Law Weakens Tenure, University Autonomy

Over strong opposition from academics, the British government has passed a bill abolishing tenure for new appointments and giving the government more authority to set research policy

BRITAIN'S ACADEMIC COMMUNITY is nervously awaiting the implementation of a new law that will make sweeping changes in the organization and funding of British universities. Finally approved by Parliament last week after a protracted and intense political debate, it will, among other measures, abolish security of tenure both for all new university appointments and for those promoted to higher academic posts.

The main organizational change will be the replacement of the University Grants Committee (UGC)—the independent body that advises the Department of Education and Science on how funds allocated for higher education should be distributed among the country's 46 universities—with a new University Funding Council (UFC). Up to 9 of the new body's 15 members can come from outside the higher education community.

Passage of the measure followed one of the most intense lobbying campaigns ever launched by the academic community in Britain. University officials and faculty members were concerned that the new body will exert a much stronger influence than its predecessor on both the teaching and research activities of individual institutions. As a result of their campaign, the government has reluctantly agreed that guidelines under which universities will be expected to operate in future should include an explicit commitment to defend academic freedom.

However, despite strong backing from the House of Lords, the universities have failed to convince the government to drop a clause in the legislation allowing the Secretary of State for Education and Science to establish the terms and conditions under which public funds are provided to universities. The academic community had fought to maintain a less restrictive system under which grants are made to the universities with few strings attached.

Government spokesmen claim that the authority to set more precise terms and conditions for research is needed primarily to ensure proper accountability for the use of public funds. The universities, however, claim that the new clause could become the thin end of a wedge that would allow the government, through the UFC, to determine which subjects they will be allowed to teach and make the subject of research.

The creation of the new UFC, which is expected to have a much higher representation from the industrial community than the UGC, forms part of an omnibus Education Reform Act which was first presented to Parliament last November, and was signed into law last Friday.

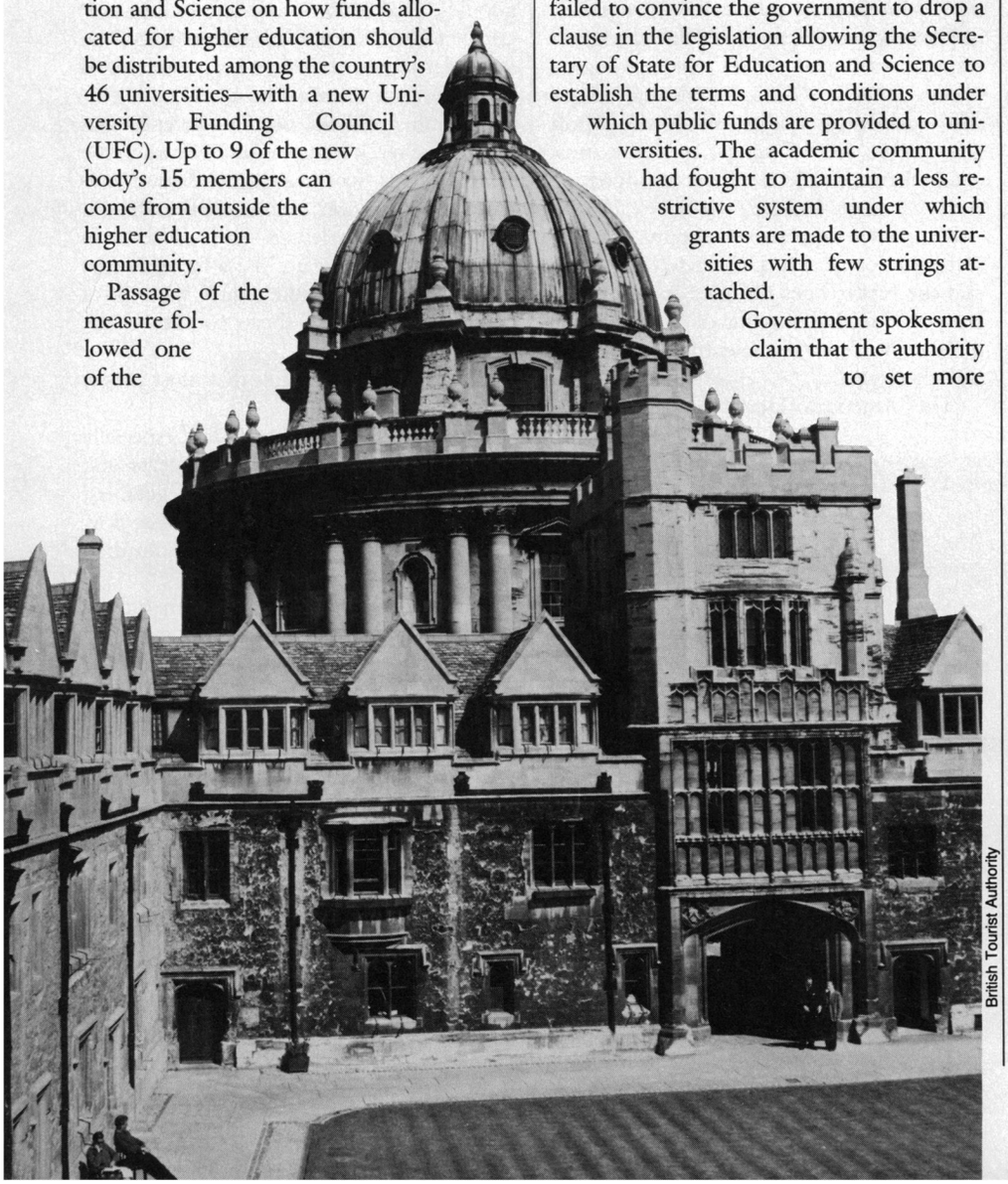
According to the Conservative government of Prime Minister Margaret Thatcher, the measures in the bill, which cover all levels of education from primary schools through to higher education, are intended to produce the most wide-ranging structural changes in Britain's education system for the past 40 years.

The most significant aspect of the new law from the universities' point of view is that, as from last November, nobody appointed to a university post, either from outside or promoted from within his or her own department, will be guaranteed security of tenure. This would make it possible for universities to fire those whose academic performance becomes unacceptable.

The universities fought this measure. Although they did not get it deleted, they did at least persuade Education Secretary Kenneth Baker to temper the abolition of tenure by including a clause explicitly protecting academic freedom—something the government had originally been firmly resisting because it considered it unnecessary.

The new clause protecting academic freedom is the result of an amendment passed by the House of Lords, which the government decided not to challenge. It states that all academic staff "will have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or the privileges they may have at their institutions."

The government also backed away from its original proposal that universities should have the right to replace a highly paid research worker with one prepared to do the same work for a lower salary. Universities had warned that such a clause would threaten the ability of universities to attract and keep world-class research workers, and the government subsequently accepted new



British Tourist Authority

British universities *will all be affected by the new law. (Left: Brasenose College, Oxford.)*

wording ensuring that academics whose research performance is judged satisfactory can be laid off only if their job disappears.

The House of Lords, to which much of the academic lobbying was directed, was less successful in its defense of university autonomy. The proposal to use what was widely described as a "contract funding system" as the basis of the new financial arrangement between universities and government had been sharply contested by almost all sectors of the academic community, ranging from the Committee of Vice-Chancellors and Principals to the 30,000-member Association of University Teachers.

"Our feeling was that the government's original proposal was too prescriptive, and would not give universities sufficient room to exercise their academic judgment on teaching and research," says Ed Nields of the vice-chancellors committee's science unit.

Such views were expressed by a succession of speakers during a debate in the House of Lords at the beginning of last month. Lord Swann, a prominent zoologist and a former vice-chancellor of the University of Edinburgh, said he had the "gravest reservations" about a system run jointly by officials from the Department of Education and Science and the new UFC which, by its very nature, he said, "must be bureaucratic, must be inflexible, and is bound to jeopardize the freedom of research."

Similarly Lord Beloff, the first vice-chancellor of Britain's only private university at Buckingham, said that a system of contract funding would impinge directly on academic freedom. He warned that the government needed to take steps to heal the breach that was growing between it and the universities.

Government supporters, in contrast, argued that, since British universities are almost entirely financed by taxpayers, the government should have the authority to occasionally require universities to pursue research in particular subjects considered to be in the national interest.

An amendment proposed by Lord Swann was subsequently adopted, under which the UFC would have been able to award universities grants rather than contract payments. However, when the bill was returned to the Commons, the government redrafted the amendment and replaced some of its original language.

Education Secretary Baker subsequently announced that the wording of the bill would retain the concept of grants, but that he intended to retain the right—which the House of Lords had wanted deleted—to set the terms and conditions under which the grants were made, arguing that these powers are necessary for the UFC to carry out its functions properly. ■ DAVID DICKSON

Court Rules Cells Are the Patient's Property

California's Court of Appeal overturns lower court; says patients must okay use in R&D and in commerce. Moore cell line case may go to trial

THE CALIFORNIA COURT of Appeal, in a precedent-setting decision, has ruled that researchers must get permission from patients before using tissues and body fluids obtained in the delivery of health care. The court also indicated that if research reveals that a patient's tissues may yield products of commercial value, the donor has a right to some compensation unless he specifically relinquishes any financial interest.

In overturning the California Superior Court's decision not to hear a dispute over the use of a patient's spleen and blood cells, two of three judges on the appeals court panel moved to clarify the extent to which individuals can control what happens to these materials. The court noted that consenting to surgery does not mean that a patient has forfeited all say over tissues and fluids that are extracted in the process. Failure to obtain explicit consent to use the materials in research or to develop a commercial product represents a taking of property, said the court in affirming that the plaintiff had established that he had a valid claim under the state's property law.

The split 2–1 decision was rendered on a case brought by John Moore, a Seattle, Washington, businessman, who was treated at the University of California at Los Angeles (UCLA) for hairy cell leukemia (*Science*, 16 November 1984, p. 813). Part of the treatment involved the removal of Moore's spleen, an accepted procedure. Two university researchers, David W. Golde and Shirley G. Quan, who were involved in treating Moore, discovered that his spleen contained unique cells that could be used to establish a cell line to produce a variety of proteins, including colony-stimulating growth factor and human immune interferon.

The university first applied for a patent in 1981 and was awarded one in 1984 for a cell line extracted from the spleen cells. Golde negotiated contracts to investigate and develop the cell line with two companies, Genetics Institute, Inc., and Sandoz Pharmaceuticals Corp. Court records state that Genetics Institute paid Golde and the university $330,000 and gave Golde 75,000 shares of stock at a nominal price. Sandoz paid another $110,000.

Moore alleged, however, that at no time did the university, Golde, and Quan ever tell him that his tissues might have any research purpose beyond his own treatment or that they had any commercial value. He claimed in his complaint that had he been informed, he would not have allowed his tissues to be used in this manner. Only on one occasion, in September 1983, did Moore give the university the right to conduct research on his tissues. At that time, he formally declined to relinquish rights to any cell lines or products that might be produced.

The Superior Court of California, acting on the defendants' motion, dismissed the case in 1986. It ruled that the complaint was technically defective and did not demonstrate that a taking of property had occurred. As a result the case did not go to trial and 12 other counts in Moore's complaint were not addressed, including allegations that he was not told about the research and the commercial potential of his spleen cells and that the university engaged in deceit and fraud.

The appeals court in its 21 July decision sent the entire case back to the Superior Court. The appeals court found that there had been an adequate showing of a property right and it concluded that a probability that an unwarranted use of Moore's tissues had taken place. "To our knowledge, no public policy has ever been articulated, nor is there any statutory authority against a property interest in one's own body," said the court in affirming Moore's property right, which the Superior Court had rejected.

Unless the appeals court decision is successfully appealed to the state supreme court, the lower court must examine the facts of the case for the first time in a trial and it will be obliged to heed the appeals court's finding that Moore had a right to determine how his body tissues were to be used. UCLA had argued that California's health and safety code stipulates that body parts obtained during surgery may be retained for scientific use. The court rejected this argument stating that "simple consent to surgery does not imply a consent to