

STUDENT SUBJECTIVITY AND THE LAW

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[This article examines the character of the university student in law in the context of wide-ranging changes to Australian higher education since the 1980s. The legal character of the student derives from two major sources: establishment of a university jurisdiction, primarily under State University Acts, and federal higher education funding legislation. With the rise of market/economic conditions in the sector, the student has become subject to tensions between these sources of law, increasingly resolved in terms of his/her existence as a “consumer” within a commercial university model. Alongside the older statutory university jurisdictions, the standing of the student is both increasingly complex and impoverished.]

I INTRODUCTION

Student subjectivity may be understood as the collective actions, behaviours, propensities or characteristics of those undertaking study in the universities. It may be understood as the legal-cultural conditions of that part of the population engaged in university education. This article reviews the circumstances of the student in law, as well as commenting on the interaction of the legal and political-economic circumstances affecting Australian university students.

Construction of subjectivities and model actors in the law is a relatively common affair (eg the notion of a “reasonable” person), although this practice has not really been extended to students. The student in Australian universities may be interpolated from an implied statutory model of the university and the student-university relationship, and by the historic treatment of this relationship by the courts. This

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model, however, must be read in the context of sweeping changes to higher education policy and administration since the late 1980s, under the direction of the Federal Government.

In the longer-term, these changes may be described as the shift from a craft-like model of the university to a commercial, or business, model. This “enterprise university” has had an enormous impact on the student condition, which has yet to be fully accounted for in the law.

Passage of new higher education funding laws in the form of the *Higher Education Support Act 2003* will have important impacts on the operation of universities, representing further development of a market-economic model. Concurrent, far-reaching changes in student “experience” represent cultural and sociological changes to student subjectivity, with greater emphasis placed upon instrumental, economic values, such as the acquisition of credentials and jobs/careers. From the perspective of the student, a tension between the ascendant economic conditions/model and the statutory and historic model of the university (as is presented in various University Acts) has largely been overlooked. It is not a tension that can easily be resolved, although, given a tightening market nexus, the courts may be eventually called upon to revise their views of the student as a bearer of rights, especially in the absence of a political will to treat the student as anything more than a “consumer” of “educational services”.

II THE STUDENT-UNIVERSITY RELATIONSHIP

In Australia, universities are self-governing authorities constituted (for the most part) under State Acts. The primary purposes of the university is the provision of higher education, research and scholarship, and the awarding of degrees, but they are not normally precluded from engaging in, and regulating themselves for the purposes of, other related activities (Eg community service, commercial and trading activities). Consistent with the British model, an Australian public university will be established as a “body corporate and politic,” comprising a University Council (or equivalent), staff, undergraduate and graduate students, and possibly alumni.¹ A machinery of self-government, including powers to make by-laws or statutes with the effect of law in relation to its functions, and establishment of an academic college (such as an Academic Board), are typically provided for in the establishing Act. The public character of the Australian university has been stated by the courts in *Ex parte Forster; Re University of Sydney*.²

The student in effect is a member or constituent of the University and is “bound by its statutes and regulations.”³ The student is claimed to be part of an “academic

¹ “The University consists of the Council, members of the academic staff, members of the general staff, graduates and students.” University of Adelaide Act 1971, sub4(2) (SA); Cf. University of Tasmania Act, 1992, sub5(1) (Tas.); Melbourne University Act 1958, s4 (Vic).

² *Ex parte Forster; Re University of Sydney*, [1964] NSWSR 723, 727.

³ Melbourne University Act, 1958, s4 (Vic).

community,” which derives its understanding from a “domestic” arrangement⁴ for the purposes of learning, and which has been expressed as a convocation.⁵ By implication, the student is a type of internal citizen, with obligations to academic processes and rules, in short the jurisdiction of the university, as well as a right to engage in the body politic via the mechanisms of internal self-government.⁶

The university’s establishment of itself as a jurisdiction in relation to academic issues is a matter that the courts have been very reluctant to intrude on. It is an issue that goes to the heart of the student as a legal subject, as this has informed what other legal relationship the student may have with the university, in particular whether, of what character, and to what extent the relationship is contractual. The legal character of the student revolves around the space of exclusivity of the university’s own jurisdiction created by the courts. The courts have viewed universities as powers unto themselves when it comes to the objects or purposes set out for them in their Acts.

III THE VISITATORIAL JURISDICTION

The jurisdiction of the university is historically associated with the office of the Visitor.⁷ This office may actually adjudicate in matters of internal dispute, or it may be a ceremonial office, or it may be abolished entirely. What is of significance is the operation of a visitatorial jurisdiction, which may be understood as the academic rule- and decision-making domain of the university. Its product is a little checked and antiquated authoritarianism over the student.

In *Thorne v University of London*, the British High Court declined to review a matter relating to student examinations. Diplock LJ held that “The principle is that at common law the court has no jurisdiction to deal with the internal affairs or government of the university, for those have been confided by law to the exclusive

⁴ See JRS FORBES, DISCIPLINARY TRIBUNALS [2.16] (1996).

⁵ The term convocation is actually used or applied to the total body of members of the University. See for instance, University of Sydney Act 1989, s14:

“... Convocation

(1) Convocation consists of:

(a) the Fellows and former Fellows of the Senate,
 (b) the graduates of the University,
 (c) the persons referred to in section 34,
 (d) the professors and full-time members of the academic staff of the University and such other members or classes of members of the staff of the University as the by-laws may prescribe, and
 (e) such graduates of other universities, or other persons, as are, in accordance with the by-laws, admitted as members of Convocation...”.

⁶ Most University legislation makes provision for elected student representatives on governing and decision-making bodies.

⁷ For a comprehensive UK study on “the Visitor”, see David Palfreyman, *A bibliographical essay on the visitor*, in HIGHER EDUCATION AND THE LAW: A GUIDE FOR MANAGERS 340 (David Palfreyman and David Warner, eds., 1997).

province of the visitor.”⁸ His Honour further states: “The High Court does not act as a court of appeal from university examiners.”⁹ In *Patel v Bradford University Senate*, the court held “that the court’s have no jurisdiction over matters within the visitor’s jurisdiction.”¹⁰ The exclusive jurisdiction of the visitor is upheld in the Australian jurisdiction.¹¹ In *Bayley-Jones*, the court commented on the “special role of the visitor in the unique environment in which his [sic] functions fall to be performed,” and the necessity that the visitor would “take into account the welfare of the university as a whole.”¹²

The courts restrict their role solely to one of judicial review, and a jurisdiction for the courts can be found in this principle.¹³ The intervention of the courts in student cases has, then, often turned on the question of a denial of natural justice, notably in cases involving student discipline or unsatisfactory academic performance. A lever into the student-university relationship may be administrative law, and review procedures provided for in this body of law. Under the Victorian *Administrative Law Act 1978*, for instance, decisions taken by university tribunals are reviewable by the Courts with respect to the application of principles of natural justice. This test is somewhat distinct from that in some other Australian jurisdictions.¹⁴

It is also worth considering the operation of the visitatorial jurisdiction in the absence of that actual office. The Victorian Government recently abolished the powers of the visitor across all Victorian universities.¹⁵ The actual operation of this jurisdiction would likely fall to University Councils. There may be a role for review by the relevant Ombudsman. Under the ombudsman’s jurisdiction, the scope for administrative review is potentially more far-reaching than under the terms of administrative law. The Ombudsman may address disputes within universities as “public statutory bodies,”¹⁶ in relation to an “administrative action.” The scope of such action is wider than merely tribunal decisions. The Ombudsman’s jurisdiction may require all internal avenues of dispute to be exhausted. It also suggests that the student-university relationship has come to assume, or be updated in terms of, in law, a heavily administrative character.

⁸ *Thorne v University of London*, [1966] 2 QB 237, 240.

⁹ *Thorne v University of London*, [1966] 2 QB 237, 243.

¹⁰ *Patel v Bradford University Senate*, [1978] 1 WLR 1488, 1493E.

¹¹ *Bayley-Jones v University of Newcastle*, (1990) 22 NSWLR 424.

¹² *Bayley-Jones v University of Newcastle*, (1990) 22 NSWLR 424, 431B-C.

¹³ “The visitor is not free from all control by the courts. Thus prohibition will lie to restrain him from exceeding his jurisdiction, and so will mandamus if he refuses to exercise it”: *Patel v Bradford University Senate*, [1978] 1 WLR 1488, 1493F.

¹⁴ See discussion of *Griffith v Tang*, [2005] HCA 7 (3 March 2005) *below*.

¹⁵ *University Acts (Amendment) Act, 2003*, (Vic).

¹⁶ See *Ex parte Forster; Re University of Sydney*, 1963 NSWSR 723, 727.

IV IS THE STUDENT DEFINED BY AN ADMINISTRATIVE RELATIONSHIP?

The exclusivity of the visitor's jurisdiction poses the question as to the nature of the "internal," academic-legal relationship to which the student is subject. What is the nature of the academic judgement the student faces? Academic decisions, i.e. the ones made by academic teaching staff, are founded on the power of the university to confer degrees and their responsibility to deliver academic programs. Students find themselves in this academic nexus: between knowledge transmission and its formal organisation and certification, between knowledge and credentials. Within this structure, academic decisions are based on grading and assessment (hence ranking). These decisions, hundreds of thousands of them every year, give effect to the "core functions" and legislative "objects" of the university.

Academic decisions are not administrative decisions; they do not represent "administrative actions." This process, however, embodied in grading and assessment, might be said to be *embedded* in administrative action and arrangements. The administrative *density* of the regulatory regime has expanded considerably with the introduction of the HESA. Notwithstanding the series of Administrative Guidelines, regulations and notices accompanying the Act, there are 293 discrete provisions (sections) of the HESA, as against 120 in the *Higher Education Funding Act 1988*, and negligible regulation pre-1989 (under the States Grants Acts regime). This does not account for the qualitative effects of regulation, but is testament to educational experience and institutional action *heavily inscribed* by administrative rules and action. These are the conditions and context in which academic judgements are made, and in which qualifications are sought. It might be said that scholastic participation has become an object of layers of executive and delegated power. If the academic relation is not directly regulated in this manner, the academic *world* of the student is.

V IS THE STUDENT DEFINED BY A DUTY OWED TO HIM/HER?

The concept of the student as a beneficiary of a duty, owed by the university, is also a subjective factor, currently being remodelled in the context of the corporate character of the institution and a seeming litigiousness of students, eg with respect to trade practices legislation. Duty constructs a framework of "protective" entitlement of the student. In the contemporary context, this equates to economic protection (against misleading action or poor quality "products") of the student as consumer. This is reinforced by universities' emphasis of body corporate status to the almost total exclusion of a political or representative dimension to their operations. HESA refers to universities solely as bodies corporate (s.16D). Consequently, the concept of a duty, owed to the student as a type of customer, implies the student as vulnerable if not ineffectual in relation to the production and/or scrutiny of courses and services provided and of actions taken by the institution. While student actions in

tort have been taken in relation to misrepresentation by universities,¹⁷ the construction of duties in relation to university statutory functions has emerged rather more by application of the *analogy* of economic tort – that is to say, in relation to quality of provision. Historically such standards were maintained through mechanisms of self-accreditation and self-government. With the rise of an economic (corporate) model, more bureaucratic/technocratic systems have been imposed.

The elaborate “quality assurance” machinery of the universities, complemented by subdivisions 19-C and 19-D of the HESA, represent means of contending with the new regime of duties owed to the student (and the wider public). In the quality assurance situation, duty represents an insulated form of right, managed by institutional authorities on behalf of students, and now overseen by statute. The student has, at best, a highly mediated, individualised form of power. They become a complainant, a bearer of grievances, and a candidate for remedy. Consistent with the corporate paradigm, any cause of action by the student is seen as private.

The concept of duty owed to students was not always this technocratic. The current situation largely evolves out of the corporate model of the university. Notions of duty also attached to the *in loco parentis* doctrine. Although this doctrine has had little currency in Australia, it has been influential in North America. It has historically been called on to explain the student-university relationship, and derives from early, small, denominational college environments, where the moral development of students was seen to be inextricable from academic formation. Literally meaning that the institutional authority will “stand in the place of the parent,” the familial model allowed the courts to defer almost entirely to the rule of the college/university, the limits of its power only being actions that were arbitrary and capricious.

VI DOES THE STUDENT HAVE A CONTRACT?

It is more common for a contract to be implied in the student-university relationship. The issue of a contract arose in *Bayley-Jones*. In considering the visitatorial question in *Clark v The University of Lincolnshire and Humberside*, the English Court of Appeal found a contract to exist between a student and a university, and, while clearly reluctant to involve the courts in anything other than a strictly supervisory function, conceded that judicial intervention may extend beyond this because of the contractual nature.¹⁸ Nevertheless, what the courts have tended to do is determine the form of the relationship as contractual and identify the terms of that contract as based on the university’s rules, procedures and decisions. The idea of a contract may provide the student with some rights within the university, but the terms of the contract weigh heavily in the favour of the institution. Dodd¹⁹ has

¹⁷ See *Fennell v Australian National University*, [1999] FCA 989 (22 July 1999); Philip Clarke, *University Marketing and the Law: Applying the Trade Practices Act to Universities’ Marketing and Promotional Activities*, 8 DEAKIN L. REV. 304 (2003).

¹⁸ *Clark v The University of Lincolnshire and Humberside*, [2000] ELR 345.

¹⁹ Victoria Dodd, *The non-contractual nature of the student-university contractual relationship*, 33 U. KAN. L. REV. 701 (1985).

argued that the attribution of a contract at all to the student-university relationship is unsound and leads to perverse and oppressive outcomes, given precisely (American) courts' propensities to load the burden of implied terms on the student over the institution. The implied terms of the contract are oppressive, but also uncertain, vague and indeterminate. The distance in effect of a contract recognisable as commercial and that "negotiated" between the student and the university is so great as to "strain" the understanding of contract: "There is little in the student-university relationship, particularly as it has been viewed by the courts, that reflects principles and policies that are associated with theories of contract."²⁰ One can argue then that the nascent "contractual rights" expressed in *Bayley-Jones* ("a reflection of the rules of the University"),²¹ are highly formalistic and provide little in the way of benefit to the student in dispute over academic rules and decisions. The peculiar contract of the student does not appear to advance their position as a member of the university, notably in relation to other "members" such as the University Council. The situation is further affected by the fact that the greater regulating force over the universities and the student is not the law per se but financing, that is by *de facto* conditions determined by federal policy. Arguably, recent changes to federal higher education legislation have reinforced a notion of a student-university contract.

VII THE *DE FACTO* ROLE OF FEDERAL LEGISLATION

Significant changes are currently being implemented in university regulation as a result of passage of the HESA. Since the 1970s, conditions attached to federal funding have been used extensively to shape the university. By extension they have strongly influenced the character of the student. The student is defined under federal legislation simply as a person enrolled in a recognised course of study. In law, the definition of a student would appear to be a relatively technical question. The bigger issue arises in the use of law in public policy.

Major federal intervention into higher education came with the Whitlam Government's decision in 1974 to abolish university fees. The instrument under which this occurred was a pre-existing funding mechanism, the States Grants Acts, under which new appropriations occurred annually. The legislation provided for grants to institutions. The bigger shift in federal university legislation came with the *Higher Education Funding Act 1988*. The introduction of HECS, full-fee paying markets for international (and then postgraduate and then undergraduate) students, tendering for funds, and the decline in government funding (to around half of 1980s levels) subjected the university to the competitive pressures of a pseudo-corporation in a marketplace. The student emerged as an economic subject, as an actor within a supply chain leading to the flow of credentials (and the skills signified by them) onto the labour market. The effect of the HEFA was a creeping "consumerisation" of the student.

²⁰ *Id.* at 72.

²¹ *Bayley-Jones v University of Newcastle*, (1990) 22 NSWLR 424, 436A.

The HESA goes one step further, where “the market order becomes the dominant mode of organisation.”²² For the first time, the HESA establishes the government as *de facto* purchaser of higher education programs, from university “providers,” on behalf of students/consumers, who in turn are provided with a voucher-style loan in order to access these “government-purchased” programs. Part of the voucher may be “consumed” at overseas institutions. The voucher structure in the HESA (Student Learning Entitlement) is explicitly referred to as being “consumed” by a student in the course of their enrolment/study.²³

Already the “quasi-market” order developed after 1988 led to new cultural and sociological realities for students, in which they became habituated to the money-nexus (as fees, debt, or scarcity of places), and found “participation” in university an increasingly privatised and instrumental experience. Universities viewed themselves and acted as corporate institutions, where executive power reigned largely unchecked over internal quasi-legislative (collegiate) decision-making.²⁴ Recent research on the “student experience” has highlighted a phenomenon of student “disengagement” from the university.²⁵ On-campus experience has been heavily diluted by other pressures, notably paid work and family responsibility.²⁶ Pedagogically, depth of thinking (and the reading and writing associated with it) has been replaced by efficiency in the completion of tasks and in interactions (including electronic-visual interactions).²⁷ For the student, an enormous tension exists between “participation” as an economic actor/consumer and a more authentic participation as a “member” of the university.

VIII THE HIGH COURT INTERVENES: GRIFFITH UNIVERSITY V TANG

On 3 March 2005, the High Court handed down its decision in the case of *Griffith University v Tang*.²⁸ This decision is significant not least because of the rarity of any dispute between a student and a University being appealed to a superior court, let alone reaching the High Court of Australia. It is also significant for the broad (if tortuous) statement made by the High Court on the student-university relationship.

The High Court found that the relationship between the student and university is not primarily one of public law; instead the private, contractual character of the rela-

²² Simon Marginson, *They Make a Desolation and They Call It FA Hayek*, AUSTRALIAN BOOK REVIEW 260 (April 2004).

²³ DEPARTMENT OF EDUCATION SCIENCE AND TRAINING, ADMINISTRATIVE INFORMATION FOR PROVIDERS s31 (2005).

²⁴ SIMON MARGINSON AND MARK CONSIDINE, *THE ENTERPRISE UNIVERSITY: POWER, GOVERNANCE AND REINVENTION IN AUSTRALIA* (2000).

²⁵ CRAIG MCINNIS, *SIGNS OF DISENGAGEMENT? THE CHANGING UNDERGRADUATE EXPERIENCE IN AUSTRALIAN UNIVERSITIES* (2001).

²⁶ CRAIG MCINNIS AND ROBYN HARTLEY, *MANAGING STUDY AND WORK: THE IMPACT OF FULL-TIME STUDY AND PAID WORK ON THE UNDERGRADUATE EXPERIENCE IN AUSTRALIAN UNIVERSITIES* (2002).

²⁷ Judith Langridge, *The Backyard Blitz Syndrome: The Emerging Student Culture In Australian Higher Education*, TRANSFORMATIONS 7 (2003).

²⁸ *Griffith University v Tang*, [2005] HCA 7 (3 March 2005).

relationship prevails. This is consistent in principle with an economic/consumer characterisation of the student.

The dispute originated out of the University's decision to exclude the student Tang from a PhD program on grounds of academic misconduct; specifically that she had fabricated experimental data in her research. The decision to exclude the student was made by an internal university committee established for student disciplinary purposes. The student sought to have the matter reviewed under Queensland's *Judicial Review Act 1991* ("JRA"), arguing that the University's decision had *inter alia* breached the requirements of natural justice. The University failed twice, first in the Supreme Court of Queensland and then on appeal to the Full Court of the Supreme Court, to have the matter struck out. However, in a 4:1 finding, a majority of the judges in the High Court overturned the decisions of the lower Courts and found in favour of the University.

The case turned upon whether or not, for the purposes of review under the JRA, the decision by the University to exclude the student was a decision "made under an enactment." By majority, the Court found that it was not; the disciplinary powers used to exclude the student were not wielded under statute but were affected by the University in its capacity to establish a private and contractual relationship with the student which exists under the general law of the land.²⁹

The Chief Justice reasoned as follows:

There is nothing in the Griffith University Act 1988 (Q) which deals specifically with matters of admission to or exclusion from a research program or any course of study, academic misconduct, or intra-mural procedures for dealing with issues of the kind that arise in the case of the respondent.³⁰

On that basis, the Chief Justice found that the powers to admit and exclude arose from "the general power to do anything necessary or convenient" in connection with the specific objects and powers that were specified under the Act.

The legal construction of the majority in respect of the student is that s/he exists within a contractual (private) sphere provided for by statute (public law).

In the sole dissenting judgment, Kirby J³¹ criticised the "unduly narrow approach"³² of the majority. In his view, the only source of the University's power to make the decision was under the University Act. Had it been made under any other source of power, it would have been unlawful.³³ This decision, being an "administrative" decision, the review of which was sought by a "person aggrieved", ought therefore be reviewable under the JRA.³⁴ On a policy basis, he added:

²⁹ Griffith University v Tang, [2005] HCA 7, [82]

³⁰ Griffith University v Tang, [2005] HCA 7, [8].

³¹ Kirby J was a former University Chancellor of Macquarie University 1984 – 1993.

³² Griffith University v Tang, [2005] HCA 7, [99].

³³ Griffith University v Tang, [2005] HCA 7, [159].

³⁴ Griffith University v Tang, [2005] HCA 7, [168].

Where bodies, such as Australian universities, specifically the appellant, are recipients of large amounts of public funds, they cannot complain when, like other statutory authorities and public decision makers, they are rendered accountable in the courts for the lawfulness of the decisions they make “under” public enactments. It is not unreasonable that such bodies should be answerable for their conformity to the law. Relevantly, the law includes the law of procedural fairness (“natural justice”). Universities, in formal and important decisions about disciplinary matters affecting students and others, should be places of procedural fairness.³⁵

The sharply differing opinions on the Court over the organisation of public and private law in the university point to the diverging threads of treatment and disposition of the student in law: as private or public subject.

IX RESOLVING THE TENSION VIA THE CONTRACT?

Growth of the market nexus in the student-university relationship militates toward a contractual reading of the relationship. This is encouraged, for instance, by investment in apparatuses of “quality assurance.” It seems increasingly likely that, in the context of a language of consumerism and service-delivery, disputes will refer to the relationship in contract. The very inflationary environment of university fees would also suggest that pressure on the courts to apply something approaching commercial terms to the academic contract will increase in the longer-term. Reports of high demand degrees topping \$100,000 are now common. Reports of academic staff feeling pressured to pass full-fee-paying international students are relatively commonplace.³⁶ With cultural and technological changes on campus, questions regarding academic misconduct, such as plagiarism, have also become more complex and obscure – and at the same time, these practices have become widespread, even mainstream. University administrations and non-academic functions are now complex and labyrinthine. Under cost pressures, and with large investments in money and time, students might be excused for feeling that their contract with the university is for a credential rather than merely for “educational services.” It remains to be seen how far the courts will intervene into the academic (visitatorial) domain in pursuit of breach of contract. Precedence hitherto suggests not far. The equation of the academic process with service-delivery rather than a quasi-domestic arrangement (craft-like transmission of knowledge from scholar to student), and the importance of administrative systems over personal-professional relationships, would tend, however, to promote judicial scrutiny. For instance, as academic functions are casualised and/or disaggregated (eg teaching and marking handled by separate people) and the market nexus made more explicit, disputes over academic judgement may find their way to the courts as claims over service-delivery, or the lack thereof.

³⁵ *Griffith University v Tang*, [2005] HCA 7, [170].

³⁶ *See eg.* Senate Employment, Workplace Relations, Small Business and Education References Committee UNIVERSITIES IN CRISIS: REPORT INTO THE CAPACITY OF PUBLIC UNIVERSITIES TO MEET AUSTRALIA'S HIGHER EDUCATION NEEDS (2001).

X WHAT OF THE “BODY POLITIC”?

The initial premise of most university legislation is, on the face of it, quite a democratic one: the student is a constituent of the university. The reality is that the student is treated as an object of the university's corporate character (eg “cohort”), subject to the rules and decisions of an academic and administrative jurisdiction. That jurisdiction has essentially been appropriated by an executive, or managerial, class. The condition overlooked in all of this is that a political/legislative (and hence democratic and representative) function also exists at the heart of the university concept. With respect to students, it is a condition nominally given effect by a small number of elected student representative positions on governing councils, boards, committees or senates. Historically, the notion has also been observed in official sanction and support for student unions or student representative councils. Until the 1980s most of these were unincorporated bodies operating under university by-laws. With respect to political operation more generally, some university councils and academic boards/senates have proved a thorn in the side of managements and Vice-Chancellors, and have held them accountable. With a long tradition of direct action and protest, students have on occasion sought to give political substance to their political status. The decade long assault on student organisations, however, has taken its toll on student political practices, whether representative or direct.

Now the body *politic* of the university appears in law as an anomaly, in the face of corporate and public-policy realities. Most managements have sought to reduce institutional democracy to an advisory function, or neutralise it entirely. It is a type of internal “imperial” mode of government, under the Vice-Chancellor. Even statutory representative bodies, such as Academic Boards, are treated as remnant and paid lip-service. Student representativeness within this framework hardly registers on the imperial radar. The political, or internal governmental principle nonetheless remains, and provides the only real basis for a democratic revision of the university – and therefore an assertion of the student as more than a “consumer,” as a public actor and decision-maker. Resuscitation of the body politic will need to make reference to the now-industrial, mass circumstances of higher education provision. But as contemporary universities resemble small municipalities,³⁷ more than intellectual workshops or families, there would appear to be a greater, not lesser, imperative for democracy.

³⁷ Brian. Jackson, *The lingering legacy of In Loco Parentis: An historical survey and proposal for reform*, 44 VAND. L. REV. 1135 (1991).