

Manchester Polytechnic

Director ~~XXXXXXXXXXXX~~

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From the Director

29 March 1988

The Rt Hon Kenneth Baker MP
Secretary of State for Education & Science
Department of Education & Science
Elizabeth House
York Road
LONDON
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Dear *K. Baker*,

I am enclosing a paper commenting on those sections of the Education Bill which deal with the governance of the Polytechnics and Colleges, which are a cause of some concern to me. You will see that I believe that they are in their present form a "fudge" and, more worryingly, one that would disable institutions in the new climate in which they are expected to function in a more dynamic manner.

I have been particularly impressed by the insistence of representatives of industry, business and the professions that provisions for governance should reflect a clear logic of responsibility and accountability in which decision taking can take place.

I realise that the Bill is now well advanced in the legislative process. Nevertheless, I do believe that proper attention should be given to the implications of the proposals relating to governance so that those who are subsequently left with the job of governing, leading and managing institutions do so within a framework which will facilitate rather than hinder the achievement of the objectives the Government has set.

I have copied the paper to Robert Jackson, and to Richard Bird, Anthony Chamier and Ron Dearing, with whom I have casually raised some of the issues.

With best wishes,

As ever,

K. Green

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THE GOVERNANCE OF POLYTECHNICS AND COLLEGES
AFTER INCORPORATION

Summary and Recommendations

- (i) The arrangements for governance outlined in Schedule 5 of the Bill are a "fudge", and a dangerous one in that the hybrid of managerialism and representationalism reflected there brings together two notions which are essentially irreconcilable. No rationale is provided for these arrangements and, therefore, no indication of their appropriateness to the powers and responsibilities of the corporate bodies which are to be created. It is essential that these should reflect a clear logic of responsibility and accountability in which decision taking can be located. Anything less will inhibit the recruitment as governors of the right kind of people from industry, business and the professions, the exercise of proper management and leadership at senior levels within institutions, and the achievement of the radical objectives outlined in the Government's White Paper "Meeting the Challenge".
- (ii) The White Paper promised that "governors will have wide powers to determine the affairs of the institution". These should embrace all aspects of policy including academic policy. Governing Bodies should be modelled on the lines of those of private companies ie small, non-representational, composed of non-executive and executive members, and looking to the director/principal as chief executive/managing director for policy advice. Greater emphasis should be placed on the responsibilities and accountability of senior staff at all levels for the exercise of academic leadership and management. Academic Boards should not be entrusted with responsibility for academic policy but, rather, for the quality assurance of academic provision. Infra structures should be modified accordingly.
- (iii) Schedule 5 of the Bill should be amended to provide a membership of governing bodies compatible with the principles outlined in (ii). Failing that, those responsible for drafting Schedule 5 in its

current form carry a heavy responsibility for explicating the rationale for the membership outlined there and, in particular, how this relates to the powers and responsibilities of governing bodies, how they are expected to discharge these in practice, and how all of this reflects on the powers and responsibilities of the director/principal as chief executive.

- (iv) If there is no appetite for amendment of Schedule 5, then the only alternative available would seem to lie in the framing of the model articles of government referred to in Clause 86. Whether this will suffice is debatable, since 'representation' quite properly carries connotations and expectations of role. Nevertheless, if this is the only way forward, model articles of government should embrace the principles and practices recommended in this Paper and its Summary. There should be no illusion that what is at stake is the introduction of a proper framework in which institutions of higher education can develop and be managed in the 1990s.

K GREEN
March 1988

THE GOVERNANCE OF POLYTECHNICS AND COLLEGES
AFTER INCORPORATION

1. Introduction:

The question at issue is whether the arrangements for the governance of institutions outlined in the Education Bill provide a framework appropriate to the realisation of the objectives for higher education outlined in the White Paper.

Recent discussions with representatives of industry, commerce and finance, aimed at securing their interest and possible participation in the future governance of Manchester Polytechnic, have highlighted the importance of a clear logic of responsibility and accountability in which decision taking can be located. As experienced members of the boards of companies, they have been at pains to stress issues relating to the legal status of the body corporate; the powers and responsibilities of its board; its composition and size; the powers and responsibilities of the director (Managing Director?) in relation to the board; the implications for any infra structure; liabilities and assets; investment and reserves etc. Understandably, they are unwilling to commit themselves without a clear indication of their roles and responsibilities pre and post incorporation.

But there are other factors. The White Paper promised "the governors will have wide powers to determine the affairs of the institutions" (para 4.13). The emphasis on the majority role to be played by those from industry and commerce in governance represents a new departure. It would not seem, therefore, that this was intended to be constrained to overall responsibility for the financial affairs and general conduct of institutions. The very process of selection of individual governors suggests that they are expected to have and to take an interest in educational matters from an informed perspective. This goes far beyond the traditional divorce of responsibilities between governing bodies and academic boards, councils and senates, and, quite properly in my view, addresses head on the problems identified by Jarratt and the assumptions of accountability implicit in notions of collegiality and legitimation by academic communities as self referencing groups, interests which have dominated higher education for too long.

2. Governance as outlined in the Bill:

Schedule 5 of the Bill, as amended, indicates that:

- a) up to 13 independent members of the governing body of the institution are to have "experience" of industry, commerce and the professions, whilst 4-8 initial nominee members are to be "representative" of various interests within the institutions and of the LEAs, and the remaining 1-4 co-opted on the basis of "relevant experience";
- b) there will be an academic board;
- c) following the appointment by the Secretary of State of the first members of the governing body, it may subsequently redetermine membership numbers but not categories.

Clause 90, as amended, provides for the designation of a successor company to a higher education corporation which is a company limited by guarantee formed and registered under the Companies Act 1985, whose memorandum and articles of association have been approved by the Secretary of State. It is, therefore, in principle possible to create a board similar in character to that of a private company, whose membership is quite different from that listed in Schedule 5. There remains the question as to whether the Secretary of State would be prepared in practice to approve memoranda and articles of association drawn up with that in mind. That, in turn, suggests that a rationale exists for the preferred model outlined in Schedule 5. Does it?

3. Is there a rationale?

Schedule 5 outlines a membership of the governing body which is pluralistic, viz. up to 13 independent members with "experience" of industry, commerce and the professions, 4-8 initial nominee members who are "representative" (1-3 of LEAs, 1 teacher nominee, 1 general staff nominee, 1 student nominee, and may include up to 2 academic nominees nominated by the academic board or, if there is none, by the teachers at the institution), 1-4 additional nominee members (of which 1 shall be a person who has experience in education, and of the other 3 permitted, 1 shall have educational experience and the other 2 need not have such experience).

This suggests that the rationale for membership varies ie some members are "representative", others not. Indeed, this was confirmed by Robert Jackson in the Commons Standing Committee on the Bill (11 February 1988) when he said "The Government have had to make a judgment about whether we should think in terms of an exclusively management-directed governing body or a representative governing body. We have come up with a hybrid of the two. It must be small enough to be a reasonably effective managerial entity but large enough to be reasonably representative. That is the proposition embodied in the Bill and we believe that it is a sound proposition".

But is it a 'sound proposition'?

Boards of companies are small, indeed, it is said, the smaller the better. Often they have 9-10 members. The membership outlined in Schedule 5 cannot in principle total fewer than 13 and is, in practice, likely to be 15-20. It will therefore tend to break up into interest groups, lack cohesiveness and the unanimity of purpose which characterises the work of company boards.

This will be exacerbated by the presence of "representatives". Boards of companies do not have 'representatives', they have members, executive and non-executive. If some members are to be 'representative', what and whom are they representing? What, then, is the rationale for the presence of a 'representative' of the students, teaching staff, staff as a whole, LEAs? As 'representatives' will they consult, represent and report back to their constituencies? If so, then there can be no confidentiality, another important characteristic of the conduct of business at board level in companies. Industrial, commercial and professional members will not therefore feel able to act as they are accustomed to as members of boards. They too can only lapse into 'representation'.

Even odder is the proposal that membership may include up to 2 nominees nominated by the academic board, or if there is none, by the teaching staff of the institution, as if these are viable alternatives. Is there an implication that the academic body corporate may be the academic board or the teaching staff as a whole? Can these be sensibly postulated as alternative sources of academic policy, or are they thought to represent alternative models of the 'academic community' (whatever that means)? Whichever, what is the rationale for such 'representation'?

Is there an assumption that the academic board is responsible for academic policy? If so, are these two 'nominees' on the governing body to reflect that fact? If so, where does that leave the director/principal for he/she certainly cannot be regarded by the governors as managing director/chief executive in the sense commonly understood in the business world unless he/she is responsible to them for all aspects of policy? And, in the absence of an academic board, what could conceivably be the role of two nominees of the teaching staff as a whole?

Certainly, it does seem that the intention is that the director/principal should be regarded as chief executive. In moving an amendment to Clause 86, Robert Jackson said "The purpose of the amendment is to make it explicit that articles of government may provide for the delegation of functions of the board of governors and of the academic board to the principal or the director of the institution. It is sensible that the board of governors be able to do that because the principal or director is the chief executive." (Standing Committee, 11 February 1988.) One can agree that it is indeed sensible, at least so far as the board of governors is concerned, though it is quite a different matter to propose that an academic board should be able to delegate functions to a director/principal who cannot and should not, by the very nature of his office, be held to be responsible to such a board or to any other than the governing body itself. In what sense, then, is the director/principal to be chief executive, in relation to a board which contains 3-5 members of staff/students representing someone and something inside the institution of which he/she is head? Is the reality a lack of confidence in the office of director/principal and therefore the presence of internal members who will act as checks and balances? But that is a subversive notion!

Mr Jackson speaks of the board as being 'reasonably representative'. Putting aside considerations of what could count as being unreasonably representative, 'representation' is clearly seen as a virtue, but no explanation is provided. It is surely more 'reasonable' to ask whether representation is compatible with the powers and functions of these higher education corporations as outlined in the Bill (Clause 85). These relate to the provision of higher and further education and the conduct of research and other such activities. But they also include powers to receive property, rights and liabilities, the provision of facilities, the supply of goods and services, the acquisition and disposal of land and

property, contracts relating to the employment of staff, powers to borrow, mortgage, invest etc. It is difficult to see why 'representation' is thought to be appropriate to the discharge of these functions. Indeed, in some cases, such as contracts relating to employment, the supply of goods and services etc, such members might be held to have an 'interest' which essentially disqualifies them from being able to act as the 'employers', which, as members of the board of governors of these corporate bodies, they must presumably ultimately be.

Perhaps, then, 'representation' is merely tokenistic? Those who take such a view can have had no experience of the way these things have worked in practice in higher education over the past twenty years!

Nor is it clear what Robert Jackson means by "an exclusively management-directed governing body" unless this is a synonym for a company board as commonly understood in business. If so, then it must be seriously questioned whether the implications of rejecting this notion for that of a "hybrid" of "managerialism" and "collegialism" have been thought out. The most important issue here is that of accountability. The "independent" members drawn from industry, commerce, the professions, education (and the LEAs!) cannot be there because they are in any sense "managerial" (which is in any case the function of the executive member(s)), but because they are adjudged on the basis of their experience, knowledge and commitment to be suitable members of that main board which determines overall policy and direction. In what sense can the director/principal be accountable to the internal members who are "representatives"?

Thus, it would seem that the proposals for governance lack a clear rationale, will not produce a body small enough to be effective, are likely to generate divisions within its membership because of differing expectations of role, and leave the director/principal as "piggy in the middle"!

At which point it might be argued that we must await clearer articulation of the articles of government as outlined in Clause 86 of the Bill. Before addressing that issue, however, and, hopefully, suggesting ways forward, it is useful to consider why the governance issue is so messy.

4. Traditional Models of Governance:

It is tempting to conclude that 'representation' is retained as a concept of governance because of its currency in institutions of higher education, and in polytechnics and colleges in particular since the late 1960s following the publication of the Weaver Report.

Thus, articles of government, though differing in detail from institution to institution, have differentiated between the responsibilities of:

- a) the Local Education Authority which, "after consultation with the Governors shall, within any limits specified by the Secretary of State for Education and Science, be responsible for determining the educational character of the Polytechnic and its place in the local educational system";
- b) the Governors who, subject to (a) "shall be responsible for the general direction of the Polytechnic and for the broad pattern of courses provided";
- c) the Director who "shall be responsible to the Governors for the internal organisation, management, and discipline of the Polytechnic and shall exercise supervision over the academic and non-academic staff"; and
- d) the Academic Board which "shall be responsible to the Governors for the determination of the main academic policy, including the place of research in the Polytechnic; the admission of students, the assessment of their work, the evaluation of their progress, and, where necessary, the exclusion of students whose work is unsatisfactory; the conduct of the examinations of the Polytechnic including those conducted on behalf of outside bodies, and the observance of any special requirements of such bodies; the awarding of diplomas, certificates and other distinctions of the Polytechnic; such other matters as may be referred from time to time by the Governors"..... "advise the Director on the academic structure of the Polytechnic, the preparation of the estimates, and the arrangements to be made for the appointment and promotion of academic staff, including the apportionment of the total number of academic staff between faculties, departments or subjects"..... "set up Faculty Boards and

Departmental Boards to which it shall delegate its functions as far as practicable in matters not affecting other Faculties or Departments respectively or the Polytechnic as a whole"..... "may set up such other committees as it thinks fit.... Any committee of the Academic Board may establish sub-committees and determine their membership and functions" (quoted from the Articles of Government for Manchester Polytechnic).

Clearly, in this model the responsibilities of the Director are specifically restricted to matters of management, structure and discipline, whilst matters of policy are the province of governing body and academic board with a direct line relationship between the two. Further, the academic board has far reaching powers to establish and delegate functions to other boards, irrespective of other considerations such as time, cost and the deployment of resources.

This differentiation of responsibilities, allied to the categories of membership of these various boards, has meant that the prevailing climate of governance over the past two decades has been that of 'participative democracy'. The reality is one of elaborate committee structures (at Manchester there are over 70 such committees in addition to 300 course committees). Governing body debates have been dominated by the interests of those constituencies (particularly staff, student and trade union and local authority) whose representatives operate and combine as groups within a group to ensure that their preoccupations are protected and enhanced. Academic Boards have similarly tended to act to protect the status quo with little appetite for the difficult decisions.

In such situations there is no place for 'leadership', indeed the notion is abhorrent. Thus, "change" and "progress" have been largely effected by strategies and methods of which Machiavelli himself would have been proud. Meanwhile, institutions have increasingly become tired of "Weaverism", recognising it as costly, time-wasting and irrelevant to the job to be done. Certainly, there have to be channels of communication, outlets for the expression of views and concerns, inputs to decision making. However, these must operate in a context where the system of governance reflects a logic of responsibility and accountability compatible with the objectives of the organisation and where decisions must and can be taken. The nonsense of the prevailing model of direct responsibility of the academic board to the governing body for academic policy is that no one can be held accountable! Indeed, the weakness of a system which is based on committees is that no one person can be

blamed, so no one can be held to account (nor is the option of getting rid of the committee available).

The justification offered for such a division of responsibilities normally invokes some notion of the academic community as the only body fit to adjudicate in such matters. It has its historical base in notions of communities of scholars, its modern expression in collegialism. Authority derives from knowledge of the subject, which is no single person's prerogative, and therefore, since contested, the province of the whole academic community. This seductive argument can be deployed in a number of forms - to repel outside interference ('academic freedom') - to restrict the activities of governing bodies to 'non academic' matters such as finance etc (university councils and polytechnic governing bodies) - to marginalise the activities of directors and vice chancellors ('no one person can represent the complexities of academe which are a feature of the large institutions of higher education').

Certainly, it succeeded in seducing Jarratt, whose Report failed to address head-on the reasons why universities are ineffective in both a managerial and policy making sense. Instead, it confirmed the traditional roles of councils and senates, recognised the necessity to bring together financial and resource planning and academic planning, and conceived of bridging committees between the two, thus, at once, failing to recognise the sovereignty of councils and the necessity to make vice chancellors really manage their institutions. And so the ineptitude continues.

On the other hand, it must be recognised that some genuinely view with concern the prospect of members of governing bodies and university councils dictating policies which impact on the academic character of their institutions. Others equally detest the prospect of vice chancellors, directors or principals operating as managing directors in the conventional sense on the grounds that this is autocratic or insensitive to the nuances of an institution of higher education.

But can these arguments be sustained? Institutions of higher education are now providers of a vast range of courses in areas in which industrial, commercial, professional, government and community interests play an essential role. It is just not true to argue that knowledge is confined to those who teach and research inside institutions of higher education. The increasing intervention of external agencies takes many forms - funding, sponsorship, consultancy,

professional recognition, inspection by HMI and accreditation by the CNAA so far as polytechnics and colleges are concerned, to name just a few. There are many voices in the conversation and quite properly so. Internally, too, the advent of technology coupled with increased specialisation and recognition of the important roles discharged by the various categories of specialist non-teaching staff have increased the strains on notions of collegialism as a vehicle of legitimation. Thus, if it ever had a currency, collegialism in the 1980s is synonymous with the practice of unenlightened self-interest. Why should the academic policy of an institution be dictated by the interests of its staff?

5. An Alternative Model:

How can it be argued that a governing body should not be responsible, like the board of a company, for all aspects of policy, including academic? How can it be argued that the academic board, if any, can be responsible for anything other than the quality assurance of its existing academic provision, that is, of its courses, research etc? How can it be argued that the director/principal can be other than the managing director/chief executive and therefore academic leader of an organisation whose business is education?

If these issues are conceded, then other things follow.

Some relate to the governing body itself. Its members must be knowledgeable about educational matters and bring that knowledge to bear on policy making. Its members cannot be representative, since no obvious rationale exists for the presence of representatives of students, teaching and non-teaching staff, or the academic board. It must look to and hold responsible the director/principal for advice which enables it to make the necessary policy decisions.

It must bring together all the elements of policy - financial, academic, commercial, resources, personnel etc - to provide a coherent approach to strategic planning.

Others relate to the academic board, the nature of its membership and responsibilities, whilst it is reasonable at the same time to envisage fundamental changes in other facets of the infra structure.

The emphasis on academic leadership will find its reflection at differing levels of the institution, requiring a more positive and proactive approach by those occupying positions of authority and greater expectations of initiative and responsibility for policy advice rather than the custodial frame into which many have lapsed over the past decade.

Those who object that the Government's intention is to create corporate bodies and not private companies must indicate how this affects the analysis outlined above. Those who suggest, rather, that the model is that currently to be found amongst the Inner London Polytechnics must be prepared to explain how this is compatible with the status, powers and responsibilities identified for the new PCFC institutions.

Those who wish to argue that the company analogy is quite inappropriate for an institution of higher education must be prepared to justify that claim both in terms of governance and management. At the same time they would do well to reflect on Bagehot's advice, "The summits of various kinds of business are like the tops of mountains, much more alike than the parts below - the bare principles are much the same; it is only the rich variegated details of the lower strata that so contrast with one another. But it needs travelling to know that the summits are the same. Those who live on one mountain believe that their mountain is wholly unlike all others."

Finally, those who suspect that attacks on the 'representative' model come only from directors/principals whose self interest lies in the prosecution of alternatives, should pause. It would then quickly become apparent that the current divorce of responsibilities between governing bodies and academic boards allows directors/principals to "hide" behind the deliberations of the respective bodies because they themselves cannot be held accountable. Many of them might prefer that that should continue. That is irrelevant. They should be up front, where they belong.

6. Summary and Recommendations:

- (i) The arrangements for governance outlined in Schedule 5 of the Bill are a "fudge", and a dangerous one in that the hybrid of managerialism and representationalism reflected

there brings together two notions which are essentially irreconcilable. No rationale is provided for these arrangements and, therefore, no indication of their appropriateness to the powers and responsibilities of the corporate bodies which are to be created. It is essential that these should reflect a clear logic of responsibility and accountability in which decision taking can be located. Anything less will inhibit the recruitment as governors of the right kind of people from industry, business and the professions, the exercise of proper management and leadership at senior levels within institutions, and the achievement of the radical objectives outlined in the Government's White Paper "Meeting the Challenge".

- (ii) The White Paper promised that "governors will have wide powers to determine the affairs of the institution". These should embrace all aspects of policy including academic policy. Governing Bodies should be modelled on the lines of those of private companies ie small, non-representational, composed of non-executive and executive members, and looking to the director/principal as chief executive/managing director for policy advice. Greater emphasis should be placed on the responsibilities and accountability of senior staff at all levels for the exercise of academic leadership and management. Academic Boards should not be entrusted with responsibility for academic policy but, rather, for the quality assurance of academic provision. Infra structures should be modified accordingly.
- (iii) Schedule 5 of the Bill should be amended to provide a membership of governing bodies compatible with the principles outlined in (ii). Failing that, those responsible for drafting Schedule 5 in its current form carry a heavy responsibility for explicating the rationale for the membership outlined there and, in particular, how this relates to the powers and responsibilities of governing bodies, how they are expected to discharge these in practice, and how all of this reflects on the powers and responsibilities of the director/principal as chief executive.
- (iv) If there is no appetite for amendment of Schedule 5, then the only alternative available would seem to lie in the framing of the model

articles of government referred to in Clause 86. Whether this will suffice is debatable, since 'representation' quite properly carries connotations and expectations of role. Nevertheless, if this is the only way forward, model articles of government should embrace the principles and practices recommended in this Paper and its Summary. There should be no illusion that what is at stake is the introduction of a proper framework in which institutions of higher education can develop and be managed in the 1990s.

K GREEN
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