

## THE ROCKY ROAD TOWARDS A FREE UNIVERSITY

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This paper concentrates on the question “what would happen if a British university tried to assert its independence from government”, and does not make a case for independence, though the principle is one I am sympathetic to. However, the stimulus is recent consideration of university independence in Scotland by Dr Charles Ellis<sup>2</sup> among others and the persuasive advocacy of independent education by Mr. John Blundell, Director of the Institute of Economic Affairs, London.

### 1. Introduction

The story is told that a Professor of Law at Harvard had a summer house in Vermont, and visited it regularly over many years, becoming well known in the local community. After a few years he was invited to join the ‘elders’ in their monthly meeting in the local store, but had never been awarded the ultimate accolade of respectability – to put his feet up on its stove.

Then one evening it was indicated that he might be allowed to do so, which excited him greatly. When it came it was clear that some form of examination of his credentials would take place. That evening the discussion turned to baptism, and there was a sharp division of opinion with some elders being ‘for’ and others decidedly ‘against’. This made the Professor uncomfortable for he foresaw what was coming – and it did. “Professor, do you believe in baptism?” asked the senior elder, and all eyes were turned towards him. He replied: “Believe in it? I have actually seen it done!” He was allowed to put his feet on the stove.

Like the Professor, I ‘have seen it done.’ I have seen the establishment of a private, or independent university. As part of the process, I found myself in negotiation with that august body, the Privy Council, which made me the first Vice-Chancellor of Buckingham, when we unilaterally called ourselves The University College of Buckingham .

While I can draw on this experience today, the establishment of Buckingham followed a very different course from one which would have to be travelled by an existing British university seeking to follow suit. It is one thing not to join a club by choice and another to choose to leave it.

I am here assuming knowledge of the benefits of being a university independent of government (The Professor from Harvard does not reveal whether he believed in baptism, but I believe in the virtues of independence!). Its supporters, including myself, largely rely on practical arguments such as the freedom from any governmental interference designed to dictate what subjects should be taught, and how and what research is considered to be ‘socially beneficial’.

A second argument emphasizes the advantages of being freed from bureaucratic interference designed to bring a university into line with government policy. This involves diverting skilled resource towards bargaining with government and devising an internal administration to

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implement government *ukases*, often rendering its members the least popular personnel in the university<sup>3</sup>.

I have nothing much more to say here about the eventual goal of independence through privatization, but on the much more difficult issue of the path to reach it. This is more analogous to Bunyan's *Pilgrims Progress* with several Hill Difficulties to climb, than a gentle walk to some Paradise Garden. Remember that I am guessing about the obstacles that have to be removed and using a sample of one to identify them, and an example that is not a correct parallel.

However, other dealings with government over the foundation of universities have come my way too. I was a member of the Academic Planning Board advising the Privy Council on the granting of a Charter to the University of Stirling<sup>4</sup>, and as a member of the putative governing body of the University of York as their foundation Professor of Economics.

A final introductory matter is to emphasize that the many academics worried about growing government interference, notably Scots principals, are having to bargain on all fronts with its many branches, including its Research Councils as well as Departments of State, not to speak of opinionated politicians who claim to know our business, and a whole army of non-governmental organizations with agenda of their own.

The retired Principal of St Andrews, Dr Lang, makes a persuasive case for a Chinese wall to be created between negotiations with government, with its legitimate concern over the allocation of state funding, and the university institutions primarily financed from private sources. While I doubt if that is possible, I appreciate that neither he nor like-minded principals in Scotland see this as a case for privatization. It might be said that, understandably, they seek the best of both worlds, sharing Stravinsky's view of the role of patrons as his financiers that they were there to put up the cash and were not expected to question how it would be used.

## 2. The Problem Of Consensus

The first stage on the road to independence is for some group of individuals, however organized, to declare the wish to set up an independent university and to draw up some kind of prospectus. I go back to the late 1960s when a group of academics, some of major distinction and from a wide range of institutions at home and abroad, signed a manifesto sponsored by the Institute of Economic Affairs which declared support for an independent university<sup>5</sup>. The idea was widely reported and excited comment from public figures ranging from total hostility to profound agreement.

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<sup>3</sup> A true story is enough to explain the kind of situation that may arise in being dependent on the state for funding. In 1982 the secretary of the Parliamentary Committee on Education was told to arrange a visit to Buckingham specifying the date and time of their arrival. This news was conveyed to me by phone by the secretary as an order. No, I said, we are a charitable corporation receiving no funding from government. I would be glad to *invite* the Committee to visit us, but, although I would try to meet their *request* on time and date, I would have to be sure that it would not conflict with our crowded timetable. I am glad to say that the official apologized, the Committee visited us, and we had a friendly discussion on the student finance.

<sup>4</sup> A summary of a my lecture on Stirling's foundation given at Stirling University during its 40<sup>th</sup> Anniversary celebrations is contained in its quarterly magazine, *Stirling Minds*, Winter 2008 , pp 5-6. Stirling was the first Scottish university to be created *de novo* for four hundred years.

<sup>5</sup> It appeared as an appendix to an essay on the subject by then Professor of Political Science at Birmingham University, Harry Ferns

Of course no one, the signatories included, were much at risk either to their personal reputations or their pockets by taking part in the controversy. It was the next stage after the rather vacuous cry that ‘something must be done’ that was more difficult. However, a small group of determined academics with some support from private business made a fist at a memorandum outlining what might be done.

There was bound to be differences of opinion, but the essential ingredient for progress was there – toleration of different points of view and patience in resolving disagreements. This was made possible with a small group of like-minded people, and it was a positive advantage if no one took us seriously as a threat to conventional covens of academia, for this meant we were left in peace to develop our ideas.

We had one major disagreement over location and organization. Several of us advocated moving fast, and that it would therefore be sensible to follow the example of Birkbeck College’s foundation, which meant setting up in a large urban area and offering evening teaching. We would then not have the responsibility for providing student housing, and would have a ready clientele from the growing demand for higher education amongst those who, for one reason or another, had taken jobs on leaving school but had discovered that they had further aspirations for improving their minds and knowledge.

We failed to persuade the others that a campus university would be expensive and would be more likely to encounter planning problems. So, without giving up my support for independence, I withdrew from active participation in the planning process. The story of how Buckingham began in 1976 in a rural area and *without* a long preparatory period, is summed up in the fact that, thirty years later, it survives and is even envied.

What would happen if a serious proposal were made by the Governing Body of a university such as St Andrews (of which I am an alumnus) to seek to become independent? Let me speculate. The most important point to be made is that the formal approach to independence would have to come from the Court and in the form of a Petition to the Government, in practice to the Scottish Government and probably to the Privy Council.

Remember that such a petition would originate not from a group of like-minded scholars acting on their own, but from a well established institution whose various parts, along with representatives from wide-ranging outside institutions, form constituencies represented on the Court itself. The days have long since gone when the Court, with strong senatorial representation, formed a self-perpetuating oligarchy (in my day very cleverly controlled in its actions by the formidable James Irvine). A principal nowadays is the Chief Executive of an institution which recognizes that its actions must take account of the views and powers of a much wider range of ‘stakeholders’ than heretofore. Even in today’s Buckingham, as I know from personal experience, the Principal is not simply supposed to guarantee the quality of learning to the outside world, but also be an expert in crisis management within the university’s own smaller sphere.

I must leave to the imagination the conflicts of interest that will emerge in discussion of such a radical move as seeking independence. The various stakeholders will have their own perceptions and prejudices as to what independence entails. One could not blame any group, be they students, staff or administrators, for thinking that there are too many uncertainties about what would happen to offer a strong incentive to go for ‘freedom’. But even if support within the university for some sort of independence became a majority view, the process of argument and negotiation to reach that point would be laborious and long-lasting, and might even need to be repeated as the composition of the Court changed over time.

Moreover, a move into the private sector would probably require an adjustment in the make up of the Court itself, with new constituencies created and others ceasing to exist.

There is a further point. The announcement effect of Buckingham being able to open its doors was muted indeed. The academic community in the UK did not feel threatened by what seemed merely a curiosity and one which would soon most likely fail and be forgotten.

By contrast the effect of an announcement by a university such as St. Andrews to seek unilateral independence would arouse not only considerable interest but effort on behalf of many other academic institutions to ensure that the move did not adversely affect them, not to speak of the involvement of Westminster and Holyrood, with government having a major role in deciding whether permission should be granted.

Of course, events would not be as clear-cut as this, because any decision to seek independence would certainly be preceded by moves to sound out those likely to play a role in influencing the fortunes of a privatized concern. Full support from other universities in the UK would not necessarily be forthcoming. This is important because no university nowadays, not even Buckingham, can be independent of others, when they rely on cooperation over joint research projects, and when students obtain a degree in one university and look to undertake graduate work or seek employment in another.

A bid for independence might imperil the presumption that St Andrews' standards would remain high, even if this was a pretence for disguising a political stance opposed to independence. I remember, with some bitterness, how some academic institutions claimed to have doubts about Buckingham's ability to maintain academic standards, and refused to recognize our 'licence', even when we were allowed to call it a degree<sup>6</sup>.

I am inclined to think that, confining our attention to the academic world, the Principals of Scottish Universities, faced with a 'UDI' by St. Andrews, would be singing in chorus the famous words of Nicely Nicely Johnson in *Guys and Dolls* : " Sit down, sit down , sit down , sit down ... SIT DOWN you're rocking the boat"

### 3. Constitutional Obstacles

No university in the UK can change its constitution without permission from those who granted it the right to hold the title. And this covers what might be considered very minor changes in the constitution's wording. For most universities this means petitioning the Privy Council, that mysterious survival from the Middle Ages when Kings governed as well as ruled. Membership is granted by the Queen on the recommendation of the Government of the day, and is normally awarded to senior politicians, not necessarily of the ruling party, and also to senior posts with some direct constitutional connection with the Crown, such as senior judges.

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<sup>6</sup> Incidentally, when we offered the option to alumni to convert their license into a degree, a large number refused on the grounds that it regarded the license as a unique mark of distinction. There is a well known precedent for this nearer home. When 'ladies' were first admitted to St.Andrews, they were awarded the LLA (ladies literate in the Arts ) and they viewed it in similar fashion when offered the ordinary MA , *ex post facto*.

Independence through privatization would not be regarded as a minor change, but as an unprecedented major alteration in the status of a university. If the necessary changes were approved, then a privatized St. Andrews would be awarded a Charter which would then be handed down to the Scottish Government to formulate the statutory instrument which would govern its enforcement. Of course, I cannot be certain of being right about this, but I cannot see a new independent university being treated differently in this from Buckingham or indeed from the recently created universities in Scotland such as Stirling, the first Scots university since the Reformation started from scratch, and others upgraded from existing institutions of higher education such as Strathclyde, Heriot-Watt, and the latest one, Queen Margaret in Edinburgh.

I am aware that the history of St Andrews does not point to anything like such an arrangement. After all, St. Andrews was founded by Papal Bull. However, I doubt if permission would be necessary to change status by petitioning His Holiness. It would make for a wonderful legal tangle, remembering that the original Bull was granted by the rival Pope at Avignon, although not long afterwards its foundation received the official blessing of Rome.

I know that St. Andrews' governance was brought into line with other Scots universities through 19<sup>th</sup> Century and some 20<sup>th</sup> Century legislation, and that something like its present system was confirmed by the legislation made necessary by the breaking away of Dundee to create a separate university in the 1960s. However, whatever the present legal force of such measures, the fact remains that St. Andrews is now treated very much as a member of the UK academic community, and would not get away with special treatment in the case of a bid for independence.

I am ruling out the prospect that St. Andrews (or any other university) would seek to be an offshore academic institution whose status depended on the law in some other country, or that it would cock a snook at remaining a university in law at all, and be like Buckingham before its constitution commanded official approval.

The above argument points to a university that sought independence having to draft a Charter for submission to and approval by the Privy Council. We had a good look at the alternatives at Buckingham, but legal advice confirmed that any attempt simply to adopt the title without the Crown's approval – *de facto* the Government's of the day – would have been fatal to Buckingham's chances of having its qualifications recognized.

The alternative strategy would require remaining as a 'university college' and obtaining recognition by the humiliating method of supplication to overseas universities and asking them to recognize the quality of teaching and research. I cannot see a serious UK university willing to move down the hierarchy of academic status as the price to pay for independence. So a Charter it would have to be.

Any strategy in seeking recognition by Charter cannot be followed without the support of the Government in power, therefore. This would entail a major campaign of political persuasion if the ministers of the day were not to be swayed by the finely crafted submissions from academic bodies and, indeed, senior civil servants who would see their power and influence eroded by a unilateral move to independence.

In Buckingham's case, we sailed with a favourable wind, but it is doubtful if any existing state-financed university in the UK would now have such an easy passage in trying to leave the club. Quite apart from the objections of civil servants and other institutions, there would be instinctive opposition from politicians who were concerned that the university would no longer follow the government's social and economic objectives. Furthermore, Scottish alumni are used to

involvement in the affairs of their alma mater and not backward in coming forward to tell it how best to conduct its business.

A short coda to this complicated procedural theme finishes this disquisition on constitutional matters. Think of the expense! Most universities have no professional academic lawyers to call upon to draft a petition to the Privy Council, let alone undertake the various other legal functions necessary. The Privy Council, however friendly disposed its staff may be to the process, have no obligation to perform these services, and might find it embarrassing to single out who might carry them out at a 'reasonable' price. Even Buckingham did not get away as easily as had been hoped. The law required that our status changed from being a charitable corporation to becoming a chartered body. We were pounced on by Parliamentary agents who seem to have a monopoly of the drafting requirements. They took us to the cleaners for a five figure sum!

#### **4. The Financing Implications**

It is commonly assumed that the major financial change resulting from independence would be that direct funding from government sources would cease or, as in Buckingham's case, would not be sought. Indeed, the 'pure' independence case, often used as a stick to beat any protagonist of privatization, carries the label that the full cost of graduate and undergraduate teaching together with the growth of the institution would have to be charged to the 'clients', i.e. the students. Any extra funding would have to come from private persons or businesses who would expect the privatized university to follow their agenda.

The crude version of this argument is that only the cream of youth, i.e. the rich and the thick, could afford to study there, and the composition of teaching and research would be coloured by the special concerns of wicked businessmen. This charge of class exclusivity is an old chestnut easily disposed of if only by appeal to what happens in practice.

The very aims of independence are to facilitate the provision of high standards of teaching and research, unencumbered by central direction as to what must be taught and how, or control over the kind of research that is to be undertaken. And the same rule applies to any attempt to turn the university into a private fiefdom of alternative interests, be they commercial or political. There would be no point in gaining independence from government, only to lose it to a corporation.

I was once offered a large sum of money in order to set up a department of free enterprise at Buckingham on the condition that it was staffed by those with the 'right' political slant. I replied, perhaps rather curtly, that we were setting up a university where criteria for staff appointments did not extend to those necessary in running a seminary.

I also assume that it would be an article of faith that special efforts would be made to help poorer students overcome financial barriers to study, just as they are in fee-paying private and state universities both in the UK and many mature economies.

Rather than elaborate on these general problems that have been fully explored, let me consider three particular ones that would arise in the case of a 'UDI' by a Scottish university.

The first would be to seek some form of guarantee that the change in its legal position would not affect dealings with the public sector (other than the cessation of direct public funding). Of course, the go-ahead by government would represent official confidence that the university would maintain its standards of excellence in both teaching and research. That being so, one would assume that graduates would be subject to the same conditions applying to those of other

universities in respect of public sector employment, particularly eligibility to take part in competition for entry into the administrative and executive classes of the civil services, and the various professional categories, such as the Government Economic Service, Geological Survey, Accounting Service and so on. Likewise, the university would be able to compete in the award of Government research contracts.

The second problem is suggested by the first. On what terms would a privatized institution be able to assume that the entire capital stock financed by past government funding would be handed over *gratis*? I find it difficult to believe that this would happen, whatever the present legal position.

Here Buckingham would be an awkward precedent. Its entire capital stock has had to be financed from private sources, a large part of it representing a considerable part of the funded debt. No person I know at Buckingham would want to make an issue of the fact that a state-financed university wanted to go it alone, but even they might perceive as inequitable a situation where UDI was accompanied by giving the breakaway institution a considerable dowry.

In other words, much of the capital stock owned by modern universities, for example in terms of physical buildings and equipment, was paid for by the taxpayer. Would this be inherited without any demand for repayment?

Finally, there is the problem of continuing to raise money by the generosity of the alumni. Again a clear idea of the general attitude of alumni to privatization could be obtained through their representation on the Court, and the Court, as we have seen, would have to be fully behind UDI for the matter to be pursued at all. Would alumni continue to be as generous as they have been and, in view of the new financial position of their alma mater, would they be prepared to be even more generous? They must count for a great deal, compared with Buckingham, which has only had a few years to confer the status of alumnus on its graduates and is much less (though increasingly) dependent on their giving.

## 5. Conclusion

I have highlighted the barriers in the way of a British university seeking independence from government. But these should not be overstated, because of the powerful trends towards independence that already exist in the global market for higher education.

The supply of opportunities for higher education has changed markedly over the last twenty years. Apart from the expansion in the number of universities, there has been a marked increase in the number of colleges acting as satellites of universities who validate their courses and, where appropriate, allow them to count them towards the award of a university degree.

On the demand side of higher education, the expansion in the range of opportunities to study, including in terms of time and location, has altered the criteria by which potential students judge their priorities for study. For example, the Edinburgh Business School (EBS) at Heriot Watt University is self financing, offering a distance learning MBA of high quality with a world-wide clientele and examination centres that have to be identified in several countries from Israel to China, and now have reached three hundred in number!

These developments are leading to major institutional and therefore constitutional changes affecting older universities in particular. The extra-mural expansion of teaching and research may

reflect the trust that clients and sponsors put in the name of the university. But those responsible for these developments expect the university authorities to give them much more freedom of action over the running of their affairs. So universities face the 'bracing air of competition' for funding, which has throughout the UK lead to pressure for students to pay more of their own way.

Such an atmosphere of change enables me to draw a more positive conclusion about the prospects for growing independence in higher education and research. In short, given the radical changes in the milieu in which academic institutions must operate, all universities, old and new, face pressure to be able to adapt in different ways – in other words to become more independent.

Such pressure will be reflected in a battle between elements in both academia and government on both sides of the debate. But one in which those in favour of greater independence will have increasing quantities of ammunition.