

The Role of Regulation in Higher Education – Facilitator or Inhibitor?

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Abstract

Regulation abounds almost everywhere in our modern world. It seems that everything, almost, is regulated by some form of government institution. Higher education is no exception and it is, overall, a closely regulated industry. While regulation carries with it considerable benefits – usually to the public – it also involves some risks to the same public and to the industry itself. Regulation also serves as an entry barrier in general, and higher education institutions (except in the USA) benefits largely from this feature of regulation. This paper presents the most common forms of regulations of higher education and discusses their benefits and drawbacks. The positive aspects of regulation will be mentioned as well as its negative ones. The main question this paper will try to answer is whether the regulation of higher education can attain its (stated) goal, or whether it is – as is the case with many regulatory efforts these days – behind the time, trying to play "catch up" with an industry that finds itself in a turmoil and has to respond fast and become agile in its attempts to retain its position in the society of the third millennium.

1. Introduction

As higher education grows, and becomes a more central element of modern society, it naturally attracts more public attention. From a somewhat esoteric, elite institutions, universities and colleges have turned into a topic that is treated, by and large, as a service – and a service that must be provided by the state (with some private, mostly not-for-profit institutions adding to the offering). This service is financed, for the most part, with public funds, though the extent of public financing varies from country to country (sometimes from state to state), both in the portion of the national budget allocated for this purpose and in the form this support assumes. Since the amounts involved are considerable – in the billions – both governments and the public have an interest in supervising the expenses. In addition, higher education teaching and research do not lend themselves easily to quantifiable, easily understood, measurements. It is therefore almost unavoidable that governments resort to regulation as a means of ascertaining that the public funds are well spent. True, regulation usually concerns itself with procedures, protocols and norms – and is much less competent as regulating outcomes and results – certainly when these outcomes and results may occur many years after the expenditures were made – but it is an accepted "common wisdom" that if the processes, procedures and protocols are carefully guarded and monitored, good results (whatever those are) must follow. In this paper we will not be going deeply into the complex theory of regulation in general (there is more than ample research and debate on this topic. See, for example, the work by Nobel laureate in economics, Joseph Stiglitz (2009)). We will discuss regulation in the higher education market and its effects, both favorable and not so favorable.

The issue of regulation in higher education is not a new one and many of its aspects are discussed by authors in various settings – from academic publications, conferences to policy reviews. The views taken by the author vary considerably. Some contend that the regulatory effort, by the government, heralds "the emergence of normative and now dominant regulatory instruments [that] act increasingly as a means for regimenting academic and institutional compliance" (Jarvis, 2014), referring also to Deem & Brehony (2005)). He then continues to say that quality assurance is just (another) form of regulation.

There is, as pointed out by Jarvis (2014), an overwhelming dearth of evidence as to the results attained by the extensive efforts, worldwide, to ensure quality. Quality – forever a desirable feature of any public service – must be guaranteed in higher education, and thus steps towards its assurance are intrinsically sacrosanct and are not to be critically reviewed in higher education as in any other sector of human activity. Moreover, since quality assurance frequently requires a prescribed system, operating at arms-length from the audited institutions, it must be regulated. All this is true, of course, if one can tell a quality institution unequivocally, a question answered at least partially negatively by the author in a previous work (Raanan, 2009).

The structure of this paper is as follows: chapter two introduces some forms of regulations imposed on higher education. Chapter three deals with the pros and cons of regulation, in general. Chapter four presents an answer to the main question of this paper – is regulation of higher education beneficial or detrimental from a general, social view, trying to consider both the short-term effects and the long-range ramifications of regulating the higher education industry.

2. Regulation in Higher Education

Higher education is, in most countries, a regulated industry. These regulations take different forms and they vary in their extent, their (expressed) purposes, their organizational structures, and in their enforcement powers. Some methods of regulation are, naturally, stricter than others; some let the market be the final arbiter of the quality of higher education institutions while some support rankings in various forms. In every case, the justifications stem from two main reasons:

- There is a great amount of public money involved, and the public\government demands that the higher education industry, like most other publicly financed sectors in the economy, be accountable - hence regulated.
- The public ability to perceive the quality of higher education is incommensurate with the stakes involved in the choices that must be made by their various clients. Therefore, an impartial agency must oversee the industry in order to guarantee that all institutions offering higher education conform to a set of standards established by that agency.

If a regulatory scheme can guarantee the achievement of making institutions of higher education accountable and, in addition, ascertain that all such institutions have at least a predefined level of quality, it seems appropriate that it should be adopted and used. In this chapter, an attempt will be made to find out – and point out – what the pros and cons of a mandatory regulatory regime are.

In higher education, there are no international statutory bodies with a global view of the industry's landscape. UNESCO does produce research on many aspects of higher education (see, for example, Martin, 2007), but has not proposed, to date, a global regulatory framework for higher education. It did publish a decision (UNESCO, 1993) that call for its member states to set up procedures for recognition of studies undertaken in one country by another, but there are no specific measures or agreements. This decision was followed by several decisions regarding regional agreements on accreditation – without specifying academic requirements. (See, for example, UNESCO 2014).

Naturally, in higher education – as in all regulated industries – the type of the regulation and its ability to achieve its purposes is derived directly from the goal established for (or by) the regulator. Regulation may be of two main types: a legally mandated regulation or self-regulation. Some professions may have a dual set of regulation – that imposed by a state regulatory agency and that imposed by a (usually) mandatory professional organization. Two notable examples in most countries are the legal profession and the medical. Both professions have set up a system for enforcing codes of ethics, or codes of conduct, that effectively proscribe rules that the members of these profession must obey – or face some disciplinary consequences. In addition, in most cases the state retains its powers of regulation – sometimes with some overlap with the areas regulated by the professional organizations. This, of course, adds a layer of regulation that does not exist for most other professions.

In higher education, no evidence was found of this dual regulatory framework. It would seem that no self-regulatory system was deemed necessary and none was established. Ethics codes do exist in many institutions, and in many there is even an office of ethics (although the name may vary slightly, to include 'compliance', for example). In some, there is a vice-president in charge of ethics (for example Purdue, Rochester Institute of Technology, Saint Louis University). However, while these codes do create another level of regulations in some higher

education institutions, they are not mandated by law and their application is left to the institutions themselves.¹

The regulation that is the topic of this paper is the mandatory, state required set of rules that are imposed on institutions of higher education – usually from their inception. That is because such regulation shapes, to a large extent, both the individual institutions and the higher education landscape in the regulated area (usually a country, but in the USA, for example, it may be a state or a region that is not the whole country).

The stated goals of regulation are usually phrased with the public's welfare in mind. As the newly established Office of Students (OfS) in the UK declares " Our role is to unleash greatness by creating the conditions in which the interests of students, short, medium and long term, are consistently prioritised and in which a diversity of institutions can thrive." (OfS, 2018). It then goes on and lists its mission:

" The four primary regulatory objectives²

All students, from all backgrounds, and with the ability and desire to undertake higher education:

1. Are supported to access, succeed in, and progress from, higher education.
2. Receive a high-quality academic experience, and their interests are protected while they study or in the event of provider, campus or course closure.
3. Are able to progress into employment or further study, and their qualifications hold their value over time.
4. Receive value for money. "

Similarly, the Council of Higher Education (CHE) in Israel, declares that "The Council for Higher Education (CHE) is the body that determines higher education policy, ... They [CHE and a statutory committee] work to develop research and instruction, promote quality and excellence, and make higher education accessible to the entire population. (CHE, 2018).

In Europe, this issue is, as are many other issues, part of the conflict of national vs. supra-national authority. There seems to be movement towards a more centralized approach (Elken, 2017) – even though it is being done by means of standards, not necessarily by direct regulation.

In the USA, accreditation is, in theory at least, a matter of institutional choice. Each one can choose whether to become accredited or not. In theory, since the federal government, and many state governments, require accreditation for the institution and, more importantly, its students, to be eligible for any form of federal (or state) financial assistance. Since no institution would have its students be ineligible for such assistance (particularly considering the rapidly rising costs of tuition and higher education), the vast majority of institutions are accredited. Indeed, some institutions may have multiple accreditations, by the relevant regional accreditation agency and by accreditation organizations of particular professions. For example, engineering (ABET, 2018)³.

¹ In passing, it is worthwhile to point out that this topic is in the center of an acrimonious public debate in Israel, where the Council of Higher Education has tried to impose an almost uniform code of ethics on all institutions of higher education. After a public outcry, it was demoted from a mandatory requirement to a recommendation, with a fair degree of autonomy given to the individual institutions.

² Bold font in source.

³ The appeal of these additional accreditations derives from their narrower focus. Whereas normally the emphasis of accreditation is to ensure minimally accepted standards, profession-based accreditations assert that they require higher performance in order to achieve their approval.

Since all the American accreditation agencies are private organizations, some of them – following the well-known developmental stages of organizational behavior – have even started to export their services to countries outside the USA. A notable example is AACSB - Association to Advance Collegiate Schools of Business – which has established regional offices in Europe and in Asia, in order to generate additional business.

It is also important to note what the regulators do not set as their objective, and that is the health of the institutions of higher education or the higher education sector as a whole. The OfS, for example, declares very clearly "It is not our role to guarantee the future success of the higher education sector" (printed in red in the original document) (SoF, 2018). That should be borne in the minds of all those responsible for carrying out the instructions of the various regulatory bodies. That mission is left to the individual institutions themselves.

3. Pros and Cons of Regulation in Higher Education

Regulation, in general, has its pluses and minuses. Its main pluses are:

- Minimal standards assured – regulation, if enforced correctly, can guarantee that the regulated bodies carry out their responsibilities at least at some predefined level. That predefined level may be (and usually is) influenced by the regulated organizations themselves through a process of negotiations, but once a regulation is set – with or without the consent of the regulated organizations – it becomes binding and thus the standard with which the regulated organizations must comply.
- Forces institutions to conform to standards they may have not adhered to without regulation – in most industries, certain standards are assumed basic and most organizations act accordingly. However, the regulator may find it beneficial to impose additional standards, over and above those that were acceptable to the regulated organizations initially. Therefore, another level of known properties or behaviors is added to the industry.
- Barrier to entry – by setting certain minimal requirements for the establishment of a new organizational entity, a barrier to entry is created. These barriers may take the form of government license or authorization; minimum number of faculty per department (with a prescribed minimal distribution of academic ranks); minimum starting capital; facilities requirements; conditional operational permits; and so on.
- Market control – the regulator may decide, given the right legal framework, that certain faculties or departments may not exist in a given institution, or that they will only admit a limited number of students. For example, in Israel there is an abundance of lawyers (Haaretz, 2011). Therefore, the Council of Higher Education (CHE) limits the number of law students in some faculties and prohibits other institutions from offering law programs. Similar, but reverse, efforts were made by the CHE in order to encourage increased outputs of computer science graduates and engineers in some specialties there are deemed in short supply (JP, 2017)⁴.
- Public assurance – perhaps the most important feature of regulation in general, and definitely an important feature of higher education regulation. The need for some sort of ostensibly impartial, objective assurance that a product or a service meet at least some

⁴ It should be noted that market control of higher education is not an exact science (if market control of any sector ever is): both cases cited above were not successful – but did affect many institutions.

minimal requirements that were set outside the direct sphere of influence of the regulated entities arises frequently and is largely manifested when the products or services are too complex or intricate to be either understood or their qualities ascertained by their clients in their search for such a product or service. Higher education is undeniably such a service. The intricacies of the system and its outputs are well beyond the capacity of most of its customers to judge for themselves reliably. (See Raanan (2003), for a discussion of who these customers are.)

On the other hand, regulation also has some negative aspects:

- Barrier to entry – the same property that was listed above as a plus, also carries with it a negative feature, since by creating barriers to entry the competition is, naturally, limited and restricted. Therefore, the positive aspects of competition – price control, innovation, creativity, market equilibrium and more – are seriously impaired.
- Compliance is very expensive – the resources that have to be invested in compliance are usually very expensive. Not only do the institutions have to comply with a plethora of regulations, directives and decrees from the regulator, they also have to submit a great number of reports and papers, retrieve, collate and deliver internal documents for inspection by various organs of the regulators. This is an extremely expensive assignment as was pointed out by a task force, established by the senate of the US congress, and made up of 14 presidents, chancellors and CEOs (past and present) of American universities and colleges. (TF, 2015)
- Many accreditations cause multiple efforts, frequently redundant – due to the tendency of many institutions to adopt several standards in addition to the regulation that is forced upon them by governments, the efforts and expenses are similarly multiplied. Institutions may find themselves going through audits almost perpetually, given that the audit \ certification \ reevaluation cycles of different accrediting agencies are not synchronized. And, although the contents required by many of these accreditation programs during their verification or review processes are frequently quite similar, there are still too many differences – in breadth, in format, in summarization levels and more – to enable the institution to create and manage a single database and just produce the reports demanded by the 'regulator of the year'.
- Political influence – many regulatory agencies are set up by law. Consequently, they are subject to political influence and intervention. In the ideal case, that influence ends when the bill is passed into law, but more frequently the political intervention (in a guise or without it) over into the daily operation of the agency.
- Limits creativity and innovation – when it is up to a regulator to grant licenses, permits or approvals, the regulated entity tends to fall within the boundaries set by the regulator and not to venture outside the prescribed perimeter. The problem can become even worse, due the effects of 'self-regulation', when the regulated entity acts within a safety margin, marked well inside that perimeter, in order to reduce the risk of having its program censured or restricted. This form of behavior tends to create additional layers of insulation from the real regulatory envelope, frequently due to restrictions or limitations, imagined by the institution, that were never actually imposed. This, obviously, restricts the creativity and limits the innovative forces inside the institution, to the detriment of all stakeholders. The Task Force on Federal Regulation of Higher Education points out " Excessive regulation can limit the ability of institutions to innovate in ways that benefit consumers... the

Department's definition has discouraged institutions from developing new and innovative methods for delivering and measuring education, such as competency-based models" (TF, 2018).

- Slowness – regulatory agencies, by their nature, work in an orderly, organized, structured way and are guided more by precision of the results they produce than by constraints of time and schedules. The anxiety generated by the fear of making any mistake leads to lengthy processes, with protracted internal review processes. Since in many cases the regulated institutions depend on the regulator's approval or acquiescence before launching, for example, a new degree program in a new and rapidly evolving area, the result is a slow to react higher education sector. In a world where knowledge is multiplied exponentially, this become a serious impediment to progress.
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4. Is Regulation in Higher Education a Facilitator or an Inhibitor?

The evidence is preponderously in favor of regulating higher education. Almost all nations on earth have some form of regulation on this important sector of society. The Guardian (2013), (a leader in the ranking of higher education rankings) in its higher education section has even carried a headline containing almost a battle cry: "What universities need: regulation, regulation, regulation". This is not surprising as the public demand for regulation over almost everything is getting, in many places over the world, to a level close to religious fervor. These days, there seems to be an almost blind belief that everything that goes wrong is due to lack of government regulation. It is well beyond the scope of this paper to discuss this trend. If we look but at just one example, we can quote Bird and Park (2016) "...a vast array of state and federal regulation that impose growing pressures on the firm's operations." While this reference addresses businesses, there is a similar – perhaps stronger – trend in regulating education. The Task Force on Federal Regulation of Higher Education divulges that there is more than one regulatory document a day coming out of the department of education! (TF, 2015). This is a direct result of the diminishing trust in the free market being self-regulating and influenced by the market, and hence operating honestly, transparently and fairly.

Higher education is unquestionably a complex endeavor. It offers research and teaching, both difficult to assess quickly and accurately, certainly by laypersons. In addition, the choice of which higher education institution to attend has far-reaching ramifications on the individual making that choice. It involves dedication of years of study, spending of considerable financial outlays, forfeiture of alternative income and more. Hence, some level of regulation is required in order to make this choice less risky for would-be students. Indeed, some regulators view that risk-minimizing as their main mission. As the OfS declares, relating to its four primary objectives mentioned above "The regulatory framework is designed to mitigate the risk that these primary objectives are not met." (OfS, 2018). The attitude it takes has another purpose in mind: "...to mitigate the risk that the sector does not deliver value for money for taxpayers and citizens who invest in higher education through: the allocation of public grant funding; research funding ...; and the public subsidy to the student finance system."

A completely unregulated, or a loosely regulated higher education sector seems to be undesirable. Evidence of exploitations of students, misrepresentations and unfulfilled promises is quite common in the US, and there is even litigation aimed at an institution founded by Donald Trump, some of it recently settled for \$25 million to return the students' tuition

(Guardian, 2018). On the other hand, the drawbacks of regulation, particularly over-regulation, are quite serious and may lead to the conclusion that it has been overdone.

So, the question becomes, in essence, one of balance: how much regulation is enough to make sure the risk to the students is not unduly high yet lets the higher education industry operate without excessive burdens, costs and distractions.

If we are to try and answer the question posed in the title, what is the role of regulation in higher education – facilitator or inhibitor – it seems that current regulation is more occupied with inhibitions. It keeps requiring licensing or registration, decreeing what may or may not be done, demanding endless reports and dictating rules and procedures to the minutest levels. It has become a burden or, by another word, a hindrance. While minimizing risks to candidates, students and the public is a laudable objective, it should enable higher education to flourish and prosper, for the benefit of its many stakeholder, of which society is the most important.

5. Summary

In this paper an effort was made to assess the value of the regulatory systems guiding the path of higher education. After the main concepts of regulation and its role in modern society, regulation in the higher education sector was presented. That was followed by a presentation of the various pros and cons of regulation – in general and as it applies to higher education. Finally, an attempt was made to answer the question posed as the title of the paper - is regulation in higher education a facilitator or an inhibitor. The conclusion offered in this paper is that while regulation of higher education is desirable, it seems that for achieving its goals of protecting some of its stakeholders – namely candidates, students and the general public – it has overshot and is now risking becoming a hindrance more than a guardian of quality and veracity.

Regulation of higher education requires a new direction. We need a lean, well-organized and fast regulatory bodies that will be able to focus on the main purposes of its mission while leaving the industry enough leeway to conduct its affairs in a more efficient manner.

6. Bibliography

- ABET (2018), <http://www.abet.org/about-abet/>
- Bird, Robert C., and Park, Stephen Kim (2016), The Domains of Corporate Counsel in an Era of Compliance, American Business Law Journal, Volume 53, Issue 2, 203-249, Summer 2016.
- Cantwell, Brendan, Coates, Hamish and King, Roger, Editors, (2018), Handbook on the Politics of Higher Education, Edward Elgar Publishing, Inc., Northampton, Massachusetts, USA
- CHE (2018) – Council for Higher Education, <http://che.org.il/en/>
- Elken, Mari (2017) Standardization of (higher) education in Europe – policy coordination 2.0?, Policy and Society, 36:1, 127-142, DOI: [10.1080/14494035.2017.1278873](https://doi.org/10.1080/14494035.2017.1278873)
- Guardian (2013) - <https://www.theguardian.com/education/2013/oct/07/higher-education-regulation-report-legislation>
- Guardian (2018) - <https://www.theguardian.com/us-news/2018/feb/06/trump-university-court-upholds-25m-settlement-to-give-students-money-back>

- Haaretz (2011), <https://www.haaretz.com/1.5039519>
- Jarvis, Darryl S.L. (2014) Regulating higher education: Quality assurance and neo-liberal managerialism in higher education—A critical introduction, *Policy and Society*, 33:3, 155-166, DOI: [10.1016/j.polsoc.2014.09.005](https://doi.org/10.1016/j.polsoc.2014.09.005)
- JP (2017), <https://www.jpost.com/Business-and-Innovation/Israeli-hi-techs-face-shortage-of-thousands-of-engineers-and-programmers-506414>
- King, Roger, (2018), Risk –based regulation in higher education: why, how, when and what else, in Cantwell, Brendan, Coates, Hamish and King, Roger, Editors, (2018), *Handbook on the Politics of Higher Education*, Edward Elgar Publishing, Inc., Northampton, Massachusetts, USA, pp 319-337.
- Lodge, Martin, (2018), Regulating higher education: national audit explosion in international markets, in Cantwell, Brendan, Coates, Hamish and King, Roger, Editors, (2018), *Handbook on the Politics of Higher Education*, Edward Elgar Publishing, Inc., Northampton, Massachusetts, USA, pp 379-391.
- Martin, Michaela (2007), Editor, *Cross-border higher education: regulation, quality assurance and impact Chile, Oman, Philippines, South Africa*, International Institute for Educational Planning 7-9 rue Eugène Delacroix, 75116 Paris IIEP web site: www.unesco.org/iiep
- OfS - Office for Students (2018), The Office For Students Regulatory Framework, https://www.officeforstudents.org.uk/media/1406/ofs2018_01.pdf
- Raanan, Joseph (2003), Can Higher Education Ever Satisfy Its Customers? TQM For Higher Education, Toulon–Verona Conference VI, Oviedo, Spain, September 2003.
- Raanan, Yossi, (2009), Excellence in Higher Education – Can We Recognize It? 12th QMOD and Toulon-Verona Conference, Verona, Italia, 27– 29 August 2009.
- Deem, Rosemary & Brehony, Kevin J. (2005) Management as ideology: the case of ‘new managerialism’ in higher education, *Oxford Review of Education*, 31:2, 217-235, DOI: [10.1080/03054980500117827](https://doi.org/10.1080/03054980500117827)
- Stiglitz, Joseph E. (2009), Government failure vs. market failure: Principles of regulation, DOI: [10.1017/CBO9780511657504.002](https://doi.org/10.1017/CBO9780511657504.002)
- TF (2015), RECALIBERATING REGULATION OF COLLEGES AND UNIVERSITIES, Report of the Task Force on Federal Regulation of Higher Education. Available at <http://www.acenet.edu/news-room/Pages/Task-Force-on-Government-Regulation-of-Higher-Education-Main.aspx>
- UNESCO (1993), Records of the General Conference Twenty-seventh Session Paris, 25 October to 16 November 1993. United Nations Educational, Scientific and Cultural Organization, 7 place de Fontenoy, 75352 Paris 07 SP
- UNESCO (2014), Revised Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and Other Academic Qualifications in Higher Education in African States, Addis Ababa, 12 December 2014. Available at: http://portal.unesco.org/en/ev.php-URL_ID=49282&URL_DO=DO_TOPIC&URL_SECTION=201.html

