

## Part 2 International Comparisons

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It is always instructive to investigate best practice in comparable countries – principally, for the purpose of this Report, countries with which Hong Kong has traditionally compared itself. However, there is also a need to understand and respect the particular circumstances, history and traditions of the university sector in Hong Kong. International comparisons are therefore valuable, but need to be treated with a certain amount of caution. Comparisons do provide a richness of diversity and innovation from which evidence can be drawn. However, it is important to emphasise that there is no single model that can be transferred unadorned to present circumstances in Hong Kong.

It might also be tempting to draw upon another set of comparisons, namely the revisions made to corporate governance in the commercial world. As indicated above, revisions to private corporate governance have had some influence over revisions to university governance in many countries. Clearly universities do not have shareholders in the way in which a publicly-quoted commercial company has. Nevertheless universities do have a wide range of stakeholders who, as indicated above, have a legitimate interest in the affairs of universities and to whom universities are increasingly accountable. Universities also increasingly undertake wholly commercial activity which draws them into the realm of commercial regulation. In the business world there are stringent codes of practice which regulate the public accountability and internal corporate structures of publicly-quoted companies.

In this Report, the emphasis will be on the most relevant of these as far as universities are concerned – namely, those codes of practice which set out the relationship between executive and non-executive members of company boards. Non-executive directors do not undertake the executive management of the company nor determine its day-to-day direction. Rather, they regularly monitor the effectiveness and performance of the senior management against its planned strategies and operational targets. Translated into a higher education context, this means that every university needs to be headed by an effective governing body which is unambiguously and collectively responsible for overseeing the institution's activities, determining its future direction, and fostering an environment in which the institutional mission is achieved and the potential of all learners is maximised. The governing body of a university needs to ensure compliance with the statutes, ordinances and provisions regulating the institution and its framework of governance, and subject to these, it also needs to take all final decisions on matters of fundamental concern to the institution. However, it is the head of the institution who is responsible for the executive management of the university, both internally and externally.

This distinction between governance and management is crucial for the proper conduct of university affairs. In practice this means there needs to be a clarity of distinction between governance and management and this needs to be reflected not only in the statutes and ordinances of each university, but also might be set out in a less formal and voluntary code of practice which each university is free to adopt. As will be seen below, many countries

have supplemented the legal and constitutional formalities of university governance with voluntary codes of practice which allow some level of flexibility, and, crucially respect university autonomy in adopting the fine detail to their own particular circumstances and traditions.

What follows is a very brief resumé of some of the issues currently being debated in other, mostly Anglophone, countries – i.e. UK, United States of America (USA), Australia, Canada, New Zealand and Singapore. In none of these cases is the account anything other than a brief summary and therefore highly selective. The purpose is to point to some key issues which are highly relevant to the current situation in Hong Kong and comment on how they are being dealt with elsewhere. The issues themselves will be presented in more depth later in this Report.

## 1. The United Kingdom

In the UK higher education is a devolved responsibility – i.e., it is the responsibility of separate legislations in England, Wales, Scotland and Northern Ireland. In practice, the variations are not very great, particularly in relation to university governance, where both the vice-chancellors' organisation Universities UK (UUK) and the organisation which represents the chairs of university governing bodies, Chairs of University Councils (CUC) are UK-wide. In the UK, as in Hong Kong, public funding for universities is largely channelled by intermediary bodies somewhat similar to the Hong Kong UGC. Allocations tend to be predominantly formulaic and are enshrined in what is widely regarded as a fundamental principle of university autonomy in the UK, namely the block grant. This means that, with only a few rare exceptions, university budgets are not subject to line-item scrutiny by the government. Instead, funding is conveyed as a block budget which universities are expected to use effectively and efficiently in pursuit of their institutional priorities.

This system places a very heavy obligation on accountability. The funding councils, the largest of which is the Higher Education Funding Council for England (HEFCE), oversee an effective system of accountability. Universities are expected to demonstrate that public money has been spent properly. An officer of the university (usually the vice-chancellor) is designated as the “accountable officer” for this expenditure, which in law means that he or she is personally accountable to Parliament for the proper expenditure of public monies. These responsibilities have been set out in a financial memorandum – a written document which includes the expectations of the government for the proper expenditure of public funds that are allocated to each university. Each year both the vice-chancellor, as accountable officer, and, crucially, the chair of the governing body, formally sign off the university's financial returns through an annual accounting procedure. This formally confirms that the obligations set out under the financial memorandum have been fulfilled. In 2014 HEFCE changed the title of the financial memorandum to “Memorandum of Assurance and Accountability between HEFCE and Institutions”, which more accurately reflects its purpose (this is set out in full in Appendix 2).

When universities were relatively small and homogeneous this might have been regarded as

little more than a legal formality. However, in the 1980s a major financial crisis occurred at what was then University College, Cardiff and which was clearly the result of both poor management and poor oversight from the governing body. It was this that led directly to the publication of the Jarratt Report and its various successors (Jarratt, 1985). There was quite clearly a need to restore public confidence in the proper governance of the university sector even though the particular crisis had occurred in only one institution. Reform came to be seen as increasingly urgent as the higher education sector in the UK had expanded rapidly during the 1960s and 1970s and then once more during the late 1980s and early 1990s. Legislation was passed in both 1988 and 1992, which included setting out the parameters for the composition of university governing bodies (for example, that there had to be a majority of non-university members, proper student representation, etc.). Only two universities were exempt from this as they were covered by previous legislation, namely the Universities of Oxford and Cambridge. Since 1992 there has been no further legislation, but there has been a considerable evolution of the development of codes of conduct which seek to establish the principles of proper university governance. It is through its activities that members of governing bodies have been given the capacity to develop the education, training and continuing professional development to fulfil their roles effectively. This has been a significant development.

In 2008 the CUC produced a “Guide for Members of Higher Education Governing Bodies in the UK” which incorporates the governance code of practice and general principles. This ran to over 150 pages and became the point of departure for individual universities when they considered their own internal governance arrangements (CUC, 2008). A revised version, consisting of 28 pages, was published at the end of 2014 (CUC, 2014). The new guide – now presented as a code – (see Appendix 3) is more schematic than its predecessor, as well as being more concise. It was produced in response to what some observers considered to be failings in governance in, significantly, just one institution (London Metropolitan University) which had encountered financial difficulties. The new Code identifies seven “primary elements” of higher education governance, each of which is elaborated in a subsequent section. Throughout there is a division between “musts” (or “should” statements) and “coulds” (which are more illustrative of good practice). It concludes with a statement of 15 “primary responsibilities”.

It is not mandatory, either in the sense of being enshrined in government legislation nor being a condition of grant under the HEFCE Memorandum (though the latter has been mooted). Universities are, however, expected to conform to its principles unless they have good reason to do otherwise (which in a number of cases they will certainly have). It should also be noted that the CUC has itself, from time to time, sought to lobby government – over such issues as the financing of higher education, the autonomy of universities, and the challenges presented by globalisation – in a manner which carries real authority from an organisation which is seen to be, correctly, at arm’s length from the university sector itself. It may not be coincidental that in a recent study by the European Universities Association (EUA) the UK was ranked second in the whole of Europe (behind Estonia) on measures of university autonomy (EUA, 2012). But it is clear that this autonomy has been nurtured and sustained only on the basis of clear lines of accountability, embedded in which are regarded as high standards of university governance.

## 2. The United States of America

Higher education in the USA is not a federal responsibility, but rather a matter for individual states. The structure of the sector is also complicated by the presence of a large private sector where inevitably governance arrangements are very different to the public universities and are also extremely varied. Even in the public universities there are wide variations from state to state. In some states, for example, governing bodies can be partially or wholly elected by local constituents; in some states governing bodies are appointed by the Governor. In all states there is little or no use of the block grant principle. Budgets are determined by state legislators and are typically allocated on a line-by-line basis. At the risk of gross over-simplification, universities generally fall into three main groups (each containing a number of sub categories):

- The first group includes those universities which have a single governing board for a campus-based institution with direct authority and responsibility for the operation and management of the institution. Some institutions in this group, primarily private, have self-perpetuating governing boards with complete authority and responsibility for all aspects of the university's operation. Others, primarily public, have mostly politically-appointed governing boards with an obligation to report to legislatures, governors, or state-wide boards or commissions that may limit the institutional board's authority and responsibility in various ways.
- The second group includes multiple campus-based public institutions governed by a common state-wide board. In this group, the campus-based institutions may report to the state-wide board directly or through a system executive.
- The third group of public institutions has a local governing board for the campus institution, and this local board has a subset of powers derived from, or delegated by, a state-wide board. The distribution of authority and responsibility between the state-wide board and the local board, and between state-level executives and campus-level executives, varies widely. These relationships tend to change with some frequency in response to challenges, opportunities, personal ambitions of individual actors, and legislative and executive branch preferences.

Every state university, however, is subject to the policy control of the state legislature and often to the policy objectives of the state's executive branch. Legislatures can and do provide direct guidance on academic matters to state institutions, often overriding the presumed authority of institutional boards. The form of this intervention may vary, but the state's strength in higher education issues comes in large measure from the power to appropriate funds. This may even extend to areas which in other countries might be regarded as unusual – for example, it is not uncommon in the USA for legislation to specify program content, graduation standards, and even detailed curricular matters.

As Lombardi et al. (2002) point out, politics is a source of most universities' existence in the United States. The state, on behalf of the people, creates institutions, provides significant proportions of revenue, and regulates institutional behaviour. State systems of governance and coordination act as agents of the State's political authority and regulate, direct and control universities and respond to political process. Some of this may seem obvious, but it

deserves emphasis because it is in this role that public university or university system trustees differ most significantly from their private university counterparts. The private university board owns the university directly and answers to the public primarily in terms of its fiduciary responsibility as trustees. The private university board focuses almost exclusively on the effort to raise funds and enhance university performance as defined by the board and the institution. It works on behalf of the institution, not on behalf of outside political constituencies.

In the USA, therefore, governance in publicly-funded universities is an intermediary between the political process on the one hand and the management of the institution on the other. Universities are expected to respond to politically-determined imperatives (to become more cost efficient; to improve access for students from poor families; to reduce cost; to play a leading role in technology transfer; etc.). These imperatives, as Lombardi et al. conclude, often lead to frustration on both sides. Universities are often regarded as slow to respond to the political imperatives of the legislature, while from a university perspective, regulation is often seen as unnecessarily bureaucratic and burdensome, addressing only short-term political expediencies. This often leads to demands to change the organisation of higher education in the belief that if public higher education fails to meet political objectives, then this is because of a failure of central control, direction and authority.

National debate on university governance in the USA has often been led by some of the larger independent charitable foundations. More recently, however, university governing bodies have become more professionalised. The Association of Governing Boards of Universities and Colleges (AGB) has been established to act as a professional association in spreading good practice across the very large and diverse American higher education sector. In September 2013 the AGB created a special commission on the future of higher education governance. Its report (AGB, 2014) was both a narrative of the challenges facing governing bodies in the USA and an embryonic code of best practice – somewhat obliquely titled “Recommendations for Change”. This followed both the UK and Australian practice (see below) in setting out a list of primary responsibilities – seven in all. As the Report concludes:

“Higher Education cannot expect to return to the traditions that worked happily 50 years ago, when mostly honorific boards concentrated on selecting prominent leaders and on fundraising, and in which state and federal governments did not ask many questions about performance. In the future, higher education must be reconfigured to recognise the new student populations, altered educational delivery methods, basic changes in financing, and rising expectations from the public. Boards must be at the forefront of these changes because their fiduciary role requires them to focus on strategic long-term issues and the intersection of internal and public interests. Presidents and faculty will not be able to lead such changes on their own”. (AGB, 2014, p.1)

### 3. Australia

Australia and the UK have traditionally gained considerably from the observation of each

other's practice when it comes to the development of higher education policies in their respective countries. This applies equally to policies on university governance. The development of higher education in Australia has been somewhat analogous to that in the UK with a move from a relatively small and homogenous set of universities up until the 1960s, followed by considerable expansion, diversification and internationalisation. Australia formerly had an organisation similar to that of the Hong Kong UGC which was both a funding body and assisted the government of the day in the development of higher education policy. This was abolished over a decade ago. This accompanied the changes in Australia relating to the elimination of most government funding for university teaching and its replacement by student fees. This new, more market-based, approach created anxieties (also present in the UK) that the public interest needed to be secured, via, most importantly, regulation, but also via a robust system of university governance.

In a departure from the UK practice, Universities Australia (roughly equivalent to Universities UK) established a University Chancellors' Council (UCC) as a national body of university chancellors (i.e. chairs of governing bodies) under the umbrella of Universities Australia. The UCC has produced a "Voluntary Code of Best Practice for the Governance of Australian Universities", which in turn received ministerial approval in July 2011. The Code is much shorter than its UK equivalent produced by the CUC. It contains only 14 paragraphs and runs over four pages. It is reproduced here in Appendix 4. In many respects its brevity is a considerable advantage. It is essentially a list of high-level principles which, because they have received ministerial endorsement, provides an essential element of public confidence in the governance of Australian universities without being used as a pretext for a series of detailed bureaucratic interventions. Many of its paragraphs form the basis of the themes which are considered later in this report.

## 4. Canada

In Canada higher education is the responsibility of the provinces. As in the UK and Australia, Canadian higher education has been characterised by high levels of university autonomy for many decades. Provincial government policy initiatives have tended to reinforce the importance of university governance structures as the mechanisms for institutional change, but they have also placed considerable pressure on institutional governance arrangements in terms of making difficult financial decisions, finding innovative approaches to difficult problems and generally adding to the complexity of institutional decision making. Traditionally Canadian universities have adopted a "bicameral" model of university governance (see Jones et al., 2001). This is based on the notion that authority within the institution should be divided between a corporate board and an academic senate. This bicameral model has come under strain as Canadian universities, like those elsewhere, have had to adapt to the competitive pressures of the 21<sup>st</sup> century. It is worth noting here that the Dearing Review of higher education in the UK recommended in 1997 that there should be one unambiguous supreme governing body in British universities. This was recommended largely in order to eliminate some of the confusion between some of the responsibilities of councils and senates. The growth of international competitive pressures (see also below) as exemplified by international league tables, has made governing bodies in

most countries aware of the reputational risks posed by the increasing globalisation of higher education. This has, however, drawn governing bodies into areas of university governance traditionally delegated to university senates, namely the evaluation of research performance and teaching quality. This is a delicate and highly sensitive issue which threatens to cut across the necessary balance between autonomy and accountability – and is evidenced not only in Canada, but also elsewhere.

## 5. New Zealand

In February 2014 the New Zealand Minister for Tertiary Education, Skills and Employment proposed changes to university councils which were intended to help New Zealand universities remain internationally competitive. In the accompanying press release the Minister stated:

“New Zealand universities have been performing very well in a world context... however they face a number of critical challenges such as greater competitive pressure resulting from massive investment in the university sector across the developing world, and the emergence of online course provision. Our universities also need to move more quickly to respond to areas of high occupational demand, attract more international students, and strategically invest to enhance their particular areas of expertise and competitive advantage. New Zealand universities would benefit from smaller, more flexible councils which support them to perform at a high level and to be nimbler, more adaptable, and better organised than big overseas universities.”

The Minister’s anxieties are by no means unique. The advent of international league tables, especially the Shanghai Jiao Tong University ranking, resonated amongst politicians in many countries. For example, in Europe the publication of these rankings led directly to reforms in France, Germany and Spain and in smaller countries such as the Netherlands, Denmark and Finland. In all cases there was a determination to reform the higher education sector in such a way that it would support and sustain “world-class” universities. In Asia these league tables are taken particularly seriously both by politicians and senior university managers. Vice-Chancellors have been hired and fired explicitly in relation to trends in their university’s ranking position. University league rankings have become a totem of national success, and in turn have become essential marketing tools for attracting and retaining world-class staff and students.

The New Zealand Minister’s statement refers explicitly to the benefits which would accrue from smaller university councils. This is by no means an uncommon view in many countries, drawing upon commercial corporate experience. Some universities have instituted these changes, although there is little empirical evidence which correlates the size of a university governing body with its overall performance. Omitted from the minister’s statement, but drawn to his attention by Universities New Zealand (the representative body for New Zealand’s eight universities), was the validity of a model of governance based upon commercial companies to universities with a far wider range of stakeholders. However, both

parties ignored the likely impact of such a change on members of the governing bodies themselves. If the explicit aim is to sustain universities as “world-class”, how many members of governing bodies can identify “world-class” performance based upon their own experience and background – and can they be sufficiently well-trained and developed to speak with authority on these issues? Potentially this places a huge burden on members of governing bodies. They would need to come from, or be acquainted with, the external competitive environment, as well as the internal quality assessments of the university’s operations, in order to arrive at the necessary judgements and inform the senior management of what changes, if any, need to be made. And the smaller the size of the governing body, the greater this burden becomes on each individual member.

Notwithstanding these risks, in February 2015 the Government succeeded, by a majority of two votes in Parliament, in passing an Education Amendment Bill which included changes to university governance. Henceforth, councils are limited in size between eight and twelve members, three or four of whom are appointed by the Minister. In practice this allows room for only one or two internal appointments. As indicated above, this is a brave experiment and it will be interesting to see whether the performance of New Zealand Universities improves as a result.

## 6. Singapore

Following a review in 2005, the then three Singaporean universities were granted a new legal status. They were incorporated as not-for-profit companies limited by guarantee under the Companies Act with their own Memorandum and Articles of Association. To ensure that the universities’ missions remain aligned with “national strategic objectives” and also remain accountable for the use of public funds, an enhanced “accountability framework” was introduced covering both quality assurance and policy and performance agreements. Within this framework the universities have been granted considerable operational autonomy.

This is somewhat analogous to, but not exactly similar to, the HEFCE Memorandum which covers universities in England. Significantly, university councils, now operating as boards of directors constituted under the Companies Act, were explicitly given a more significant role in “charting the direction, optimising resources and ensuring the long-term financial sustainability” of their institutions in their pursuit of excellence in education and research (Singapore Ministry of Education, 2005; also Hawkins et al., 2012).

## Conclusions

Most university governing bodies in the countries considered here retain elements of what might be termed a “participatory” model of stakeholder involvement – not just university faculty but also students, alumni, local and regional representatives, etc. None of these categories are mutually exclusive with driving a university towards world-class status. But equally and oppositely, universities everywhere do need to be more agile in the face of



rapidly-changing uncertainties which can impact upon their long-term (and even their short-term) sustainability.

There is no single and perpetual solution to the balance between autonomy and accountability. Autonomy takes many forms and the second of a series of publications by the EUA, which attempted to compare the autonomy of university systems across Europe, demonstrates the complexity of this issue with a separate consideration of financial, organisational and academic autonomy (EUA, 2012). Complete autonomy is, of course a myth. So autonomy will always be somewhat constrained by the needs of the wider public interest (for publicly-funded universities) and the nature of the market place (for those which are privately funded). However, the most comprehensive study of the relationship between institutional autonomy and the performance of research universities does provide some interesting pointers (see Aghion et al., 2009). A multi-national group based in Brussels investigated how university governance affects research output, measured by patenting and university research ranking. For both European and United States universities several measures of autonomy, governance and competition for research funding were generated and the study demonstrates that university autonomy and international competitiveness are positively correlated with university output, both in European countries, and among United States public universities. This study is based upon a statistical regression analysis and the findings must be treated with a certain amount of caution. Nevertheless, such is the size and scope of the study that they cannot be dismissed as a mere theoretical construct. The point here is that, given the uncertainties of international competition, policy interventions of a radical kind in university governance need to be treated with some care. A major redefining of the balance between autonomy and accountability in university systems could produce major unintended consequences. It is into this kind of uncertainty and complexity that individual members of governing bodies in universities all around the world are thrust. It presents them with a considerable intellectual and practical set of challenges, and these are responsibilities which are not to be taken lightly.

So good governance matters. Robust accountability helps to guarantee university autonomy which, it seems, is positively correlated with overall performance on those measures (principally research output) where international comparisons can be made.

As Edwards concludes from his survey of university governance in Australia:

“Universities are in transition in a complex and changing environment. There is therefore need for each of them to articulate clearly where they are heading and why and relate their objectives to appropriate governance structures, bearing in mind what is happening elsewhere... What will help individual universities in this transition is a clear statement of who is responsible for what, particularly between the governing council, the Vice-Chancellor, her / his management team and academic board... One test of success is whether university staff and students through this process, understand why they have a Council.” (Edwards, 2001, p.17)