



REPORT 2

Is Moving from Co-operative Governance to Conditional Autonomy a Contribution to Effective Governance?

A response to the Hall, Symes and Luescher (2002) study on institutional governance.

Requested by the Council on Higher Education for a special issue of *Kagisano*.

Teboho Moja, Nico Cloete and Nic Olivier

November 2002

| Background

Governance and decision-making structures were highly contested during the policy debate phase because of the struggle to have power and control over decisions at institutional and national levels. This continues to be an issue in the transformation of higher education. The Higher Education Act of 1997 was criticised by some opponents for leaving too much power in the hands of the Minister of Education. Within two years and every year thereafter the Act was amended to increase the power of the Minister. It is in this context that the Minister, concerned about the power struggles in the system, “requested the CHE to advise him on governance of higher education institutions by June 2002” (CHE, 2002). The Council on Higher Education (CHE) commissioned a report called “Governance in South African Higher Education” (Hall, Symes and Luescher, 2002), which posits its primary objectives to be: “the description and analysis of the present state of governance in South African higher education; an analysis and re-examination of the concept of co-operative governance; and the development of proposals for the improvement of efficiency, effectiveness and accountability in higher education governance” (p. 8).

This commentary will focus on the main strengths of the report, identify important issues not addressed and assess whether the proposed new model of governance could contribute to more effective governance.

| Contribution of the Study

The main strength of the report is the study of 12 institutions. It adds further insight to the “styles of leadership” developed by Kulati and Moja (in Cloete et al., 2002) and elaborates the governance indicators developed by Cloete, Bunting and Bunting (2002). Another important contribution is a different approach in understanding the two dimensions of effectiveness and delegation as two axes, allowing for a way to draw a graph that plots an interaction between functional and unstable governance.

The ambitious objectives, like so much other South African education policy work (Cloete et al., 2002; Jansen, 2001) promise

more than what is delivered. The study does not deal with the all-important systemic governance relationships which affect not only interactions between government and institutions, but also relations within institutions. Following a study of a limited set of governance (and leadership or management) activities within 12 higher education institutions and a brief review of governance policy and legislation, the policy report made 21 recommendations on institutional governance and two general recommendations on the promotion of good governance and the need for a code of governance in institutions. The shift in focus of the report from institutions to a proposal on a new “model” of governance called “conditional autonomy” to regulate the relationship between government and higher education institutions as a group (with implications for the entire system) seems not to be informed by the study itself.

The report describes, in considerable detail, four “types of governance” emerging within institutions. Whether these are internal governance types or leadership styles as described by Kulati and Moja (2002) is not always clear since governance practices and leadership style are so intertwined. The four types described in the document are “contested” (25 per cent of institutions), “management-focused” (33 per cent), “democratic” (33 per cent) and “democratic, well-managed” (nine per cent) institutions. This categorisation is rather similar to the “three emerging approaches to leadership” described by Kulati and Moja (2002): crisis, managerial and transformative leadership. The Kulati and Moja transformative leadership category includes a sub-category called “transformative managerialism” which is even more uncannily similar to the “democratic, well-managed” category of the report. Since the two studies do not refer to each other, it seems that two independent investigations with different methodologies came to remarkably similar conclusions about the state of institutional governance in South Africa.

The study could be read to mean that 75 per cent of the sample studied (management and democratic) are relatively well-governed and that 42 per cent (democratic) are operating broadly within the White Paper’s (1997) policy of co-operative governance. In international terms the high percentage of higher education institutions operating within a framework of representative and participative democracy is quite remarkable. Rather than celebrating this

achievement, and making recommendations as to how some of the good practices of the democratic institutions can be transferred to the less well-functioning ones, one of the main conclusions of the study is that: “the concept of co-operative governance, as defined in the earlier 1990s, is now in danger of becoming a hindrance that confuses policy and inhibits the development of good practice” (p. 108).

What is problematic about the study is that it examined internal institutional governance and management styles but concluded that the present model of co-operative governance for the higher education system as a whole is a failure. It then proceeded to make recommendations relating to the introduction of the model of conditional autonomy as the foundation of the relationship between higher education institutions as a group and government, with much wider implications for the governance of the higher education sector. No mention is made in the proposed model of conditional autonomy of the role and place of the CHE and the relationship between the CHE and the government.

Another puzzling conclusion is that: “despite a generally negative view of the prospects for institutional forums, a broader interpretation of governance in practice, particularly when coupled with the critical assessment of the current functioning of councils, does suggest an important and continuing role for the institutional forum” (p. 86). While questioning the usefulness of co-operative governance, and referring to their own empirical research which shows that a central aspect of institutional co-operative governance – the institutional forum – is not working, the authors nevertheless recommend that the forums be continued. It is difficult not to conclude once more that the recommendations of the authors are not informed by the empirical evidence of their own study, nor by their new “model” of governance.

| Slippage Between State Steering and State Control

A study of governance in the higher education sector needs to include other central components of co-operative governance at the systemic level, meaning at the level of interactions between the government and the statutory advisory body (CHE); the relationship between national-interest organisations and the government; and the relationship between the government and institutions.

A major shortcoming of the Hall et al. (2002) report is the omission of the dynamics of relationships at national level. The statutory body, the CHE, and national-interest bodies such as the South African University Vice-Chancellors' Association (SAUVCA) and the Committee of Technikon Principals (CTP), are left out of an investigation that has important policy implications for governance of the sector. This limitation, despite the encompassing title, is partially conceded within the report: "The investigation excluded any evaluation of a range of issues forming part of the wider context of higher education governance" (p. 11).

Co-operative governance as conceptualised in the National Commission on Higher Education, is framed within the notion of the new state. The co-operative governance approach made a clear choice between three models regarding the relationship between the government and higher education institutions. Model one, state control, is premised on effective and systematic state administration of higher education, executed by a professional and competent civil service – the "continental" model characteristic of Western Europe in the 20th century. Model two, state supervision, is founded on less centrist forms of control. The locus of power shifts from "centralised control" to "steering", in which governments provide the broad regulatory framework and, through the use of instruments such as planning and funding, institutions are "steered" to produce the outputs governments desire. Steering is seen as an interactive process between government and institutions and is the current preferred model in many countries, albeit with widely divergent mechanisms and levels of steering. Model three, state interference, is based on control in higher education that is neither systematic (model one) nor "regulation through steering" (model two), but is based on arbitrary forms of intervention. This model operates in many developing countries, Africa in particular (Kraak, 2001).

It was within the framework of state supervision/steering that the 1996 National Commission on Higher Education report, the White Paper 3 on Higher Education (1997) and the Higher Education Act of 1997 located the co-operative governance approach and asserted the need for institutional autonomy linked to public accountability (Preamble, Higher Education Act, 1997). A series of institutional crises and a lack of confidence in higher education leadership – a critical component of governance – led to a series of amendments to the 1997 Higher Education Act. The Hall report acknowledges the

amendments that are aimed at increasing the Minister's power of direct intervention at institutional level (Hall et al., 2002: 7–8). Examples of this gradual transition from a steering to an increasingly controlled approach are to be found in the following amendments:

- Higher Education Amendment Act 55 of 1999: allows the Minister to appoint administrators to a higher education institution where there is financial or other maladministration of a serious nature.
- Higher Education Amendment Act 54 of 2000: allows the Minister to determine the scope and range of operations of an institution, and determines that an institution may not, without the approval of council and, under certain circumstances, without the concurrence of the Minister, enter into a loan or overdraft agreement, or develop infrastructure.
- Higher Education Amendment Act 3 of 2001: includes a provision for the indefinite appointment of the administrator and the repeal of private Acts.

Concurrent to the legislative changes, the method of steering also altered. Initially, planning and funding were regarded as an interactive approach to determining goals and targets (Department of Education, 1998). However, the Ministry shifted to a perception that, in order to implement the transformation programme, an increasing use of the executive powers vested in the Minister by the Higher Education Act would be required. A key example is the proposed new funding model which, in the words of one of the authors, “will be a top-down one. It will come into operation only when the government has determined what total of public funds should be spent in a given year on universities and technikons and what the key policy goals should be for that year” (Bunting 2001: 4). The model Bunting describes is not an interactive steering approach, but is much closer to the centralised state-control model outlined above.

It is not only the Minister who has acquired new powers and has shifted to a more “top-down” model. The CHE has also adopted a more centralised approach, according to Kraak (2001). Writing about the proposals formulated by the CHE Task Team on “Size and Shape”, he argues that the proposals represent a shift in the conception of the role of the state from that founded on a model of “state supervision” to that of “state interference”. The solutions to

the dysfunction and endemic crisis in the higher education system sought by the CHE are found in the articulation of a “state interference” model – a bureaucratic, weak and arbitrary form of intervention based on prescriptive fiat and rigid rules and procedures. The affinities between this form of state interference, stratification thinking, and the proposals of the CHE are self-evident. They represent a view of the state as weak and unable to attain the sophistication required for “steering” and, as a consequence, show the necessity for a reversion back to a conception of the state as bureaucratic and prescriptive. This is the only perceived route in which the (weak) state can gain some control over what is perceived to be a crisis-ridden and highly dysfunctional sector (Kraak, 2001: 30).

Considering the context of a shift to more centralised governance, the arguments presented by Hall et al. (2002) for a new approach to governance are problematic. First, the report argues that the National Plan for Higher Education marks the path of change to a “system of conditional autonomy in which substantive autonomy (academic freedom) continues to be guaranteed while the state exercises increasing control over procedures of funding and academic accreditation” (Hall et al., 2002: 19). The argument is flawed as it is clear that a shift in approach, culminating in the proposal for “coerced” mergers (DoE, 2002) violates the first condition of conditional autonomy set out in the report, namely “the right of individual institutions to determine their primary goals”.

Second, government interventions have mainly been driven by the need to improve efficiency. It could be argued that while the apartheid government used political alignment as a determinant key for intervention, it did not care much about inefficiency or corruption. The new government, in contrast, with its post-1997 emphasis on a more efficient state, used inefficiency as grounds for intervention – and with a surprising degree of support from the higher education sector.

During the development of the merger proposals, it started becoming clear that since some inefficient institutions were not earmarked for merging, and some very efficient institutions were identified for mergers, a strong measure of other political criteria, based either on equity considerations, or on a judgement of the political strength of certain institutions, entered the equation. While Hall et al. (2002) make a case for “state steering”, it is becoming

evident that the current conditionality is based on an undefined type of “political efficiency”. The Hall proposal would allow for the transition from a state-steering model to a state-control model, on account of the fact that the content of the conditions imposed from time to time on the higher education institutions as a group or on individual higher education institutions would be the sole discretion of government.

The Hall et al. (2002) report makes no attempt to specify what qualifies as “steering” and what should be regarded as “intervention” or “control”, but a strong argument could be made that the Minister’s power to determine the mission of institutions (e.g. by prescribing their programme offering), and the condition that financially strong institutions cannot take out a loan without his approval, is somewhere between state control and state interference.

The Minister, operating under an official policy of co-operative governance, has not specified the Department’s approach to changing conditionalities. It is submitted that the fact that the proponents of conditional autonomy have not clarified which conditions might be acceptable and which might be totally unacceptable could have a devastating effect on the autonomy of higher education institutions – because it vests an unfettered discretion in the hands of government. In addition, it could be argued that since the proposed approach for conditional autonomy is not located within a broader framework of the state, it is actually impossible to specify a coherent set of conditionalities.

Third, co-operative governance was proposed as a model for higher education that fitted into a framework for the new state. The notion of co-operative governance gives content to the constitutionally enshrined notion of co-operative government (Chapter 3 of the 1996 Constitution), which determines that all organs of state (including government departments and any institution exercising a public power or performing a public function in terms of any legislation) must co-operate with one another in mutual trust and good faith (Section 41). In addition, the Constitution is based on a number of founding principles, among them, a system of democratic government to ensure accountability, responsiveness and openness (Section 1), and the need to establish a society based on democratic values (Preamble). The Constitution also lays the foundations for a democratic and open society (Preamble).

Conditional autonomy is not located within the Constitution, nor within the theory of the state implicit in the Constitution. It does not distinguish between an authoritarian governance approach and a democratic participative approach.

Fourth, if conditional autonomy fits as easily into in the framework of the new democratic government as it did into the framework of the apartheid authoritarian model, then there is not only a conceptual problem but, much more seriously, a political danger that within the national approach of participative co-operative governance there could be practices uncomfortably reminiscent of the previous regime.

| If Reform is Problematic, Change the Policy

Apart from the conceptual and political problems associated with conditional autonomy, it also raises problems with regard to policy and transformation. The suggestion for a review of a governance model is, to a considerable extent, like the merger proposals, influenced by the failure (crisis) of the 25 per cent of “contested” institutions. The failure of these institutions cannot be ascribed only to a failure of internal governance, but could rather be attributed to a whole set of structural, geographic, capacity and socio-historic factors (Habib, 2001). Instead of putting forward a plan to assist these institutions with their internal governance problems, and a strategy to make the 33 per cent management-focused institutions more democratic, the model of co-operative governance is seriously questioned and a proposal made to change it.

There are two major flaws in this type of reasoning. Firstly, Castro and Levy (2002) argue that it is important to understand that “neither conceptually nor in terms of policy does one size fit all” (p. 27). A different approach could be to reward the 42 per cent of higher education institutions that have democratic governance, “steer” the 33 per cent management-focused ones to greater democracy while maintaining the strengths of their existing management structures, and develop a support (rescue) interventionist plan for the 25 per cent in crisis.

A second problem, well described by Vlasceanu and Sadlak (in Cloete et al., 2002) in Eastern Europe, is that, instead of dealing with

the more difficult task of tackling problems, new policies are proposed. Vlasceanu and Sadlak conclude that in Eastern Europe: “the frequency of changes and changing policies has had two major effects. Firstly, the changes have left traces in the structure of the system that will have long-lasting effects. Secondly, many academics have become sceptical of the constant flow of change and have returned to the tradition of operating within the system. They thus continue to do ‘business as usual’ while trying to avoid the external demands for change as much as possible” (p. 2).

Finally, the report and its recommendations are problematic in the sense that they attempt to apply a new, one-size-fits-all governance approach to all institutions, when almost 50 per cent of the institutions are, according to the study, already democratic. Another problem is political in the sense that it would be difficult to justify, within a fluid new democracy, the transition from a steering model to an increasingly evident controlled approach (with strong discretionary powers of intervention) without clearly specifying the conditions, the circumstances and the methods that warrant the violation of autonomy.

The variety of methodological, conceptual and political problems identified in this report leads to the conclusion that a case has not been made as to why conditional autonomy will lead to more effective governance than the co-operative governance model. Within a democratic state there is really no choice between an imperfect model (co-operative governance) – democracy is by its very nature imperfect – and a model that fits as easily into an authoritarian state as it does into a democratic state... all depending on the vagaries of the minister of the day.

| References

- Bunting, I. 2001. ‘The Relationship Between State and Public Higher Education Institutions.’ Unpublished CHET paper.
- Castro, C. and Levy, D. 2001. ‘Four Functions of Higher Education.’ In *Higher Education Digest*. Autumn, No. 41.
- Cloete, N., Bunting, L. and Bunting, I. 2002. *Transformation Indicators Applied to Two South African Higher Education Institutions*. Pretoria: CHET.

- Cloete, N., Fehnel, R., Maassen, P., Moja, T., Perold, H. and Gibbon, T. (eds). 2002. *Transformation in Higher Education: Global Pressures and Local Realities*. Cape Town: Juta.
- Constitution. 1996. Final Constitution of the Republic of South Africa, 108 of 1996. Pretoria: Government Gazette.
- Council on Higher Education. 2002. 'Policy Report: Promoting Good Governance in South African Higher Education.' CHE Governance Task Team. Pretoria.
- Department of Education. 1997a. *Education White Paper 3: A Programme for the Transformation of Higher Education*. Pretoria: Government Gazette.
- Department of Education. 1997b. Higher Education Act 101 of 1997. Pretoria: Government Gazette.
- Department of Education. 1998. *National and Institutional Planning Framework for the Higher Education System*. Pretoria: Government Gazette.
- Department of Education. 2002. *Transformation and Restructuring: A New Institutional Landscape for Higher Education*. Pretoria: Government Gazette.
- Habib, A. 2001. 'Structural Disadvantage, Leadership Ineptitude and Stakeholder Complicity: A Study of the Institutional Crisis of the University of the Transkei.' Commissioned Paper. CHET website: www.chet.org.za/papers.asp.
- Hall, M., Symes, A. and Luescher, T. 2002. *Governance in South African Higher Education*. Pretoria: Council on Higher Education.
- Jansen, J.D. 2001. 'Rethinking Education Policy Making in South Africa: Symbols of Change, Signals of Conflict.' In Kraak and Young (eds). *Education in Retrospect: Policy and Implementation Since 1990*. Pretoria: Human Sciences Research Council.
- Kraak, A. 2001. 'Policy Ambiguity and Slippage: Higher Education Under the New State, 1994–2001.' Commissioned Paper. CHET website: www.chet.org.za.
- Kulati, T. and Moja, T. 2002. 'Leadership.' In Cloete, Fehnel, Maassen, Moja, Perold and Gibbons (eds). *Transformation in Higher Education: Global Pressures and Local Realities in South Africa*. Cape Town: Juta.

Vlasceanu, L. and Sadlak, J. 2001. 'Changes in the Higher Education System and Institutions of the Central and Eastern European Countries: 1994–1999.' Case Study. CHET website: www.chet.org.za/papers.asp.