Managerialism in Irish Universities

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"Managerialism" is a term often used in relation to modern universities, sometimes as a neutral description of certain organisational techniques, sometimes as a pejorative expression. This article has three goals. Firstly, I suggest a reasonably precise definition of managerialism in this context. Secondly, against this definition I search for "managerialism" in modern Irish university law and practice, from the Universities Act, 1997, to the present; in which it will appear that managerialism has made considerable gains, though it has by no means conquered the field. And thirdly, I sketch some of the implications for the management of Irish universities.

I - Introduction

The history of any conflict is written by the victors, or so it is often said. Yet when we consider the struggles over the management of universities in recent decades, the truth may be the converse. The academics, who in earlier centuries would have managed the universities themselves, instead write gloomy accounts of how they have been deposed by a new breed of bureaucrats, both within and without the university. This development is variously termed "managerialism," or "loss of university autonomy," or (for those emphasising links to wider developments in public administration) "the New Public Management" or "neo-liberalism."[1] Yet these terms remain controversial.

This article has three goals. Firstly, to propose a meaning for "managerialism" that is sufficiently precise to be useful in this context. Secondly, to trace the rise of managerialism in Irish university law, from the *Universities Act 1997* (*Universities Act*) to the present, in which I show that managerialism has indeed prospered, but has by no means won all the battles it has fought, nor is it the only influence of note. Thirdly, I sketch some of the implications for the management of Irish universities.

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[1] See the writings summarised in R. Deem, S. Hillyard & M. Reed, *Knowledge, Higher Education, and the new managerialism* (Oxford: Oxford University Press, 2007) chap. 1 [hereinafter Deem *et al.*]; also M. Olssen & M. Peters, "Neoliberalism, higher education and the knowledge economy" (2005) 20 Journal of Education Policy 313.

II - What is managerialism?

Some clarification is needed, yet there is no universally agreed definition either of managerialism or of how the modern management of universities should be characterised. A starting point is to define a traditional understanding of a university. In the past, universities have exhibited, and to a certain extent in the public imagination still do exhibit, a high degree of autonomy, both externally (no-one can tell them what to do, or at least not in any detail) and internally (they function co-operatively, without one internal unit telling the others what to do, or at least not in any detail). So we might say that, traditionally speaking, a university:

(i)   establishes its own credentials. A good university is recognised as such because it can convincingly assert its own reputation, and does not rely on any validation from external authorities;

(ii)   maintains independence from government and other outside bodies, whether on the grounds that it is run by trustworthy people, or that outsiders cannot possibly understand its working, or both;

(iii) allows autonomy from internal management. The various academic units comprising the university operate on the basis of co-operation, not hierarchy, and the most important principle relating to individual staff members is that of academic freedom. Key staff members have tenure, which enhances both their own freedom and the freedom of the units they head up;

(iv) regards teaching as an end in itself. A university need not justify its teaching by reference to the public good – or (what amounts to the same thing) it is assumed that university education is good, without any searching enquiry into what it consists of. There is therefore little public scrutiny of which subjects are covered, or how they are taught; and

(v) regards research as an end in itself. Again, a university need not justify, or even explain, to any outside body the topics and methods of research; the assumption is that a growth in certain types of knowledge is good, and that universities can be trusted to identify those types and to foster this growth.

Of course, no university was ever in reality (or even in literature) *quite* like this, and indeed the various elements it compromises do not quite make sense in combination. (If an organisation allows *complete* freedom to its members, in what sense is it "an organisation"? If the content and quality of research is really subject to *no* external standard, why would anyone fund it? and so on.) Nonetheless, the picture is a recognisable one, and can serve as a brief sketch of what those who defend the traditional university have in mind.

A managerial university, by contrast, would completely lack autonomy both externally (it would be subject to review and instruction from without) and internally (every member of staff would have a line-manager, to whose gaze and orders they would be subject). Such a university:

(i) receives its credentials from outside. A good university can only be recognised as such by external reviewers, and is perhaps compared to, or ranked with, other universities. The external review might result in a global judgement on the entire institution, or might simply consider one aspect (the quality of its teaching and research, or the merits of a single department within it);

(ii) forms part of a chain of command extending far outside it, whether into government, or to other outside bodies. Any local autonomy exercised is subject to review, and must be within the scope of a discretion granted by the external authorities;

(iii) does not allow autonomy from internal managers, who are given free rein to do their jobs – that is, to manage. The various academic units comprising the university operate on the basis of hierarchy, not voluntary co-operation, and the most important principle relating to individual staff members is they should do what they are told or face the consequences. Meaningful tenure rights are not part of this picture;

(iv) evaluates teaching by reference to external criteria. The value of teaching is always under review. Sometimes the review criteria stress public goods (does the teaching serve economic goals, such as inculcating demonstrably useful skills?), and sometimes private goods (do the students, or their parents,

regard it as value for money?). Both the topics to be covered, and the manner in which they are covered, are under the spotlight; and

(v) evaluates research by reference to external criteria. The value of research is always under review. Generating knowledge is costly, and such expenditure must be justified – again, either by reference to public goods (how does the research make the world a better place?) or private goods (is there someone who values the research enough to fund it?).

Again, no real institution is quite like this, and if it were, it would be unlikely to be a hotbed of intellectual liveliness – or indeed in any sense merit the name "university." But again, the picture is recognisable and it is entirely meaningful to ask whether Irish universities have become less like the first model and more like the second – in other words, to ask whether they have become more managerial.

A. Public or private?

If universities are autonomous, what are they are autonomous *from*? While it will always make sense to ask whether a university is autonomous from external agencies, the detail of this will depend entirely on the nature of those agencies. So while it is entirely meaningful to suggest that (say) both Irish and U.S. universities are subject to increasing managerialism, the complaints in the U.S. tend to be about the increasing power of *private* bodies (particularly in controlling which research is carried out, and what is done with the results), and so are usually directed at increasing corporatisation.[2] Yet a very different picture is apparent in Ireland, where the external agency is usually the Irish State – so much so, indeed, that increased involvement with the private sector is usually seen in Ireland as a *liberating* move, freeing universities from government oversight, and generating funds not subject to rigorous standards of public accountability. "Managerialism" is not confined to public or private sectors alone, but one or the other may bulk larger in particular contexts.

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[2] See *e.g.* J. Washburn, *University, Inc: The Corporate Corruption of Higher Education* (New York: Basic Books, 2006); G. Tuchman, *Wannabe U – Inside the Corporate University* (Chicago: University of Chicago Press, 2009).

So there is both a public and a private dimension to managerialism – if universities are coming under external control, that control may be by government or by the market. Whether universities are seen as predominantly "private" or "public" institutions varies with culture and over time. Modern Irish universities seem relatively "public" institutions when compared with those in the U.S. (and, to a lesser extent, the U.K.): there are no private universities in Ireland, all universities are heavily reliant on public funds, and for many purposes university staff may be regarded as public servants.[3] Yet Irish universities seem relatively "private" when contrasted with those in continental Europe: they certainly have more institutional autonomy, and the freedom now being thrust on the (somewhat reluctant) European universities has long been taken for granted in Ireland.[4] The line between public and private is drawn differently in different countries, and which side of the line universities fall is not always obvious.

The truth is that universities' activities are varied, and so the whole is not easy to characterise: the same university will conduct research which cannot possibly be funded except by the State (which looks very "public") but will also attract foreign students who will be charged the market rate for tuition (an obviously "private" approach). So care is needed here, as many of the changes wrought by managerialism have been despairingly described as "treating universities as if they were businesses." While it is important to recognise the truth in this, it is also important to realise what a partial picture it is. Certainly, managerialism treats universities as *organisations* – to what extent the modern business corporation is treated as the model for other organisations is a matter of taste and fashion. Certainly, managerialism repeatedly asks what needs universities satisfy, and is thoroughly informed by the neo-liberal view that the allocation of funds to competing needs is a task usually best performed through market mechanisms. But the mantra that "universities are being treated like businesses," especially when used by writers with no very deep knowledge of business, is not particularly helpful; neither is the related complaint that students are increasingly treated as customers, which often seems like a protest against the very

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[3] For a contrasting view see M. Tight, "Changing understandings of 'public' and 'private' in higher education: The United Kingdom case" (2006) 60 Higher Education Quarterly 242.
[4] On the Bologna process see L. S. Terry, "The Bologna Process and its impact in Europe: It's so much more than degree changes" (2008) 41 Vanderbilt Journal of Transnational Law 107.

idea that students might have an opinion about their education.[5] In what follows, I describe the various methods by which universities are subject to control, and leave it to others to say whether those methods are distinctively "business" methods.

III - Managerialism in Ireland

So, defining "managerialism" as rigorous control of a university's activities from both within and without, it seems clear that over the last decade Irish universities have seen considerable advances for managerialism, particularly in the *Universities Act*, but also in subsequent developments. However, Irish universities still retain considerable autonomy. Moreover, there are many developments in the administration of those universities which cannot be pigeon-holed as either "advances for managerialism" or "victories for traditionalists."

A. University credentials

It is the Irish State which decides which institutions within its borders are to be regarded as universities, and those who use the title without ministerial approval are liable to an injunction.[6] As the "grandfather" provision[7] makes clear, this was an innovation in the *Universities Act* – the State has always claimed the power to recognise universities, but until 1997 so have others within its borders; the modern provision thus has echoes of the 19th-century battles over the "university" label.

The State's power to recognise new universities is to a certain extent regulated in the *Universities Act*, which provides for input by "international experts and national experts", and requires the consent of various governmental agencies.[8] Public consideration of which additional bodies might merit recognition as universities has a

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[5] For discussion see F. Furedi, "Now is the age of the discontented," *The Times Higher Education* (4 June 2009); T. Kaye, R. D. Bickel & T. Birtwistle, "Criticising the image of the student as consumer" (2006) 18 Education and the Law 85; M. Shattock, *Managing Successful Universities* (Buckingham: Open University Press, 2003) at 93-95 [hereinafter Shattock].

[6] *Universities Act*, s. 52.

[7] An institution described as a "university" before 30 July 1996 is free to continue to so describe itself (s. 52). The principal beneficiary of this is St Patrick's College Maynooth, granted status as a Pontifical University in 1896. Thus, what was founded in 1795 as a Catholic seminary has over time been transformed into two distinct universities, one secular (NUI Maynooth) and one religious (St Patrick's College).

[8] *Universities Act*, s. 9.

distinctly managerial cast: for example, a commissioned report on the application of Waterford Institute of Technology (W.I.T.) for university status is largely taken up with a discussion of the demands which the *Universities Act* makes of them, and W.I.T.'s ability to satisfy those demands;[9] and the public debate which followed concentrated on the supposed need to alleviate the dire economic position of the South-West.[10]

Also an innovation in the *Universities Act* was explicit provision for quality assurance, which requires university activities to be assessed in some detail under official auspices. Each university is to institute procedures "aimed at improving the quality of education and related services provided by the university,"[11] and involving non-employees of that university "competent to make national and international comparisons on the quality of teaching and research and the provision of other services."[12] (This rather minimal formulation of course begs a number of questions about what "quality" is, and misleadingly suggests that judgements on quality are merely matters of technical expertise.[13]) Recommendations emerging from these procedures must be implemented, except where a stated reason against is given.[14] University quality procedures must themselves be reviewed every 15 years.[15] Quality assurance has become an accepted part of the university scene – though not sufficiently so for some, a recent Fine Gael report castigating current procedures as a "box ticking exercise"[16] and recommending a "rigorous independent quality control programme ... measuring the value of course content, teaching performance and research output within every institution across the country."[17]

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[9] J. Port, *Application by WIT for designation as a university – Advice to the Minister for Education and Science* (JM Consulting, 31 July 2007) (often referred to as "the Port report", in reference to its author, Dr. Jim Port).

[10] See *e.g.* E. Walsh, "WIT is the only contender," *The Irish Times* (25 March 2007). For discussion of an earlier application by a different institution see C. Garvey, *The Dublin Institute of Technology and university status: A case study of the application by DIT for designation as a university (1996-99)* (EdD thesis, University of Sheffield, U.K., 2008) <etheses.whiterose.ac.uk/105/> (date accessed: 29 June 2010).

[11] *Universities Act*, s. 35(1).

[12] *Ibid*. s. 35(2)(a).

[13] For discussion of "quality" and "excellence" in this context see B. Readings, *The University in Ruins* (Cambridge: Harvard University Press, 1996).

[14] *Universities Act*, s. 35(3).

[15] *Ibid*. s. 35(4).

[16] B. Hayes, "The Third Way", *Fine Gael Green Paper on Reform of Higher Education* (March 2009) at 14.

[17] *Ibid*. at 15.

A separate development is the rise of national and international university rankings, which again operate as a kind of external validation of the quality of individual universities. In principle the attention paid to rankings is baffling, as their methodology is typically crude, yet they tend to be treated as important indices of quality by both university management and would-be students.[18] One explanation for the attention paid to them is simply that there is *no* very satisfactory answer to the question they address – namely, which universities are best – and so their obvious weaknesses are overlooked.[19] But whatever may be the explanation, once again the credentials of each university are put under a harsh spotlight.

B. Autonomy of universities from government

A key feature of the *Universities Act* is the increased role it granted government in the management of universities. The Fianna Fáil opposition insisted during its passage that the *Universities Act* constituted a massive assumption of governmental power; the Labour and Fine Gael coalition proposing the legislation, while not denying the increased role for government, argued that it could better be seen as striking a new, and preferable, balance of accountability and autonomy. Whatever the truth of this is, it is complex.

State control of the university governing authorities, by the introduction of state appointees on each, received great attention during the passage of the legislation.[20] For a number of reasons, however, this does not seem to have limited university autonomy much: considerable local discretion as to the composition of governing authorities was ultimately conceded, tending to dilute the effect of state

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[18] L. Harvey, "Rankings of higher education institutions: A critical review" (2008) 14 Quality in Higher Education 187; E. Hazelkorn, "Rankings and the battle for world-class excellence: Institutional strategies and policy choices" (2009) 21 Higher Education Management and Policy 1.
[19] J. Kivistö & S. Hölttä, "Information as a regulative element in higher education systems" (2008) 14 Tertiary Education and Management 331.
[20] For an example on whether local politicians should be entitled to representation on a university's governing authority see 151 Seanad Deb., col. 128 (22 April 1997). Insistence on state representation on governing authorities was explicitly tied to state funding: those who argued the contrary were said to have "an erroneous impression that what the State gives in the back door is not to be recognised in the front parlour": N. Bhreathnach, 151 Seanad Deb. col. 173 (22 April 1997).

appointees.[21] There is a procedure for the State to suspend an errant governing authority, but it is complex, and has never to date been invoked.[22] In practice, State influence via this route has been minimal; probably the main reason is structural. Governing Authorities are now relatively large, and meet relatively infrequently. Given the increased bureaucratic demands on universities, and the role of other power centres such as the chief officer and the Academic Council (both of which are firmly established in the *Universities Act*), Governing Authorities have tended to be pushed into the background – they can and do act as gatekeepers, but the initiative in university administration lies elsewhere.

In theory, the *Universities Act* granted a considerable *freedom from* control in one respect: new university statutes were no longer to be subject to a possible negative vote in the Oireachtas.[23] In practice, however, negative votes were extremely rare, and all modern examples involved government control over university finance,[24] which is retained by the *Universities Act*. Statutes affecting pension rights are still subject to government veto.[25] Many matters with which statutes are supposed to deal – such as the constitution of important university bodies – are pre-empted by the *Universities Act*, and much of the content of university statutes is dictated by it.[26] It is therefore difficult to see this as a significant extension of university autonomy.

Of greater significance in the long-term has been the increased monitoring role of government, either by central government or through the Higher Education Authority (H.E.A.) (an autonomous body which mediates between universities and relevant ministries), with extensive duties on universities to report their current status and plans.[27] These include a requirement that each university prepare a three-year master plan ("strategic development plan") against which its future actions can be

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[21] See *Universities Act*, s. 16, a complex section which makes different provision for each of the seven universities.
[22] *Ibid*. ss. 20-21.
[23] *Ibid*. s. 33(4), repealing *Irish Universities Act 1908*, s. 5.
[24] See *e.g.* "University College, Cork, Statutes: Motion," 274 Dáil Deb. col. 421 (4 July 1974).
[25] *Universities Act*, sch. 5, para. 7. At the time of writing, the pension funds themselves are in the course of being ceded to the government under the terms of the *Financial Measures (Miscellanous Provisions) Act 2009*.
[26] For example, the requirement that dismissal procedures be specified in a statute, under the *Universities Act*, s. 25(6).
[27] *Universities Act*, ss. 37-41, 49-51.

judged.[28] This monitoring can certainly bring individual universities sharply into public gaze, as where one President had to appear before the Committee for Public Accounts to explain his university's capital deficit.[29] What is most unclear from the legislation is the extent to which the H.E.A. may actually *direct* the universities on how they may conduct their affairs. There are a few compulsory powers in the *Universities Act* – for example, university overdrafts must conform to a framework agreed with the H.E.A.,[30] and staff pay rates are set by central government[31] – but for the most part the H.E.A.'s role is to encourage, to advise, and to warn, but not to give orders: so for example the level of fees is left to universities but the H.E.A. may "advise the universities on the fees which in its opinion should be charged;"[32] and the H.E.A. may issue guidelines on "the numbers or grades of employees of the university" and "the proportion of the budget of the university to be applied to the different activities of the university," but those guidelines are explicitly stated to be non-binding.[33]

Each university, the *Universities Act* roundly declares, is "entitled to regulate its affairs in accordance with its independent ethos and traditions and the traditional principles of academic freedom ... and if, in the interpretation of this Act, there is a doubt regarding the meaning of any provision, a construction that would promote that ethos and those traditions and principles shall be preferred to a construction that would not so promote."[34] Whether the universities, in practice, have any choice whether to conform with the wishes of government, is not a matter which can be deduced from the wording of the *Universities Act*, but emerges from private negotiations between relevant parties. Often this is obscure: the "restructuring" initiative of 2004, while the result of government pressure, nonetheless publicly tended to be treated by each university as if it were a purely local issue. More open has been the Employment Control Framework, rolled out by the H.E.A. in response to the current economic crisis, and which generally forbids universities from hiring or

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[28] *Ibid*. s. 34.
[29] See Committee of Public Accounts, *University College Cork: Financial Statements 2000 to 2002*, 96 Parl. Deb. (1 December 2005).
[30] *Universities Act*, s. 38(2).
[31] *Ibid*. s. 25(4).
[32] *Ibid*. s. 40(3).
[33] *Ibid*. s. 50.
[34] *Ibid*. s. 14(1)(b).

promoting any individual – there are a few exceptions, and liberty to make special application for compelling cases.[35] The obvious point that this does not seem to conform to the legislation[36] has been made publicly,[37] but will probably become no more than a bargaining-chip in negotiations. Whether in the long-term the current legislation will remain in place, and if so what level of control it will be treated as conferring, remains to be seen.[38] It is also an open question whether the H.E.A. itself can survive. As Government (and especially the Finance Department) grow more demanding of the universities, there is less room for a "buffer" between them, and in current circumstances the H.E.A. can be little more than a bringer of bad news, with no significant discretion as to the terms of the messages. Unsurprisingly, its continued utility has been doubted.[39]

Public opinion also leaves it mark. Public attitudes to academics frequently portray the university as a gravy train, staffed either by unworldly types who would be incapable of surviving outside their privileged environment, or by idle scroungers. In this vision of things, teaching is portrayed as archaic or chaotic or both, and research as either self-indulgent or non-existent. This view is widespread. Indeed, a recent report on public expenditure (chaired by an academic economist!) gratuitously referred to the long vacation as "the extended holiday period," and recommended that universities should justify their existence by assuming a larger teaching load while simultaneously reducing staff numbers.[40] Yet government cannot be blamed for reflecting popular sentiment, except if it ignores clear evidence that this sentiment is

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[35] See S. Flynn, "Authority moves to restrict third-level recruitment," *The Irish Times* (7 July 2009).

[36] *Prima facie* at least, it is precisely what the *Universities Act*, s. 50(2), forbids: "[g]uidelines issued under subsection (1) shall not be binding on a university, and if a university departs from those guidelines [the H.E.A.] shall not, as a result of such departure, impose restrictions or conditions on the use of moneys paid to the university by [the H.E.A.] or otherwise limit moneys payable to the university by [the H.E.A.]."

[37] See especially Editorial, "Third-level recruitment," *The Irish Times* (9 July 2009); J. Bray, "Academics consider legal action over 'threats' to withdraw university funding," *The Sunday Tribune* (12 July 2009); S. Flynn, "Legal challenge to third-level posts policy may emerge," *The Irish Time*, (7 September 2009).

[38] For further discussion see F. von Prondzynski, "'Employment control' in the universities", *University Diary*, < http://universitydiary.wordpress.com/2009/07/07/employment-control-in-the-universities/ > (date accessed: 29 June 2010). At the time of writing, government control here has been slightly relaxed, but still goes further than seems justifiable on a straightforward reading of the Act. See S. Flynn, "Reduction sought in college staff numbers," *The Irish Times* (11 January 2010).

[39] For discussion see L. Holden, "Head diplomat for the universities," *The Irish Times* (13 October 2009).

[40] Department of Finance, *Report of the Special Group on Public Service Numbers and Expenditure Programmes* (16 July 2009) vol. 2 at 65.

misguided; provision of such clear evidence is becoming a strategic priority for universities.[41]

C. Autonomy of individuals within universities

Over the last decade, there has been a distinct bureaucratisation of employment practices within Irish universities. Far greater attention is paid to legal niceties on appointment, promotion and dismissal, administered by the rapidly-growing Human Resources departments. The driver of this is legislative – but it is mostly due to increasing employment rights generally, rather than any development specific to universities. The laws on unfair dismissal, discrimination and harassment have quickly become part of the fabric of university life (at least in its less happy quarters), as have the associated bureaucratic requirements surrounding any change in job status, whether upwards or downwards. Potentially most radical of all is the fixed-term workers legislation, which prohibits arbitrary dismissal of employees who have been in post for four years or more, though the most awkward question for universities – whether such workers may be dismissed if their posts are externally funded, and the funding has now terminated – seems likely to be resolved in the universities' favour.[42]

In that respect, therefore, university administration has clearly taken a very managerialist turn here. Yet while increasing managerialism was foreseen as an almost inevitable consequence of the *Universities Act* – because of the important status given to each university's Chief Officer,[43] and the apparently limitless freedom of management as to employment terms[44] – it was assumed that staff autonomy would in the future be strictly limited or indeed barely noticeable. This perception led, however, to an organised fight-back during the passage of the legislation, and its (politically weak) promoters were forced to accept a number of limits on managerial

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[41] For a U.S. perspective on this issue see N. W. Hamilton & J. Gaff, "Proactively justifying the academic profession's social contract", Social Science Research Network <ssrn.com/abstract=1444587> (date accessed: 29 June 2010).

[42] See particularly *NUI Maynooth v. Buckley* (24 February 2009, unreported), Labour Court.

[43] *Universities Act*, s. 24.

[44] Section 25(1) of the *Universities Act, ibid.*, provides that "... a university may ... appoint such and so many persons to be its employees as it thinks appropriate." Also relevant is s. 25(3): "... the employees of a university shall be employed on such terms and conditions as the university from time to time determines ... ."

power: explicit guarantees of academic freedom[45] and of the rights of those in post when the legislation took effect;[46] appointment and dismissal procedures were to be established by formal procedures within each university, which meant (potentially at least) that they would be openly debated with employees,[47] provision must be made for tenure for full-time permanent academics,[48] and a dispute-resolution procedure, involving an independent arbiter, has to be negotiated with relevant unions, and expressed in a university statute.[49]

These and other factors have ensured that while university management's powers are now considerable, they have not in fact tipped the balance against their staff much, if at all. Whatever may have been the intent behind the *Universities Act*, it has not put much of a dent into traditional academic tenure. Those with tenured positions before the *Universities Act* came into force retain their rights into the future, as was recently emphasised in *Fanning v. University College Cork*.[50] All those appointed to full-time academic appointments – a much wider category than those who traditionally had statutory rights – are now also entitled to "tenure," and while the precise significance of that word is not yet established, clearly it denotes something substantial.[51] (Whether it prohibits compulsory dismissal for redundancy is a matter of current controversy.[52]) The point that most of the leaders of academic units have tenure, of one sort or another, has certainly placed a brake on academic restructuring: it has not prevented it entirely, but it has slowed it down. When combined with the impact of ordinary employment law, the rights of academic staff to impede reorganisation are now considerable.

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[45] *Ibid*. s. 14(2).
[46] *Ibid*. s. 25(8).
[47] Appointment procedures require a university statute or regulation (*ibid.*, s 25(1)); procedures for suspension and dismissal require a university statute (*ibid.,* s. 25(6)).
[48] *Ibid*. s. 25(6) (see definition of "officer" in s. 3).
[49] *Ibid*. s. 26.
[50] [2008] I.E.S.C. 59.
[51] See especially *Cahill v. Dublin City University* [2007] I.E.H.C. 20, where arbitrary dismissal on notice was held incompatible with s. 25(6), on the grounds both that this denied the employee "tenure", and that it amounted to a denial of appropriate "procedures" (a mere dismissal not in itself constituting a procedure). The point was not addressed on appeal ([2009] I.E.S.C. 80), where the Supreme Court affirmed the decision in Cahill's favour on the simple ground that the procedures followed were unfair.
[52] In *Cahill v. Dublin City University* [2007] I.E.H.C. 20, Clarke J. considered that "tenure" could in some circumstances at least be compatible with compulsory redundancy (para. 6.3), though he did not state precisely what those circumstances would be. The point was not addressed on appeal ([2009] I.E.S.C. 80).

D. Teaching as an end in itself

Clearly also the *Universities Act* has placed limits on how universities can teach. These are, however, rather light-touch controls, which can only have a substantial effect when measured over decades of operation. The Quality Assurance mechanism provides a pressure towards a more bureaucratised approach to teaching, and national co-ordination here is provided by the Irish Universities Quality Board. The National Framework for Qualifications has similarly vague and long-term effects. Teaching qualifications for academic staff, largely unheard of in the last century, are making creeping gains, though they are strongly resisted by many staff, by scepticism that there is any skill which can be "taught" by the methods currently employed, and resentment at the implied bracketing of university teachers with school teachers. The effects are patchy. Student representation on the more important committees, while now taken for granted, probably does little to change their deliberations; the establishment of Quality Departments within the university administration seems likely to have a more lasting influence. Also likely to be significant to an increasing extent are issues on equality of access: at the time of writing, public debate has focussed almost exclusively on the issue of whether fees are charged to students, a vital matter to be sure, but if a serious attempt is to be made to provide university education equally across all socio-economic groups then this has serious implications for teaching practice.

E. Research as an end in itself

Finally, managerial control of research has decidedly deepened, most noticeably in research areas requiring significant funding. With research grants a major component of university funding, each university must necessarily devise a research strategy, which will favour some teams and disfavour others.[53] A growing divide is apparent between Science research and Arts/Humanities research, which may be summed up as being that the Scientists have been managerialised to a much greater extent than the Artists; the Arts are still to a great extent the domain of the

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[53] On university strategies in the light of research review regimes see F. Rossi, "Universities' access to research funds: Do institutional features and strategies matter?" (2009) 15 Tertiary Education and Management 113.

traditional, individual scholar, and so the organised committee-led approach of the Scientists is alien to them. There is little pressure from the Artists to change that situation, and little likelihood that the Arts will receive the high level of funding for which the scientists are competing[54] – the government's failure to treat Arts research as being of significant public benefit starves it of funds, but also confers a high measure of freedom on its practitioners.

Nonetheless, there are continual fears that managerialism is the way of the future, and that (as has happened in the U.K.) *all* Irish research will be pushed down the road of constant evaluation by peer-review or bibliographic indices, leaving universities no alternative but to respond with a more organised strategy. Little of this is, however, now apparent in the legislation, where all the talk is of (a rather vaguely-defined) academic freedom;[55] laws regulating research are generally notable by their absence.[56]

IV - Managerialism and the *Universities Act* in context

Clearly therefore the *Universities Act*, despite its explicit guarantees of autonomy,[57] has coincided with a major growth of managerialism – defined as increased control of university activities from both within and without. In some cases the increased control can be directly traced to the *Universities Act*, in other cases the influence is less direct and may be doubted, in yet others the growth in control is clear but the *Universities Act* seems to have nothing to do with it. It is also clear that some of the more important ways in which managerialism has been resisted can be traced to amendments to the statute, inserted by opposition groups during its passage through the Oireachtas.

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[54] Though note the recent establishment of the Foresight in the Arts, Humanities and Social Sciences (F.A.H.S.S.) exercise, under the auspices of the H.E.A.

[55] *Universities Act*, s. 14(2).

[56] See especially the recent decision by University College Cork that embryonic stem cell research was not in principle objectionable; an issue, one might have thought, to be resolved at national level. See B. Roche, "Stem-cell vote by UCC governors paves way for campus research," *The Irish Times* (29 October 2008).

[57] *Universities Act*, s. 14(1).

Whether the main charge brought against the *Universities Act* – that it represents a massive and unjustified extension of governmental control over universities – can be made out, depends on more overtly political arguments. There never was a golden age in which universities were free of all governmental influence; any review of Irish university history, in any period, shows the State very much concerned with which bodies should have the title "university," and how those bodies should conduct themselves. There are differences, certainly. Before the 20th century, the State's concerns would have been relatively little to do with internal university management, and much more to do with the (political and religious) loyalties of the universities and their members. These days are behind us, and universities are now incomparably richer, more scholarly and more technically adept – but this is in large part due to the considerable state investment in them. It would be naïve to assume that the State would bankroll the universities while paying little or no attention to how the money is spent; naïve also not to realise that a failure by universities to state clearly what their mission is makes it inevitable that government will assert its own view of the matter. That governments will seek greater and greater control is a given; how universities will react against this, and with what result, remains to be seen. Talk of more or less managerialism is therefore talk about where the balance between control and freedom will be set, not about a "victory" for "one side."

It would also be a mistake to be so impressed by the rise of managerialism as to think it the only issue of importance within Irish universities, or that every important development within the universities can be seen as either promotion of, or resistance to, managerialism. Other factors to consider include:

(i) *existing administrative structures* tend to take on lives of their own, with no clear function, or with a function predicated on past events or past appointments with questionable modern relevance. So bodies such as the National University of Ireland and the H.E.A., not to mention countless lesser structures within individual universities, may exist in a kind of limbo while their right to exist is debated all around them;

(ii) as noted above, while *the legal system* can be a tool of university management, it can also be a tool for resistance to it. In fact, the law pursues many goals, some of which cut right across university concerns. The increasing

involvement of the law in internal university disputes seems to be an inherently ambiguous phenomenon, being blamed (according to taste) on either an increasingly intransigent management, an increasingly insubordinate staff and student body, or an unnecessary formalisation of disputes which would have occurred anyway.[58] Clearly the courts' traditional "academic deference" – deference, that is, to decision-makers taking distinctively academic decisions – is on the wane, though it is not absolutely clear what is replacing it;[59] and the significance of traditional academic freedoms is in doubt, given that they were framed in an earlier age when freedom was in short supply. (If *everyone* has a right to intellectual freedom, does it still make sense for universities to claim some special "academic freedom"?[60]) On the ground, academic freedoms are increasingly merging with the more ordinary sort: the law of academic tenure is merging into general employment law, the rights of students are increasingly a mere special case within consumer protection law; and

(iii) finally, *the influence of the market* has many aspects, some of which undoubtedly enhance central control and accountability, others of which have very different effects – inasmuch as worrying about the market effects of their decisions give academic mangers a reason to care what the world outside the university thinks of their actions, many of the results diminish central control, rather than the reverse.

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[58] For some of the issues see M. Davis, "Students, academic institutions and contracts – A ticking time bomb?" (2001) 13 Education and the Law 9; M. Newman, "Persecution (is) complex," *The Times Higher Education* (21 May 2009); and H. Astor, "Australian universities in court: The causes, costs and consequences of increasing litigation", Social Sciences Research Network, <ssrn.com/abstract=1294021> (date accessed: 29 June 2010). For a U.S. perspective see A. Gajda, *The Trials of Academe: The New Era of Campus Litigation* (Cambridge, Massachusetts & London: Harvard University Press, 2009).

[59] *Quinn v. Honourable Society of King's Inns* [2004] I.E.H.C. 220, while respecting traditional academic deference by refusing to investigate whether an examination paper was given the right mark, nonetheless made it clear that a challenge on procedural grounds (such as a failure to allow scrutiny by an extern examiner) might very well succeed. For international discussions of academic deference in the courts see M. Davies, "Challenges to 'academic immunity' – the beginning of a new era?" (2004) 16 Education and the Law 75; J. M Flanders, "Academic Student Dismissals at Public Institutions of Higher Education: When is Academic Deference Not an Issue?", Social Sciences Research Network,, <ssrn.com/abstract=1034476> (date accessed: 29 June 2010).

[60] S. Fish, "Academic Freedom Is Not a Divine Right," *Chronicle of Higher Education* (5 September 2008).

More ephemeral events also leave their mark, in some cases long after they have themselves evaporated. The *Universities Act* itself is shot through with reminders of the peculiar political circumstances in which it was born, its promoters being powerful enough to force the legislation through, but not powerful enough to resist changes explicitly designed to subvert it. A stronger government might have produced a very different statute; a weaker one might not have produced any at all. And the political circumstances at the time at which this article is being written are also peculiarly ominous: increasing government scepticism over how universities have used their freedom;[61] an opposition either even more sceptical or simply indifferent on the issue; and an overriding political imperative to reduce public spending, which tends to favour a re-balancing of university activities away from research and towards undergraduate teaching.[62] Whether the resulting changes to universities and their governance will have long-term effects, or will simply blow over, remains to be seen.

V- Irish university management in fact

The *Universities Act* has little explicit to say on the internal management of Irish universities. Probably the key provision is this: "[t]he chief officer of a university shall, subject to this Act, manage and direct the university in its academic, administrative, financial, personnel and other activities and for those purposes has such powers as are necessary or expedient."[63] So the chief officer (president or provost) must "manage and direct," subject only to the *Universities Act* itself – "be ye never so high, the law is above you" – and to the Governing Authority[64] (though as the chief officer is the most powerful member of that body, and a substantial number of the other members are university employees reporting to the chief officer, it is not obvious how real the restraint is). Similarly vague is the position of the Academic Council, which on the wording of the *Universities Act* might be roughly co-equal to

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[61] See *e.g.* F. von Prondzynski, "Remodelling the universities", University Diary (24 July 2009),< http://universitydiary.wordpress.com/2009/07/24/remodelling-the-universities/> (date accessed: 29 June 2010).
[62] See C. Scott, "Snipping or re-shaping the universities?" Ninth Level Ireland (20 July 2009), < http://9thlevelireland.wordpress.com/2009/07/20/guest-blogger-colin-scott/> (date accessed: 29 June 2010).
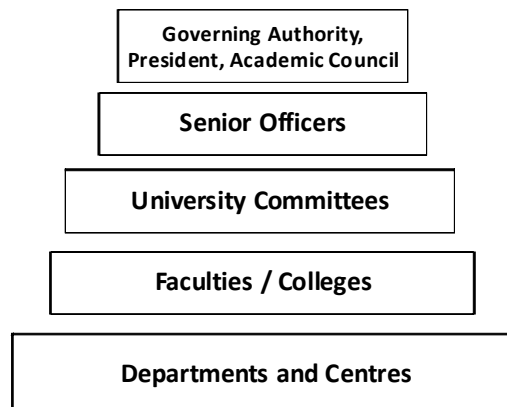[63] *Universities Act*, sch. 4, para. 1.
[64] *Ibid.* sch. 4, para. 2.

the chief officer (the Academic Council is subject to "review by" the Governing Authority,[65] whereas the president/provost is "answerable to" them).[66] As for the rest of the university, it acts at the president's/provost's behest, as he or she "may delegate any of his or her functions to an employee of the university ... unless they are so delegated to the chief officer subject to the condition that they shall not be sub-delegated, and the employee shall be answerable to the chief officer for the performance of those functions."[67]

A. Top down?

This naturally suggests a top-down view of the university, with information and responses to consultations flowing up the pyramid, and power and authority flowing downwards. This top-down view has the merit of being comprehensible – it suggests clear lines of authority, with rational consideration of all points of view, culminating in clear and authoritative resolution of difficult issues, culminating in a coherent overall policy. There seems, in theory, no reason why the system cannot be scaled up as universities expand, and as they have to deal with a wider set of issues: still the steady flow of documents up and down the ladder should be capable of dealing with whatever emerges.

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┌─────────────────────────────────┐
│      Governing Authority,        │
│  President, Academic Council     │
├─────────────────────────────────┤
│         Senior Officers          │
├─────────────────────────────────┤
│       University Committees      │
├─────────────────────────────────┤
│        Faculties / Colleges      │
├─────────────────────────────────┤
│     Departments and Centres      │
└─────────────────────────────────┘
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A top-down view of Irish academic management

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[65] *Ibid*. s. 27(1).
[66] *Ibid*. sch. 4, para. 2.
[67] *Ibid*. sch. 4, para. 3(1).

But that is theory; in practice, scaling-up changes the nature of the university. In a traditional university, academic management could be relatively "flat." Each academic would be immediately answerable to their professor, with whom they might (in principle, and often in fact) have regular dealings; the professors themselves would be immediately answerable to their president/provost, with whom again they might (in principle, and often in fact) have regular dealings. Sheer numbers make such a "flat" management structure impossible today. The number of levels of administration increases, as does the number of officers or bodies with some sort of authority over others. Each level deals with such a very different class of issue from those above and below, so that mutual incomprehension grows; where proposals are discussed at a number of different levels, their point may be entirely lost at some levels. (As an example, try asking a random sample of university employees what the recent "restructuring" exercise was designed to achieve.) Certainly the production of a university-wide strategic plan, most of the content of which is incomprehensible to most of those supposedly guided by it, is likely to promote cynicism, rather than the sense of communal purpose which is presumably its aim.

B. Middle management?

The "flat" university structure is irretrievably gone. The multiplicity of tasks which the modern university must perform, and the high level of internal coherence it is expected to have despite the diversity of its activities, together create the need for a considerable number of academic middle managers. Yet this class of managers – if indeed they form a coherent class – has rightly been treated as problematical. Who are they, and how have they acquired the right skills to do the job (if they have)? The abilities and loyalties of this category of academic middle manager are much debated in the literature,[68] with a tension emerging in the role they must play: are they

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[68] See *e.g.* T. Kallenberg, "Strategic innovation in HE: The roles of academic middle managers" (2007) 13 Tertiary Education and Management 19; M. V. da Motta & V. Bolan, "Academic and managerial skills of academic deans" (2008) 14 Tertiary Education and Management 303; C. Whitchurch,

primarily managers, attempting to support and guide the university's activities as a whole, or are they primarily academics, continuing the activities of their particular specialism at a higher level? In other words are they truly (in Richard Winter's succinct phrase) "academic managers," or rather "managed academics"?[69]

Various factors conspire towards making these middle managers amorphous when considered together. There is no agreed career path leading to where they are, and those who do make it will have very different skill-sets. (A purely managerial career starting outside the university, or even within it, will have involved very different capabilities from an academic career culminating in a managerial role.[70]) The current impermanence in higher management structures – frequent "restructuring" exercises with poorly-defined objectives – may give senior administrators a wide variety of experience in a relatively short time, but does not make for a very coherent overall university strategy. There are sometimes elements of a "permanent civil service" emerging, able to take a long-term view of the university's interests rising above any current crisis, but they are infrequent; and not everyone thinks that this is to be encouraged. Attempts to boost management salaries at the high end have not met with official favour;[71] and some, such as Michael Shattock, decry traditional "leisurely decision-making" and "the stately process where ideas floated upward from the lower rungs of a committee hierarchy and decisions flowed back down from the committees systems' upper reaches some months later;"[72] far preferable, in his view, is a significant degree of devolution as close to departmental level as possible, which would reduce the power and status of the middle managers considerably.[73]

"Professional managers in UK Higher Education: preparing for complex futures," *Leadership Foundation* (November 2008).

[69] R. Winter, "Academic manager or managed academic? Academic identity schisms in higher education" (2009) 31 Journal of Higher Education Policy and Management 121.

[70] For discussion see H. Fearn, "Business divisions," *The Times Higher Education* (21 February 2008).

[71] "Universities pressured to defend €6m salary spend," *The Sunday Tribune* (7 December 2008); S. Flynn,"UCD agrees to abolish special payments to 60 top academics," *The Irish Times* (26 August 2009).

[72] Shattock, *supra* note 5, at 37.

[73] *Ibid*. at 31, 37, 69.

There is, however, little evidence of significant devolution in current arrangements. Rosemary Deem's conclusions as to U.K. universities could equally well have been written about their Irish counterparts:

[t]hough devolution of finance to cost centres such as departments is now quite widespread ..., the resource allocation models we encountered ... rarely, if ever, included any autonomy on new staffing decisions and mainly what was devolved was the responsibility to raise money and to worry about deficits. Not only did middle managers feel that they were not trusted. This feeling extended, in our case study data, to perceptions of a range of other employees too, all of who felt that they were not trusted and that transparency tended to run in one direction only, from the bottom of the organisation to the top but not the other way around ... .[74]

(i) There is much talk of the merits of devolution, but it is not very obvious what "devolution" would look like – and even the most optimistic descriptions of it seem, at best, a very pale shadow of the autonomy that departments had in earlier decades. The traditional control points are still the most prominent ones: control over how much money each department has, and over employment status (who is employed in the department and at what grade). But these control points are now exploited to a very high level: *modern accounting technologies* allow for much more detailed monitoring, and hence more detailed instructions as to precisely how money should be used. Purchasing decisions which in earlier decades would never have come to the attention of central administration are now routinely examined in detail, or even anticipated with a view to reducing local discretion. Increasingly, the ability to nuance the financial system is used as an instrument of policy, by rewarding ("incentivising") desired behaviour and punishing the undesired; and

(ii) *appointment and promotion* has become ever more rule-bound and bureaucratic; as the number of policies the university is committed to implementing increases, appointment and promotion procedures increasingly demand that candidates demonstrate their own commitment to them, in all their many activities. The nature of the process is also changed by the

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[74] Deem *et al.*, *supra* note 1, chap. 3 at 67, 95.

broadening of those taking the decision: at the higher levels at least, it is now relatively little about demonstrating skills in relevant academic subject areas (few on the decision-making panel would be qualified to judge such a demonstration) and much more about showing a good fit between the candidate's public profile and the needs of the university as seen by its senior decision-makers.

Control also seems to be expanding outside these traditional confines, as more and more statistics are demanded, and the attempt is made to knit individual departmental activities into a coherent university policy. Indeed, a perverse dynamic seems to operate, by which activities on which no figures are available are not taken seriously, so that those who wish to promote them positively *invite* official surveillance. (So, for example, many researchers who know full well the resource-sapping disadvantages of Research Assessment Exercises nonetheless clamour for one in Ireland, suspecting that it is the only way to "prove" that competent research is being done.) At present, allegations that Irish universities are not giving "value for money" are a major pressure towards workload models and Full Economic Costing of activities, which of course open the way to an even more detailed bureaucratic control over each academic's activities.

C. Bottom-up?

But most departmental members have little interest in making the university run like a well-oiled machine, especially as that vision consigns them to the role of mere obedient cog. Viewed from the departmental level, both the perspectives and the loyalties are very different – which gives the university much of its character, and makes it so hard to govern. As a generality, the academics' viewpoint and allegiance will be discipline-based rather than tied to the particular institution. Fidelity to the university as a whole may be weak, or indeed (if it conflicts with fidelity to discipline) hardly discernable at all. In principle, we might expect institutional loyalty to be stronger in Ireland than in (say) the U.K. or the U.S., given that job mobility is lower. In practice, this does not seem to be so: each academic's detailed knowledge of the university is typically about their own department or related departments, their contact

with the rest of the university being less frequent and typically purely social. Their loyalty is owed to the people they know and whose activities they understand, not to others, with whom they might occasionally compete for parking space but whom they otherwise ignore. And whatever rationality and purpose may inhere in central university processes is very probably not apparent from the point of view of typical department members.

This limits the influence that central university management has, or can possibly have, on the individual departments, and hence on the university's activities as a whole. The very lack of understanding between management and departments provides much of the protection the departments need: appeal to disciplinary norms and values can be powerful, as well as sufficiently inscrutable to prevent over-close management surveillance.[75]

Governing Authority, President, Academic Council
Senior Officers

The rest
of the university

Related Departments and administration
Our Department

*A view of Irish academic management
from the perspective of any single department*

D. An outside view?

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75 For discussion see M. O'Brien, "Collegiality and change on legal education – A case of herding cats?" [2009] 3 Web Journal of Current Legal Issues <webjcli.ncl.ac.uk> (date accessed: 29 June 2010).

An interesting side-debate in this, though it is rarely tackled head-on, is the role of outsiders to the university. The sterility of any conflict between departments and middle-managers might in theory be moderated by appeal to relevant outside experts. Many factors interact here. The use of outsiders (as referees, as externs, as quality reviewers, as visitors) is in many ways quite traditional and established;[76] but so equally is suspicion of outsiders, principally because they are usually assumed to be an ally of the insiders who selected them. In practice, referring the issues to non-aligned outsiders only rarely provides any respite from sectional interests; and the disputes over which outsider to chose can be fairly intense.

VI – Conclusion

Managerialism in Irish universities is therefore a fact, and a fact which is growing in importance. Tighter central control of university activities results in more information about their activities, which is in turn treated as the revelation of further "problems," the remedy for which is taken to be an even deeper control. Countervailing forces rely heavily on the extreme sub-division of knowledge now apparent throughout academia, whereby each discipline is almost incomprehensible to others – and hence very hard to prescribe rules for.

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[76] For criticism of the system of external examiners see R. Attwood, "Outside looking in," *The Times Higher Education* (25 June 2009).