

# Higher Education in Scotland and England after Devolution

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**ABSTRACT** The twentieth century saw a convergence of the Scottish and English systems of higher education. Since devolution in 1999 there has been divergence. English policy is based on differentiation and competition, while Scotland has favoured integration and more egalitarianism. Scotland has not followed England in introducing up-front tuition fees or top-up fees. These differences are consistent with overall patterns of divergence in public service provision after devolution.

**KEY WORDS:** devolution, higher education, policy community, policy style

## **The Historical Legacy**

Devolution in the United Kingdom is not a clean break with the past, but builds upon existing patterns of unity and of policy and institutional differentiation across the various fields of public policy. Institutional differentiation was provided by the Scottish Office (established in 1885), with its associated agencies and boards, and by the autonomy that the United Kingdom has traditionally conceded civil society, including professions and public bodies that are not formally part of government. Scotland after the Union preserved important elements of its civil society as well as its legal system, education system and Church which, while being part of the public sphere, retained a degree of autonomy. It is a moot question just where the boundary between state and civil society lies in the United Kingdom, given the lack of a clear concept of the state, but there was within the Union settlement a strong suggestion that certain Scottish institutions should be insulated from the London government both functionally and territorially.

Among these historical institutions are the universities, which had distinct origins. Scotland had four historic universities, at St. Andrews, Glasgow, Aberdeen (which for several centuries had two) and Edinburgh – the first three founded under papal

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bulls and the last by municipal initiative. Until the nineteenth century, England had just two, at Oxford and Cambridge. Scotland has always had a higher participation rate in university education and until the nineteenth century a distinct intellectual and pedagogical tradition, based on logic, philosophy and disputation, in contrast to the English emphasis on the classics (Davie, 1981). There was a civic tradition, in which universities were seen as part of their local communities and rather open, in contrast with the specialist and more elitist model of England. Scotland was also a big net producer of engineers and physicians.

There is a long-running debate on just how much autonomy Scotland possessed under the pre-1999 dispensation. Kellas (1973) wrote of a Scottish political system, based on the Scottish Office, Scottish interest groups and the Scottish committees of Parliament, with considerable scope in making its own policy. Paterson (1994) argued that Scotland, through its administrative institutions and civil society, possessed more autonomy than most stateless nations of Europe during the nineteenth century and was able to model the twentieth-century welfare state in a distinct way. Others (for example Midwinter, Keating and Mitchell, 1991; Ross, 1981), while agreeing on the distinct nature of the primary and secondary education system, generally played down the real power of the Scottish Office, arguing that its role was to apply UK policy in Scotland, putting a Scottish face on British government. The role of Scottish interest groups and Scottish MPs, in this account, was to add an additional role of territorial lobbying to their essential role in articulating sectoral, partisan or class interests (Keating, 1975).

Whatever the merits of these arguments, it is widely agreed that the rise of the welfare state in the twentieth century posed a challenge to the informal arrangements by which Scottish (and indeed English) domestic policy had been made. As governments invested in public services, they required central accountability. The expectations for social citizenship created by the welfare state were articulated on a British (if not a UK) basis. Considerations of economic competitiveness entered discussions of policy across a range of fields. Modern notions of bureaucratic control and management entered the debate on the reform of traditional institutions. The demands of war posed questions about the adequacy of British national preparedness – it was in the midst of the First World War that the British government decided to adopt the German type of doctorate known as the PhD.

The universities were affected by these trends, with government inquiries into Oxford, Cambridge and the Scottish universities in the mid-nineteenth century, leading to legislation for reform. One of the biggest challenges to the Scottish system was the system of competitive entry into the civil service, which replaced the patronage system after the Northcote-Trevelyan report (1854). This forced the Scottish universities to downplay the old generalist degree (followed by specialist education as in the North American system) in favour of an honours degree on the English model. The Scottish Education Department (SED) (founded in 1872 but later incorporated in the Scottish Office) sought to gain control of the universities, in effect establishing a state university system in Scotland dedicated to filling vocational needs in the civil service and industry (Davie, 1981). Scottish universities, however, resisted successfully, the SED lost out and universities accordingly came under the University Grants Committee, a British agency under the Department of Education in London,

but with considerable autonomy from the civil service and politicians; indeed it was run by university academics. They thus gained some functional (horizontal) autonomy at the expense of territorial (vertical) autonomy. They were also detached from the rest of the Scottish education system and, between the 1930s and the 1950s, relations with the SED deteriorated further (Paterson, 2003b). Some authors have seen the reforms of the late nineteenth century and then the dominance of the UGC and London-based education department as heralding the decline of the distinct Scottish tradition, although others have emphasized the later developments. Most agree that some elements of the civic tradition did survive, but under increasing pressure.

Certainly, policy in the latter half of the twentieth century was British and largely uniform. Higher education was expanded in the 1960s after the Robbins report, to widen access and enhance economic competitiveness, with older colleges of technology gaining university status and new (plate glass) universities set up. This applied equally in Scotland. In the 1970s, a further tier of institutions was recognized, concentrating on more vocational training. In England, they were called polytechnics and came under local authority control, while in Scotland, they had a variety of names, and some of them were under their local authority and others under the Scottish Education Department; their role however was the same. In the 1980s, severe cuts were imposed on universities by the Conservative government under the direction of Education Minister, Keith Joseph, who believed that educating the masses was a dangerous idea. These cuts applied equally in Scotland. In the 1990s, the Conservatives changed tack and embarked on a massive expansion of student numbers, also applied equally across the United Kingdom.

Some distinct features did remain in Scotland, such as the four-year honours degree and the higher participation rate, even as overall participation rates increased. This meant that, by the early 2000s, Scotland had half of the relevant age cohort in higher education, one of the highest in the world. The policy community, however, was UK-wide, with Scottish universities considering themselves part of a British system to be judged on the same criteria as those in England. This was reflected in strong opposition within the universities to include them in the Labour government's devolution proposals of the 1970s, which, it was feared would parochialize them and subject them to undue political control. The government had taken note and under the 1978 Scotland Act (which was never put into effect) the universities were to remain under the aegis of Westminster.

### **The Nationalization of Universities**

The 1980s and 1990s saw a series of attacks on university autonomy in the United Kingdom and a determined effort to remould them as state institutions almost on continental lines (even as governments in continental Europe were moving in the opposite direction). This line was pushed by civil servants at the (then) Department of Education and Science, frustrated that what was now a very substantial amount of public money was being spent by the university sector without direct control. There was also a drive by politicians once again to harness universities to the economic agenda, now focused on competitiveness and the needs of private business. An early move was to abolish the University Grants Committee, which consisted of academics, and replace it with the

Universities Funding Council, under more direct government control and with a predominance of business people on its board. The competition model, applied widely across the public services, was introduced, forcing universities to compete for funding and for students. The successive regimes for regulating student numbers are too complicated to discuss here. Generally governments have sought to encourage universities to compete for students, with funding following the students, but then pulled back as soon as they saw the consequences, including over-spending and over-expansion. Universities were encouraged to reform their management structures, reducing the role of collegiate government by academics in favour of hierarchical structures and professional managers. From the late 1980s, research funds were distributed competitively through the Research Assessment Exercise (RAE), in which, about every five years, the research output of all university departments is assessed. Teaching was controlled through what at one point became a highly intrusive and costly regime of inspection, the Teaching Quality Assessment (TQA). Assumptions and management systems derived from private business became central to the management of universities, creating a whole new language of their own (Baker and May, 2002). Unable either to leave the universities alone as in the past, or to control them in detail through a centralized bureaucracy, government opted to make them compete in the attainment of specified targets. Like all systems of centrally-controlled management through target-setting, this produced many perverse outcomes, especially as the targets and priorities would change from year to year. Applied knowledge was stressed at the expense of pure research and scholarship (Graham, 2002).

In 1992, as part of the commitment to mass education and the competitive model, the government abolished the 'binary line', so allowing polytechnics and other colleges to call themselves universities and award their own degrees, from bachelors' to doctorates. Many suspected that the motive was to force down the cost of education in the older universities by making them compete with the former polytechnics. This had one important consequence for Scotland. The old polytechnics and colleges came under the Scottish Office, whereas the universities came under Whitehall. Since the government of the day was actively pursuing administrative devolution (to try and still demands for political devolution), it was decided that the new system should come under the Scottish Office (and the Welsh Office). Separate Higher Education Funding Councils were then set up for England, Scotland and Wales. Former Secretary of State for Scotland Ian Lang (2002), in his memoirs, claims that it was his decision to set up a separate funding council for Scotland, but it was patently a consequence of the British-level decision to abolish the binary line.

### **The Devolution Settlement**

The basic principle of the 1998 Scotland Act was to give to the Scottish Parliament broadly those tasks that had come under the Scottish Office (although technically all matters are devolved except those expressly reserved to Westminster). It was consistent with this to devolve the universities. Equally important, the strong opposition within the universities expressed in the 1970s had largely abated, no doubt as a result of the centralized and political intervention to which they had subsequently been subjected by the Westminster government. Universities are therefore entirely devolved

and are once again part of the broader Scottish education system. There are very minor exceptions, such as the rule that awarding the status of a university is the prerogative of the Privy Council (not the UK government). There are no state-wide framework laws governing universities such as exist in Germany and Spain. On the other hand, Scottish universities are part of a highly articulated UK policy community, with frequent contact among academics and managers, shared ideas and a determination not to be reduced to mere regional importance. The representative body for universities, Universities UK, contains within it a Scottish body, Universities Scotland. The responsible departments in England and Scotland are in regular contact and exchange ideas, as do the funding councils. The Research Councils are UK-wide and are reserved in the Scotland Act, although research grants are also made through government departments, including the devolved ones. The Research Assessment Exercise (which allocates base research funding) is still conducted across the UK, as the universities have insisted on a single set of standards, although it is up to the individual higher education funding councils in England, Scotland and Wales how they will use the information. Pay bargaining is conducted on a UK-wide basis, although government has made no secret of its preference for localized bargaining and has abolished Britain-wide bargaining in the civil service even while the civil service remains a single body. International and European matters, including the Bologna process for harmonizing academic qualifications, are handled by the Whitehall department (now Department for Education and Skills), with some sporadic Scottish input. If the Europeanization of higher education should proceed, this could pose some problems. There have already been complaints about the threat to the Scottish four-year honours course and the fact that the degree awarded at the end by the ancient Scottish Universities (but not the newer ones) is called a Master of Arts (MA), which in England generally refers to a postgraduate degree.

The challenges facing universities in England and Scotland after 1999 are rather similar. They have had to absorb a massive increase in student numbers without a concomitant increase in resources; between 1976 and 1995, the unit of resource (the amount of money per student in real terms) fell by 40 per cent (Scottish Executive, 2004). They must provide mass education which caters for the best students and produces high quality graduates, while at the same time sustaining world-class research. Pressures to cater for the needs of business have remained constant under Conservative and Labour governments. Universities are expected to play a role in economic development, particularly at the local and regional level (Paterson, 2001) where they must contribute to the research and innovation that is so important a feature of new policies for regional development. Particularly important is the task of providing a bridge between academic research and production applications in the firm. Yet, while serving economic needs they must preserve their academic autonomy and sustain pure research and scholarship. Universities are also expected to help in overcoming social exclusion, by broadening their intake, especially to working class students, ethnic minorities and mature applicants. Universities and governments across the UK, and indeed Europe, have responded to these challenges in some ways that are rather similar. Yet, there have been important differences between England and Scotland, to the extent that we can now talk of a distinct university system in Scotland and a reversal of the twentieth-century pattern of convergence.

### **Policy Style in Scotland**

Some of the differences between England and Scotland reflect broader policy styles and preferences in the management of public services. Under New Labour, English government has broadly continued the Conservative model of public service reform, based on differentiation, competition, selectivity and control through targets. This is a mixture of centralization, with departments and agencies given sets of targets, sometimes through Public Service Agreements under the Treasury; and decentralization, as they are then given freedom to achieve them. Scotland has generally followed the same principles of management reform as in England, but has applied them a little differently. In Scotland, government has been more inclined to take public sector professionals into partnership and agree goals and targets with them, rather than denigrating them as 'producer interests' to be marginalized from policy making. There is less emphasis on competition among service providers and less inclination to summary measures of their achievement that can be used to put them in a hierarchy. So, for example, Scotland has not followed England in introducing 'foundation hospitals', which, after getting a 'star rating' may be given autonomy and special status. There are no school league tables, as in England, where parents are encouraged to compare performance on the basis of examination results, a procedure criticized for giving an incentive for teachers to coach children through exams, and for stigmatizing schools in socially difficult areas. Local councils in England compete for 'beacon council' status; there is no equivalent in Scotland. Instead of this strategy of reward and punish, the Scottish departments seek to work with the service providers to identify problems where they arise and agree on strategies for improvement. The Scottish style also involves a great deal of consultation in policy making and working with interest groups and stakeholders in the wider society.

There are a number of reasons for this distinct policy style (Keating, 2005). One may be the greater weight of public service professionals in Scotland, and the fact that politicians are often themselves drawn from these groups. Another is the relative weakness of the policy capacity of the Scottish Executive, which obliges it to go out to the policy networks for advice and policy development. This includes agencies of the Executive, which predated devolution. The role of Scottish Enterprise in economic development policy is central while, in Higher Education, SHEFC has had a vital role. There is also the commitment, inherited from the devolution campaigns of the 1990s, to a less confrontational and more consensual type of government. The Scottish parliamentary system further limits executive dominance. Foundation hospitals and university top-up fees were imposed on England over the opposition of English MPs, with the government mobilizing Scottish MPs to vote for them. This has ironic parallels with the way Scotland was governed before 1999, when Scottish public and parliamentary opinion was frustrated by the English party vote, stifling dissent even within the governing party. In the Scottish Parliament, no party has a majority, Labour governs in coalition with the Liberal Democrats, and even the coalition has only a small and vulnerable majority, especially on committees. It is important not to exaggerate the differences in policy style in Scotland. First Minister, Jack McConnell, has given signals that he is more favourable to the English approach than are some of his colleagues; but the difference is there.

There are also subtle but important differences in policy substance in Scotland. Like all social democratic parties, New Labour faces the difficulty of sustaining the welfare state and keeping within it the middle classes, without whose support it could not be viable. In England, faced with middle class pressures and the possibility in health and secondary education of their opting for private provision, the response has been to create a middle class niche within the public sector. Hence the foundation hospitals, specialist schools, elite universities and other instruments that in practice will be used by the articulate middle class population. In Scotland, there is a greater preference for the traditional social democratic strategy of universal provision and equality. This may to some extent be a reflection of public opinion which, across most issues, is slightly more inclined to collectivism and equality than in England (Keating, 2005); on comprehensive education the difference is quite substantial (Bromley and Curtice, 2003). Scots are certainly less inclined to use private health or private schools than people in the south of England. There is a public service ethos, which survived the Thatcher years. This is not a uniquely Scottish phenomenon. It also exists in England – and it would be interesting to explore regional variations within England. In Scotland, however, it is sustained by national identity and a ‘moral economy’ (Hearn, 2000), providing a counterpoint to the neo-liberal discourse that has been dominant in elite political circles in the United Kingdom. Thus a stronger pro-welfare assumption has been constructed in Scottish debate. Party politics has also shaped policy choices. Labour in Scotland faces little competition on the right but a great deal on the left and is in coalition with the Liberal Democrats, a party rather closer to traditional understandings of social democracy than is the modern Labour Party (New Labour). Even the Conservatives in Scotland are less neo-liberal than their counterparts in England and are able to support free care for the elderly and to oppose university top-up fees, policies that could be regarded as right-wing (as they benefit the better-off) or left-wing (they are universal benefits) but in any event reflect a more collectivist view of public policy.

It may also be that the professions in Scotland have a different perspective on public policy. Medical professionals are less inclined to practice privately and there is some evidence that their attitudes are more favourable to universal public provision (Keating, 2005). Paterson’s (2003a) survey of academics in England and Scotland found similar attitudes towards the main issues, but with a persistent tendency for those in Scotland to favour a stronger ‘civic engagement’, with a role for universities in economic development, and a strong commitment to providing leadership within the nation. There was less suspicion of a government role in education and academics were more likely to take on public roles. These attitudes were found throughout the system in Scotland, but in England were prevalent only in the newer universities, and even there were less strong than in Scotland. This suggests that the old civic tradition was not completely dead, despite some decades of assimilation into the wider British system.

This finds a reflection also in the attitudes of universities to student fees since 1999. While the Russell Group of elite universities has pressed strongly for the introduction of higher fees for their students and differential top-up fees for the best universities, as a way of restoring funding and marking them out from the mass, the Scottish universities, with the exception of St. Andrew’s, have resisted.

**Policy Development Since 1999**

The English approach to higher education continues to emphasize management, regulation, differentiation and competition, while the Scottish approach stresses professional autonomy, consensus, egalitarianism and policy learning. In England, change has been politically driven, while in Scotland, it has emerged from professional networks, in collaboration with government.

England needs to manage a huge system of some 138 institutions funded by the Higher Education Funding Council for England (HEFCE). In this context, neither detailed planning nor close links with individual institutions are possible, so reliance is placed on targets and incentives. The Teaching Quality Assessment exercise was initially stepped up in the form of Quality Assurance, but in the face of the bureaucratic nightmares and mountains of paperwork that arose, the government pulled back in 2000 and agreed to reduce the burden of inspection and move to a less detailed Institutional Audit based on the concept of Quality Enhancement. Charlton and Andras (2002) suggest that the aim is really a reduction in the quality of teaching in line with reduced resources and an expansion of mass education for occupations requiring modest skills. There has been an emphasis on differentiation among institutions and on broadening sources of funding, consistent with previous Conservative policies. One sign was the decision by the Labour government in 1997 to abolish student grants and to introduce a fee (initially set at £1000 a year) payable by all students in the United Kingdom, with exemptions for those from poorer families. This was ostensibly based on the report of the Dearing committee, which had recommended the introduction of fees, but only if grants were maintained for poorer students, although the government simply ignored the latter part of the recommendation.

The main policy initiatives, however, were contained in the January 2003 White Paper on Higher Education (Department for Education and Skills, 2003) whose introduction was held up by some almost public wrangling in Cabinet, indicating the highly political nature of the process. The White Paper, which applied only to England, proposed a sharply differentiated system, with a few elite universities at the top and a mass of institutions at the bottom. The elite universities would be able to charge students an additional 'top-up' fee of up to £3000, allowing them to provide a higher standard of education. The model underlying this was ostensibly the American elite universities, although the White Paper betrayed some ignorance of the research-intensive public universities in the United States and ignored Canada completely. Research funding was also to be allocated more selectively through the RAE. In fact, this had already started, as the HEFCE invented a new grade 6 after the 2001 exercise had been completed in order to give more money to the top institutions at the expense of the rest. At the lower end, the White Paper proposed to expand student numbers so that 50 per cent of the relevant age cohort were in higher education, by allowing further education colleges to introduce two-year 'foundation degrees' and to call themselves universities. To address the problem of access for students from less privileged backgrounds, the government toyed with the idea of quotas and targets, but retreated in the face of middle-class criticism. Instead, it proposed an access regulator, who would be able to penalise universities, and prevent them from charging top-up fees, if they failed to achieve social diversity in their student intake. Much of this was criticized by the

House of Commons Select Committee on Education and Skills (2003), which voiced many of the concerns that prevailed in Scotland, but the White Paper provisions were pushed into legislation at the insistence of the Prime Minister and Minister for Education.

Scotland has a smaller and more manageable system of twenty institutions and SHEFC was able to take on more of a planning role and establish closer relations with the institutions, although the latter have generally sought to keep SHEFC at arm's length and do not like the terminology of planning. This closer relationship with the institutions has enabled it to avoid the practice in England of top-slicing the financial allocations in order to target money at specific areas. In Scotland, more of the money goes to universities in the form of block funding for teaching and research. At the same time, reform was less politically driven but emerged from discussion and negotiation among the Scottish Executive, SHEFC, the universities and other interested parties. This is not to say that there were no high level political decisions. A majority within the Scottish Parliament has been consistently opposed to university tuition fees and this includes the Liberal Democrats and all the Opposition parties. Labour was therefore forced to backtrack on its pre-devolution policy, as a condition for the Liberal Democrats joining a coalition government, and agree to the abolition of university tuition fees. In practice, the solution was not simple and involved an independent commission (the Cubie Commission) and more negotiation after that, to arrive at a compromise in which no fees are charged while students are at university, but a 'graduate endowment' is charged afterwards, the proceeds of which are used to fund bursaries for poorer students. Part of the second coalition agreement in 2003 pledged the Executive not to introduce 'top-up fees' on the English model; by this stage, all the parties in the Scottish Parliament were opposed to these.

Policy since devolution has been developed through a three-part review by a team including representatives of the civil service, the funding council, business and universities (including people from English universities); a Lifelong Learning Strategy published in 2003; and a series of reports from the Scottish Parliament committee. The procedure is consensual and consultative, bringing in the various stakeholders, rather than politically driven as in England, and the result has been gradual policy evolution rather than radical change. The first review focused on SHEFC and identified a number of issues, including the idea of merging with SFEFC (Scottish Executive, 2001, 2002). The second review, reporting in 2003, contained 44 commitments by the Scottish Executive, 29 recommendations to SHEFC and 21 expectations for the universities (Scottish Executive, 2003). At this stage, Scottish developments were overtaken by the publication of the English White Paper, itself delayed because of wrangling in Cabinet. A key recommendation of the English document, on top-up fees, was seen to have such strong implications for Scotland that the third phase of the review had to wait until this issue was decided before looking at the implications. This review was organized in four working groups, chaired by the Scottish Executive, the National Union of Students (Scotland), the Association of University Teachers (Scotland), and Universities Scotland, respectively, and reported in 2004 (Scottish Executive, 2004).

There is a general opposition to the idea of elite universities and a preference to achieve high standards through inter-institutional collaboration rather than

concentrating resources in one place. Scotland remains part of the UK-wide Research Assessment Exercise, which universities regard as important in demonstrating their credentials, but SHEFC uses the results differently, and did not follow England in creating the new grade 6. Nor did it propose to concentrate future funding on a few elite institutions. Rather, it has provided mechanisms to allow emerging research fields in traditionally less research-intensive institutions to gain funding, and promoted networks among research teams across Scotland.

The teaching quality assessment process has also drifted apart, after the efforts to get UK-wide uniformity in the late 1990s. While the QAA remains a UK body, with offices in Gloucester and Glasgow, the Scottish body has formal responsibility in a range of Scottish matters and reports directly to SHEFC. There is a concern in Scotland to avoid creating league tables, punishing or shaming institutions, or being overly prescriptive. Instead, there is a focus on the institutional level and working with universities to improve performance. There is no list of requirements following review, but a narrative report intended to give a rounded picture. A student auditor is also part of the process in Scotland, but not in England.

By 2003, Scotland already had half of the age cohort in higher education, the target set for England, and the Executive announced that it did not intend to raise the participation rate beyond this. It had achieved this level partly by the presence of a higher education sector within the further education colleges, in the form of Higher National Certificates and Diplomas, with an articulation between the colleges and the universities and an ability to move from HNDs to degree studies. It was reported in 2003 that 28 per cent of Scottish higher education was done further education colleges, compared with 11 per cent in England (*Times Educational Supplement*, 31 January 2003). So, Scotland did not follow the English 2003 White Paper in allowing colleges to become universities or in introducing foundation degrees, opting instead to retain the HNC and HND as a respectable qualification. In 2004, the sectors were brought closer together again with proposals to merge the higher and further education funding councils. This is a sharp departure from the organization in England, where the further education colleges come under the Learning and Skills Council which, with its 47 local councils, is responsible for the volume job training which in Scotland comes under Scottish Enterprise. There was some opposition to the merger proposal both from universities, who feared that their student costs would be brought down to the FE level, and from the colleges, who feared that they could be the poor relations, but the proposal went ahead.

Improving access for students from less privileged backgrounds is a priority in Scotland as in England, but Scotland has not gone for targets or a regulator. Instead, SHEFC works with four Wider Access Regional Forums and a series of local projects seeking to understand and address the problem on the ground.

From the outset, universities in Scotland were placed together with economic development in the Department of Enterprise and Lifelong Learning. This has allowed an engagement of universities with regional development strategies including research and innovation. More recently, universities in England have been encouraged to engage more with the Regional Development Agencies, but there is not the same policy linkage. Specific initiatives include the Proof of Concept Fund and the Intermediate Technology Institutes that have no counterpart in

England. The university-business interface has not been easy and has raised conflicts between and within universities; there is still in Scotland, as in England, a conflict between the vocation of universities in economic development and their role in the dissemination of pure knowledge.

Scotland thus has a large measure of autonomy in running its university system and is not subject to any overall, UK-level control. Similarities in policy (for example over the RAE, if not its detailed use) arise from autonomous choices and from the desire of the universities themselves to be part of a broader system. The limits of autonomy, however, are posed by the practical inability of the Scottish Parliament to raise its own taxes, even while it has complete discretion in spending. This poses a problem faced by Scotland generally if it should choose to retain tax-funded universal public services while England goes for selectivity and charging. The funding formula for the Scottish Parliament (the Barnett formula) provides Scotland with a population-based share of any increase in tax-based funding of English services comparable to those devolved to Scotland. If the British government chooses to fund English services through fees, however, Scotland must either charge fees itself or find the money by cutting back on other services.

This problem is posed by the decision to charge top-up fees in English universities. The Scottish universities complained that this will put them at a disadvantage, preventing them attracting the best staff and students or renewing their infrastructure. In the short run, the crisis was averted, if only because the policy in England was watered down. The £3000 fee for English universities (frozen until the end of the next Parliament, that is about 2011) represents only some £1900 per head on top of the existing fee and up to a third of this is to be devoted to bursaries for poorer students. The balance has to cover enhanced salaries, more staff, better equipment and new buildings and, although the White Paper was short on financial details, most observers have considered that it will make a paltry difference; it will certainly not create an English Ivy League. Additional government money is promised to increase the participation rate in England and Wales up to 50 per cent of the age cohort. As this level had already been reached in Scotland and the Scottish Executive had no intention of going beyond it, the Barnett consequentials of this funding would be available for Scottish universities if the Scottish Executive chose so to allocate them. Additional Barnett consequentials would be available from the start-up funding given to English universities to tide them over until fee repayments started. The Executive was therefore able to argue that there was no immediate crisis and to increase university funding over the 2005-8 spending round.

It is likely, however, that the government will return to the issue and that over the longer term universities in England will rely increasingly on fee income, so that eventually a serious funding gap could open in Scotland. Although the government's intention had been to limit top-up fees to elite universities or courses, it appeared by early 2005 that nearly all English universities would charge them. In any case, irrespective of what happens south of the border, Scotland needs to find its own way of financing world-class institutions able to compete in global markets. Both English and Scottish universities remain seriously under-funded and neither jurisdiction has found the solution.

There remain a series of boundary questions between devolved and reserved powers, and between Scotland and the rest of the United Kingdom. Some Whitehall initiatives, for example from the Department of Trade and Industry and for regional projects, may or may not be open to Scottish universities; this may depend on political relationships at the time. Income thresholds for repayment of students loans and deferred fees are set at a UK level since they are administered by the Inland Revenue. At present English, Welsh and Northern Irish students studying in Scotland pay up-front fees, while students from other EU countries have to be treated the same as Scottish students, and do not pay. Powers have been taken to allow Scottish universities to charge incoming English students the top-up fee they would have paid to study at home, including differential fees in medicine. It is by no means clear how the educational market and cross-border student flows will adjust to different funding regimes or what the knock-on effect to the job market will be. As in other markets, behaviour is not always rational. There were reports in 2005 of a large increase in English students applying for university places in Scotland to avoid the top-up fee, even though students commencing their courses in that year would not be liable for top-up fees in England; and English students arriving from 2006 will likely have to pay top-up fees even if they moved to Scotland. Scotland educates a disproportionate share of UK medical students, but many of the incomers then continue to work in Scotland while a proportion of the Scots leave. The Executive has also taken powers to levy additional fees in order to cope with this. Many of these anomalies arise in any devolved or federal system (for example, they are an issue in Canada) but others reflect the weakness of the financial settlement for Scottish devolution, which centralizes revenue-raising but completely decentralizes spending choices.

Scottish universities have a long-standing fear of being parochialized and losing their UK and international links. On the other hand, the opposition to devolution which they expressed strongly in the 1970s had largely disappeared by the 1990s and they have learned to operate the new system rather quickly. There are still close connections among higher educational policy-makers in England and Scotland and the policy community is rather open and peopled by individuals able to work across different levels. The UK context is still very important for higher education policy making in Scotland. The policy agenda has often been set by England, given its strongly politicised approach and the implications for Scotland of initiatives such as top-up fees. Scottish policy, in this as in other fields, has often therefore been reactive but without an input into English debates. This illustrates a key problem of the devolution settlement, its asymmetric nature and the lack of a true federal principle and the absence of a federal arena of policy debate, given the dual responsibilities of Westminster and Whitehall as the government of the United Kingdom and of England. There was some criticism of the lack of consultation with the Scottish Executive before the 2003 White Paper on Higher Education but it is not easy to see a solution within the present settlement. If Scotland were to be consulted on such initiatives, it would risk drawing the devolved institutions back into a unified system in which they would be junior partners. If they are not consulted, they need to cope with the fall-out from decisions in which they have not participated. Scotland is a great deal more autonomous than it was before 1999, but its autonomy is still constrained by the UK political system and policy communities.

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