The 'product range' characteristic of a higher education system would be significantly altered under such circumstances.

Public regulation of attributes and standards may encourage universities to develop means of resistance and avoidance. Universities may seek to lobby and dominate the regulatory agenda, and they may be partially successful in several respects,[18] but where such efforts do not succeed, resistance to unacceptable regulation becomes an option. The costs of complying with certain regulations, for example, are unlikely to be trivial and, especially in a context in which regulation extends to fee and funding levels (qualities of a higher education system), could possibly be met in part through sacrifices of investments in teaching and research – sacrifices which are bitterly resented in university communities, and in efforts to

conceal the outcomes of such activities from the regulators.[19] Resources may be directed to searching for evermore sophisticated methods of evading the compliance costs and other impacts of regulation (Becker 1989: 21).

If universities have some flexibility with regard to fee levels, these may be increased on account of the need to meet regulatory compliance costs.[20] This may reduce student access to higher education in a way which compromises government equity policies. In general, compliance games may be played, and universities may concentrate their efforts on complying with, say, regulatory standards at the cost of ignoring other, perhaps more difficult-to-measure, dimensions of higher education. This outcome, of course, may be precisely what regulators wish to achieve.

4.4. Public Regulation of Higher Education Qualities: Implications for Innovation

Some scholars of regulation have maintained that it can have dire consequences for innovation:

> Design standards are enacted to control quality but serve to impede innovation; the temptation is great to write standards that eliminate competition. … Regulation also pose[s] barriers to innovation, since innovators must persuade regulators … that their product is … desirable. Regulation might be thought of as imposing a vast amount of inertia. (Gruenspecht and Lave 1989: 1537)

The significance of this particular source of inertia can be multiplied if innovation has multinational origins. An international network of scholars in corporate governance may design a postgraduate diploma to be delivered online as well as in each partner institution. There is a real risk, however, that such an enterprise would founder (or be inhibited in some way) to the extent that it encountered inconsistent and/or significantly different requirements in the national regulatory systems from which approval of the qualification had to be sought.

One of the risks in the four-stage models of higher education qualities' assurance used in South Africa and parts of Europe is that the process of peer review may identify innovations in one university which reviewers subsequently apply in their own institutions. In the short term, and from a systemic perspective, such diffusion of innovation may be desirable. But the incentives to innovate in component parts of the system may be seriously compromised under such 'externalisation' (theoretical reflection on related points can be found in Williamson 1985: 143). Commercial-in-confidence rules may attenuate opportunism in this context to an appropriate extent, but this is by no means certain. The peer review process may thus have the effect (if not the intent) of creating an externality, a somewhat paradoxical situation in the sense that the process may well have been designed in the first place as a means of eliminating certain systemic characteristics which were associated with market failure including externalities. Managing market failure in a way which may create market failure is an interesting state of affairs.

The pursuit of allocative efficiency by reducing those characteristics of a higher education system associated with market failures may also compromise what Douglass North has called 'adaptive efficiency', which, amongst other things, is concerned with "the willingness of a society to acquire knowledge and learning, to

induce innovation, to undertake risk and creative activity of all sorts, as well as to resolve problems and bottlenecks of the society through time" (North 1990: 80). North goes on to argue that

> [a]llocatively efficient rules would make today's firms and decisions secure – but frequently at the expense of the creative … process. … Moreover, the very nature of the political process encourages the growth of constraints that favour today's influential bargaining groups. (1990: 81–82)

Universities may have further grounds for selectively displaying their innovations in teaching, managerial systems, and so on over the above avoiding the risks of expropriation. Quality improvement is a favourite catch phrase of many higher education regulators (uttered often in total disregard of the possibility that the costs of supplying qualities' improvements may, at some point, have to be included in the regulatory and university decision-making processes). Minimum standards in respect of those characteristics of higher education which are of interest to governments and/or their agents will thus rise over time. Universities may have an incentive to slow down this process by deflating regulator expectations by, amongst other things, concealing the true state of the qualities' improvements (new attributes and/or higher actual performance standards) which they have adopted. Avoiding what the regulatory literature refers to as the 'ratchet effect' may become a priority (Laffont and Tirole 1993: 664).

4.5. Moral Hazard

An effect of the public regulation of qualities and standards may be to increase the extent of moral hazard inefficiencies in a higher education system. Students, for example, may be less vigilant, less critical, less discerning over matters of higher education qualities relying instead as a matter of faith on the activities of the public regulator(s). They may take greater risks in course selection, given that they think they have been afforded a form of taxpayer-funded insurance against the deleterious effects of any poor decision making on their part (the relationship between moral hazard and regulation is discussed in Spulber 1989: 61–62, 611–617). The value of such insurance, however, depends, amongst other things, on the performance of the regulatory agency. A possible effect of an agency's regulatory behaviour might be that regulators and/or the general public lose respect for it. The agency may provide incorrect or misleading information (Joskow and Noll 1981: 27); it may perform in an administratively inefficient manner; and/or it may impose poorly considered policies and/or ineffective implementation requirements (for material relevant to some of these issues, see Blackmur 2003, 2005; and State Services Commissioner, New Zealand 2005).

4.6. Too Much Information?

The effect of risk communication/hazard warning methods of regulation (which are based on respect for the principle of consumer sovereignty) may be, perhaps paradoxically, that 'too much' information is made available to students and others

in a higher education market. The amount of information which is of value in any decision-making context will depend, amongst other things, on the cognitive limits of these involved: "a limit exists beyond which additional information does not improve decisions. … Increasing the amount of risk information creates an information processing trade-off" (Shogren 1989: 6). Despite their shortcomings, standards-setting approaches may thus augment the effective exercise of consumer choices under relatively severe conditions of risk, opportunism, and bounded rationality. Joskow and Noll (1981: 28) have acknowledged that "standard setting makes sense only in those situations in which a strong case can be made that the dissemination of information is extremely costly, or that consumers will find it difficult to use the information effectively".[21]

4.7. Multiple Agencies

The higher education sector in any country may have some or all of its characteristics and standards defined and assured by several agencies. Contradictory regulation may be the result (Gruenspecht and Lave 1989: 1512–1513). One agency, for example, may seek to maximise access to higher education by people without formal entry requirements; another may regulate recognition of prior learning in ways which inhibit such access. Each may optimise in terms of its own goals, but such a process fails to account for interaction effects and any necessary trade-offs. Clearly, the greater the number of agencies which exercise regulatory authority in higher education, the greater is the risk of this type of suboptimisation. When added to the suboptimisation, which can occur if single agencies fail to establish trade-off ratios between multiple dimensions and standards (Gruenspecht and Lave 1989: 1514), and which occurs if agencies are subject to various forms of capture, there are substantial a priori reasons for suggesting that the goals of government and the performance of regulators may not always coincide.

4.8. Wider Effects

The likely effects of higher education qualities' regulation in particular, and regulation in general, can also be examined from more holistic perspectives. Regulation can have both intended and unintended effects on the distribution of income. Relatively poor taxpayers may subsidise relatively rich (or soon to become so) university students through the means whereby higher education funding characteristics are determined.[22] Other outcomes are, of course, possible: funding arrangements may assist the poor to gain access to higher education. Again, funding devoted to higher education regulation is not available to be spent on providing, say, basic services to the poor, a matter of deep significance in developing countries.[23] The Chicago school of regulatory theory is especially interested in distributional issues: "The theory predicts that regulators will use their power to transfer income from those with less political power to those with more" (Joskow and Noll 1981: 36).

Discussions of the effects of higher education regulation on variables such as employment, inflation, interest and exchange rates, and economic growth do not

occupy a prominent place in research on the impact of higher education qualities' assurance. Matters such as these arguably should be added to the research agenda. Another candidate is the magnitude of the impact of higher education regulation on the regulatory reputation of a country. A reputation for, say, 'excessive' command and control regulation in this sphere, especially if such an approach is applied more widely across the economy, may damage a country's attractiveness to foreign investors, which can produce deleterious consequences for, say, employment and growth (*Economist* 2005).

4.9. Actual Outcomes: Examples

There are many judgements concerning the impact of higher education qualities' regulation in particular cases. Alan Ryan, the Warden of New College, Oxford, has maintained that the Quality Assurance Agency "has been unable to do anything beyond reducing what was already a pretty minimal amount of really spectacular incompetence in the management of teaching" (Ryan 2005). John Mullarvey (2005), the Chief Executive Officer of the Australian Vice Chancellors' Committee, has argued that

> [u]niversities operate in an increasingly legislated and regulated environment, requiring an unprecedented level of reporting to … governments that impinge on their ability to fulfil their academic missions. The increasing redirection of resources away from teaching and research to meet government reporting requirements is having an impact on our universities.

There are, furthermore, many clearly demonstrated outcomes such as the recent decision by the Council on Higher Education to remove certain MBAs from the South African market in the name of quality assurance. It will be important to assess the longer-term impact of this and similar decisions (Blackmur 2005). What is also needed is further comparative international research which can inform inductive theories of the impact of public efforts to regulate higher education characteristics and performance. The techniques of the econometricians may be of particular assistance in parts of this enterprise.

5. CONCLUSION

Higher education has many characteristics. Public policy may seek to determine some of these and to define certain performance expectations. A government may thus decide that universities must, for example, undertake research. It may also specify minimum standards against which the actual quality of the research characteristic will be measured. Qualities' assurance, or quality assurance, involves a process whereby interested parties seek confidence that desired qualities are, in fact, present to at least the required extent. There will, of course, be often formidable problems of definition and standards' setting in the regulation of higher education quality, regardless of whether this is conducted by the state or by individual universities or, as typically happens, by some combination of the two. These problems, amongst others, suggest that there are limits to regulation in general, and

to certain types of regulation in particular. In respect of the latter, governments may discover that public regulatory processes are incapable of replicating (at any acceptable cost, or at all) important tacit knowledge held by academics in certain significant areas, and that, on this account, many matters of attribute selection and/or their quality assurance are best decided within universities including at the level of the individual academic (universities may come to the same conclusion). There may be considerable space for various forms and levels of self-regulation in matters of higher education quality. Having said that, even individual academics will, in the final analysis, necessarily think about higher education qualities, and make judgements about them, in terms of some (often personal) standards, expectations, preferences, and so on.

The economics of regulation can enrich our understanding of the motives, processes, and effects associated with government intervention in the nature of higher education relationships. Much of the scholarly literature on higher education qualities' assurance, however, has a strange characteristic (to the economist's eye) in that there are but rare references to the costs of regulating qualities and their quality (the 'value for money' perspective may be an exception). It is as if, once the market has been rejected as the arbiter of qualities, matters of price and cost can be safely left out of the analysis. Exhortations, furthermore, which assert the desirability of 'quality improvement' are often made and in the complete absence of any references to the possibility that, at some point, such improvements may not justify the costs of securing them. The implication is that quality improvements should be pursued regardless of cost. A general equilibrium dimension is also lacking in much of this literature. All of the costs, for example, associated with higher education qualities' regulation clearly must be properly accounted for in terms of their systemic and institutional impacts, but they also represent foregone opportunities in parts of a society other than the higher education sector. They may, moreover, have important consequences for employment, inflation, investment reputation, and growth.

Public choice perspectives remind scholars of higher education public regulation that government/bureaucratic failure needs to be considered alongside market failure, and that governments/agencies may act for reasons which have nothing to do with, or are actively opposed to, efficiency. Attention has also been drawn in this chapter, amongst other things, to the possibility that, whether higher education regulatory agencies pursue efficiency and/or other goals, they may perform so poorly that they lose client and/or public respect. It may not be too far-fetched to suggest that in the future the fact that a degree has been favourably accredited by a particular agency will not necessarily be to the advantage of those who hold that degree!

The fact that governments internationally are vitally concerned with determining various higher education qualities is a commonplace. The various theoretical insights which have been discussed in this chapter help to define the range of possible motives for this. A series of case studies, guided in part by these theories, may be able to identify the precise reasons for government regulation of certain higher education relationships and structures. Such studies, furthermore, perhaps ought to give consideration to the relevant empirical magnitudes. Are there estimates of the losses incurred, and by whom, as a result of, say, market failures in higher

education? Are the costs of addressing these, if governments so decide, far greater than the benefits? Answers to such questions may assist communities to determine which, if any, of the 'problems' that public higher education qualities' assurance processes allegedly seek to address are really worth worrying about and, where they are not, why they might nevertheless remain on the public policy agenda.

NOTES

1 I gratefully acknowledge critical comment on an earlier version of this chapter which was offered by the participants in the Douro 5 Seminar "Dynamics and Effects of Quality Assurance in Higher Education" convened by CIPES and HEDDA in Portugal in October 2005. Special thanks are due to Don Westerheijden for encouraging me to think differently about parts of the argument, and to Glyn Davis of the University of Melbourne for valuable comments. I am also indebted to Gina Verberne's for discussing with me many of the issues raised in this chapter and for assisting with matters of format and style. Responsibility for all errors is entirely mine.

2 This is in the spirit of Kelvin Lancaster's research on the properties of goods and services and of the implications of such an approach for theories of consumption (the foundation article is Lancaster 1966). Consider the case of potential buyers of air-conditioning machines. One of the many characteristics of these machines of interest to these buyers would almost certainly be the noise associated with their operation. In terms of this characteristic, a very quiet machine would be of very high quality (assuming people do not enjoy noise, at least beyond a certain level). Another desired characteristic might be the efficiency of the machine. The higher the cooling effect per unit of energy input, the higher would be the quality of this characteristic of the machine. Another example, which includes the role of the state, can be taken from the production and sale of cigarettes. Cigarettes and their packaging will have characteristics decided by the manufacturers, but they will also have characteristics decided by the state. The nature of the cigarettes themselves, for example, has to conform to defined public standards: certain ingredients may be prohibited. The packets must display health warnings that must comply with government standards, which include the requirement that a warning be displayed on the external part of the packet. Public checking (assurance) at the point of sale (and elsewhere) assures all interested parties that the characteristic of displaying a health warning is, in fact, in evidence to the required extent. This chapter uses an analogous approach to the public regulation of higher education quality (for a discussion of this perspective, see Klein and Leffler 1989: 618; and Spulber 1989: 386–387).

3 'Failures' has an unfortunate pejorative ring to it. The outcomes of a 'failed market' may, in an imperfect world, be the best that can be achieved. A government *may* decline to exhibit an interest in addressing market failure(s) in higher education on the grounds that corrective action would produce an improvement of lesser magnitude than the costs of securing it.

4 A university-established body charged with policing quality and devising penalties for malfeasance may nevertheless appear, or could be represented, as nothing but a servant of self-interested universities concerned largely with cosmetic adjustments and/or responses.

5 To anticipate the argument, from a public choice perspective, government action may not be motivated by efficiency considerations at all but by lobbying by special interest groups which have an interest in the maintenance, not the elimination, of certain sources of inefficiency. This challenges assumptions to the effect that "inefficiency invites relief" (Williamson 2000: 603). The public choice literature suggests that situations of inefficiency will be deliberately created and, at times, successfully defended. Those seeking relief from the consequences of the 'rent-seeking and obtaining' behaviour of others may never prevail. Williamson's assumption is also debatable on other grounds. In a world of bounded rationality and costly information, inefficiencies may persist undetected in the form of habits and routines.

6 If such markets were viable, insurance companies would act as qualities' assurance institutions. Banks can also be thought of as performing a qualities' assurance function if they make loans to, say, students and/or universities for higher education purposes.

7 Universities also may have a selection problem, but this is of relatively less magnitude than that faced by students given the range of selection instruments which are available to universities and their capacity to take advantage of economies of scale and scope in selection processes.

8 Such an assumption, however, may not be justified in particular cases: any efficiency gains attributable to public regulation may be smaller than the associated costs. It is for this reason, in general terms, from an efficiency perspective, that market failure is a necessary but not sufficient condition for public intervention. Adam Smith, perhaps not surprisingly, enunciated this principle in 1776. In discussing the behaviour of sellers in a competitive market, he noted that "some of them, perhaps, may sometimes decoy a weak customer to buy what he has no occasion for. This evil, however, is of too little importance to deserve the public attention" (Smith 1776: 460).

9 This chapter does not explicitly address normative issues. One of the many normative theories on how governments should implement decisions to change relationships in a market economy has been developed by Ayres and Braithwaite (1992).

10 Principal and agent theory, and theories of own as opposed to market-mediated production, (especially transaction costs theories of vertical integration), could be particularly useful in this regard. McCubbins (1985: 722) has drawn attention to American instances of the Congress choosing to deal directly with the detail of regulation as opposed to delegating this to administrative agencies. He poses a central question in this context: "under what conditions do legislators prefer to delegate legislative authority to administrative entities?" (1985: 722). Analysis of this matter is based on considerations which include the "technical complexity of modern society" and a desire "on the part of legislators to escape the costs, political and otherwise, of regulating directly" (McCubbins 1985: 722–723; see also Laffont and Tirole 1993: 501). Public choice theorists would argue that the choice of regulatory means would turn significantly on its relevance to the identification and extraction of rents: "there may also be gains from specialization in identifying industries with appropriable producers' surplus and in determining how best to extract it. If so, legislators predictably would delegate cost-imposing functions to specialized bureaucratic agencies" (McChesney 1988: 187). Consideration might also be given to the possibility that delegation of authority to an agency may be chosen on the grounds that it is important to have a corporate memory, especially with regard to 'consumption' issues, in those areas of the economy and society where exchange is often 'one off' and the advantages of repeat dealing as a (market-based) regulatory device are thus unavailable. Many aspects of higher education would seem to qualify in this respect given the rapid turnover of students and the fact that they typically only obtain one degree from any given university. Survivability considerations would suggest that an agency serving a corporate memory purpose may be a public authority rather than a private firm, although other matters may also impact on this choice.

11 Universities may, for example, be excluded from the ambit of product liability laws and from general consumer protection law.

12 Much of the New Institutional Economics uses the word 'institution' to refer to norms, customs, practices, values, and so on. This chapter does not follow this convention. The words 'institution' and 'organisation' and their derivatives are used interchangeably.

13 It is interesting to note that governments in many countries have established competition (anti-monopoly) authorities but at the same time they have established public monopolies to regulate higher education (and other industries and occupations). Under these circumstances, the issue of 'who regulates the regulators' takes on special relevance. Possible changes to the system of monopoly regulators are foreshadowed in a recent draft of a European Commission proposal to allow universities to select from accreditation agencies (Baty 2004). It would seem, however, that, under the proposals, these agencies would have to be accredited by a single authority.

14 I am not sure if there is a statutory requirement for universities to provide information to the Teaching Quality Information site, which provides details of the National Student Survey of UK higher education.

15 These are not necessarily mutually exclusive categories. Certain pressure groups, for example, may lobby governments to introduce efficiency-enhancing regulation.

16 The chain of principal/agent relationships can be complex. The analysis in this chapter oversimplifies it in this respect.

17 Students may seek to substitute unregulated (or differently regulated) services for regulated ones (Menard and Shirley 2005: 14).

18 It could be hypothesised, for example, that the enormous political pressure exerted by New Zealand universities in the 1990s to escape the jurisdiction of NZQA was motivated, in part, by concerns over compliance costs, notions of academic freedom and institutional autonomy, a sense of status, and especially by a rejection of the philosophical underpinnings of NZQA's regulatory model. The

universities may, of course, have also been very afraid of what an external agency may have discovered and disclosed about their performance.

19 A more likely possibility is that such economising would occur in relatively unregulated university activities.

20 There are costs which arise out of regulation over and above compliance costs. The resources devoted by universities to lobbying governments on regulatory matters (which could include drawing attention to the impact of compliance costs) provide an example (Laffont and Tirole 1993: 505–506). On the other hand, fees may also be increased by universities as a result of their successful lobbying, or as a result of independent, but favourable, decisions of regulators. Thus, universities which receive regulatory protection against competition in certain degree markets may be able to increase the fees charged for these degrees and to use the proceeds to finance competition against rivals elsewhere (Baseman 1981: 329).

21 These considerations are, of course, largely irrelevant if regulation is explicitly designed to suppress the exercise of consumer preferences.

22 The notion of a 'funding' characteristic may cause some discomfort. The argument is that a government may decide to regulate a higher education system in such a way that students are charged less than full cost fees and the shortfall is made up from general taxation revenue. This system thus exhibits a 'less than full cost fees' funding characteristic.

23 In terms of my own personal prejudices, I wonder at the wisdom of countries such as South Africa, encouraged by, for example, the European Union and UNESCO, establishing extremely expensive systems of post-compulsory educational regulation (of arguably doubtful net benefit) while at the same time millions of their citizens lack even basic services such as clean water, electricity, and primary health care.

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