

# Trends in the Restructuring of German Universities

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What happens when a highly regulated educational system—one featuring academic freedom, a national outlook, and an input-oriented, state-run bureaucracy—attempts to internationalize and introduce management structures that are outcome-oriented, deregulated, and more efficient? The question is relevant in many countries where universities are trying to get out from under the state, and it is critically important in the formerly communist systems as well as in countries where Prussian traditions have influenced the university model. In the case of Germany, examined in this article, it has long been admitted that change is needed. There is no shortage of exhortations to achieve it, both within and outside government. Yet the German model is an immensely influential one, both in Europe and the United States.<sup>1</sup> Accordingly, a change in German higher education would represent a significant reconfiguration in the academic world.

My purpose in this article is to explore the measures currently being taken to modernize and create a market within German universities and to evaluate the success of these measures. The following questions are addressed: How are marketizing trends being manifested in governance and law, management, finance, quality assurance, and human resource management? What are the obstacles to marketizing trends? How are these trends influencing the model of the German state in its postwar incarnation?

To address these questions, trends in the restructuring of German universities were studied both qualitatively and quantitatively. Visits were undertaken to the Federal Ministry for Education and Research (BMBF) in Bonn and Berlin, the Hochschulrektorenkonferenz (HRK; Conference of Higher Education Rectors), the *Bund-Länder-Kommission*, the *Wissenschaftsrat* (Council for Higher Education and Research), and Higher Education Information Systems. Professional staff associations, namely, the *Deutscher Hoch-*

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<sup>1</sup> Ulrich Teichler and Henry Wasser, eds., *German and American Universities: Mutual Influences—Past and Present* (Kassel: Wissenschaftliches Zentrum für Berufs- und Hochschulforschung der Gesamthochschule Kassel, 1992).

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*schulverband* and the *Hochschullehrerbund*, were also visited. Interviews were carried out with key personnel from 2001 up to the summer of 2005. These were supplemented by study of official publications, policy statements, books, and articles. In addition, a survey was conducted of the academic staff of 12 universities, which is the subject of separate publications.<sup>2</sup>

#### Dysfunctional Aspects of the Status Quo

In international competition, the German model is felt to be losing out to an Anglo-American model that is becoming the norm. A government document, "Courage to Change," by Federal Minister Edelgard Bulmahn, admitted the undeniable signs of crisis: chronic underfunding, deteriorating conditions of study with excessively long completion periods and high drop-out rates, inadequate investments in buildings and equipment, an insufficiently practical orientation in education, and a lack of attractiveness in the international arena.<sup>3</sup> Part of the problem is due to a growth in student numbers without a corresponding increase in resources. The *Wissenschaftsrat*—the top advisory body to the government on higher education—observed that between 1977 and 1990, the number of students increased by 73 percent and the number of those completing their courses rose by 20 percent. However, expenditures on higher education grew in real terms by only 12 percent, and the time taken to complete a program of study increased by 48 percent.<sup>4</sup> These are clear signs of an underresourced system in which there is a great deal of student failure and dropout. The traditional Humboldtian "unity of teachers and learners" may be feasible in graduate school, but in a system where the ratio of professors to students is 1 : 47 it is impossible to achieve, except at the postgraduate research level.<sup>5</sup> Detlef Müller-Böling, head of the Centre for the Development of Higher Education (CHE) in Gütersloh, believes that German professors sometimes abuse the esteem and freedom they have traditionally enjoyed; this results in canceled lectures and a lack of student support. Academic individualism can undermine corporate identity in higher education, resulting in neglect of common interests.<sup>6</sup> Müller-Böling advocates several changes, including more strategic planning built on evaluation and the reconciliation of academic values and practices with modern

<sup>2</sup> Rosalind M. O. Pritchard, "Humboldtian Values and Globalisation: Staff and Students in German Universities," *Oxford Review of Education* 30, no. 4 (2004): 509–28, and "The Influence of Market Force Culture on British and German Academics," *Comparative Education* 41, no. 4 (2005): 433–54.

<sup>3</sup> Edelgard Bulmahn, *Mut zur Veränderung* (Bonn: BMBF, 1999). Although the minister complains of high dropout rates, in actual fact the German rate is between 28 and 30 percent, which, with the exception of Japan (11 percent), is the lowest among large Organization for Economic Cooperation and Development (OECD) countries. See OECD, *Education at a Glance* (Paris: OECD, 2000).

<sup>4</sup> Wissenschaftsrat, *10 Thesen zur Hochschulpolitik* (Cologne: Wissenschaftsrat, 1993).

<sup>5</sup> Bundesministerium für Bildung und Forschung, *Zahlenbarometer 2000/2001: Ein bildungs- und forschungsstatistischer Überblick* (Bonn: BMBF, 2001), 41.

<sup>6</sup> Detlef Müller-Böling, *Die entfesselte Universität* (Gütersloh: Bertelsmann, 2000), 61–64, 90.

management principles; in addition, stakeholder interests need to be adequately represented.<sup>7</sup> Müller-Böling's comments may apply generally to globalizing universities elsewhere, as neoliberal forces prevail.

### Theoretical Background

German higher education is certainly not short of criticism from those who want it to become more competitive and to keep up with the international developments characteristic of globalization. Like other nations, Germany must respond to contemporary demands in light of its own identity and cultural history. The reciprocal interaction among global, national, and local forces ("glo-na-cal") results in a form of academic hybridization that may change the very nature of this identity.<sup>8</sup> In common with many other European universities, Germany can be regarded as a state-centered system, but it also possesses distinctive characteristics. The role of the state has traditionally been valued in Germany. In 1883, Otto von Bismarck created one of Europe's first comprehensive state-sponsored systems of welfare, helping to engender a positive orientation toward the state.<sup>9</sup> However, after 1948–49, representatives of the allied powers blamed the centralist-unitary character of the German constitution for the failure of the first German democracy. Since then, the character of the state could be regarded as "diversity within unity."<sup>10</sup> The *Länder* (federal states) have sovereignty in cultural affairs that include higher education planning.<sup>11</sup>

There are reasons to doubt that a strong version of the market force model can thrive in Germany as well as it can in England or America. Exponents of regulation theory (RT) explain differential adjustment to marketization by comparing the weight given to the nature of the labor process, as opposed to the overall pattern of production and consumption, or to modes of growth or regulation. The German model described within RT modifies the assumption of state-centeredness. Germany's tripartite, corporatist arrangements—linking unions, business, and the state—reduce the influence of "crude supply-siders and monetarists" and provide the basis for

<sup>7</sup> *Ibid.*, 144.

<sup>8</sup> Simon Marginson and Gary Rhoades, "Beyond National States, Markets and Systems of Higher Education: A Glonacal Agency Heuristic," *Higher Education* 43, no. 3 (2003): 281–309.

<sup>9</sup> Derek Lewis, *Contemporary Germany: A Handbook* (London: Sage, 1997), 139.

<sup>10</sup> Wolf D. Gruner, "Historical Dimensions of German Statehood: From the Old Reich to the New Germany," in *German Public Policy and Federalism: Current Debates on Political, Legal and Social Issues*, ed. Arthur B. Gunlicks (Oxford: Berghahn, 2003), 20.

<sup>11</sup> In order to assure equality of provision throughout Germany, the construction and expansion of higher education institutions are funded 50 percent by the federal government and 50 percent by the *Länder*; the *Bund* provides framework legislation within the parameters of which the *Länder* enact their more local legislation.

resistance to a purely neoliberal strategy.<sup>12</sup> Applied to higher education, this labor market theory, taken together with constitutional safeguards against centralism, shows why it is so difficult to introduce market elements into German universities.

#### Higher Education Changes in Response to Market Imperatives

After the Second World War, the Federal Republic of Germany was reconstructed based on the rule of law (*Rechtsstaat*). The law per se has a great deal of prestige because it is felt to be a guarantor of democracy. Federalism was intended to militate against any tendency to return to a dictatorship. It was manifest in the reluctance to create legislation at the national level, and there was little central government legislation on higher education before the 1970s. The *Länder* tended to enact their laws independently, and this created problems for individuals who relocated from one state to another. There was a need for unifying legislation, which was eventually provided by the Federal Framework Act, the *Hochschulrahmengesetz* (HRG), first passed in 1976 and followed by several restructurings and modifications since that year. The 16 federal *Länder* enact their own higher education (HE) laws, but they are supposed to do so within the parameters set by the Federal Framework Act. However, in general the HRG now deliberately confers increased autonomy on the *Länder*, and, at *Land* level, the introduction of “experimentation” clauses allows for the introduction of new ideas.<sup>13</sup>

The most substantial and important recent version is the Fourth Amendment of the HRG, which came into force on August 25, 1998. It was intended to help transform German higher education according to market principles and aimed to improve German higher education institutions’ (HEIs’) international competitiveness by means of deregulation and performance-oriented incentives, rewards, and funding.<sup>14</sup> It was followed by the Fifth Amendment of the HRG, which laid down new structures for the academic profession and introduced the so-called junior professorships.<sup>15</sup> This law was the subject of a legal dispute (discussed below) because it sought to abolish the postdoctoral thesis as a requirement for a professorial chair. It was supplemented by a law on academic remuneration to reinforce performance

<sup>12</sup> Bob Jessop, “Conservative Regimes and the Transition to Post-Fordism: The Cases of Great Britain and West Germany,” in *Regulation Theory and the Crisis of Capitalism: Four Country Studies*, ed. Bob Jessop (Cheltenham: Elgar, 2001), 140.

<sup>13</sup> Statement of Wolf-Michael Catenhusen, Parliamentary Secretary of State, in *Hochschulräte als Steuerungsinstrumente von Hochschulen*, ed. B. Goebbel and U. Greitzke (Bonn: Hochschulrektorenkonferenz, 2000), 11.

<sup>14</sup> Fourth Amendment of the Federal Framework Act, available at <http://www.dip.bundestag.de/btd/13/098/1309822.pdf>.

<sup>15</sup> HRG, Fifth Amendment of the Federal Framework Act, passed by the Bundestag on November 11, 2001, came into force on February 23, 2002, available at <http://www.dip.bundestag.de/btd/14/068/1406853.pdf>.

orientation.<sup>16</sup> A Sixth Amendment introduced bachelor's and master's (BA/MA) courses on the Anglo-American model.<sup>17</sup> It also prohibited fees for initial degree qualifications, but this too became the subject of legal dispute (also discussed below).<sup>18</sup> A Seventh Amendment gave the HEIs the right to select a proportion of their own student intake.<sup>19</sup>

An important trend is the Europeanization and internationalization of German higher education, since both of these are connected with globalization and the opening of national markets. Germany and Great Britain are already tied as the second most popular destination of international students.<sup>20</sup> Indeed, in Germany between 1999 and 2003, there was an increase of 59.73 percent in the number of foreign students recruited from outside the country. International students currently make up 12.2 percent of the student body overall.<sup>21</sup> The introduction of the above-mentioned BA/MA complies with the Bologna Declaration for the European harmonization of academic courses (here termed "Bologna"). Germany aims to switch from its present structure to a two-cycle system by 2009–10. Currently, the new programs constitute about 26.3 percent of all available degree programs, though the percentage of actual students in such courses is still modest as a percentage of the whole student body. Quality is assured through the German Accreditation Council that enforces quality standards within a decentralized system and certifies a number of agencies that carry out the actual degree accreditation by conferring upon them a quality seal.<sup>22</sup>

The BA/MA is the biggest change in academic structure since World War II. It is partly motivated by Bologna, and partly an attempt to improve the German market product, thereby gaining new international students, spreading German influence abroad, and bringing foreign spending money into the domestic market. In some HEIs, courses are also being offered in English in order to add market value. However, there are incipient problems about the status, rewards, and length of the short and the longer courses.<sup>23</sup> Only the MA qualification gives access to the higher ranks of public service employment, and the president of HRK, Peter Gaetgens, has suggested that

<sup>16</sup> Professorial Emoluments Reform Act, February 2002.

<sup>17</sup> The Fourth Amendment instituted BA/MA on a trial basis. See Helga Welsh, "Higher Education Reform in Germany: Reform in Incremental Steps," *European Journal of Education* 39, no. 3 (2004): 365. See also the Sixth Amendment of the Federal Framework Act, available at <http://dip.bundestag.de/btd/14/088/1408878.pdf>.

<sup>18</sup> However, most *Länder* charge fees to students who substantially exceed the normal length of the study period.

<sup>19</sup> The Seventh Amendment of the Federal Framework Act, available at <http://dip.bundestag.de/btd/15/014/1501498.pdf>.

<sup>20</sup> See the Bologna Process National Report for Germany 2004–5, available at [http://www.bologna-bergen2005.no/EN/national\\_impl/00\\_Nat-rep-05/National\\_Reports-Germany\\_050118.pdf](http://www.bologna-bergen2005.no/EN/national_impl/00_Nat-rep-05/National_Reports-Germany_050118.pdf).

<sup>21</sup> Data were obtained direct from the ministry (BMBF) in Berlin, June 2005.

<sup>22</sup> See, e.g., ZEvA (Zentrale Evaluations- und Akkreditierungsagentur), Hannover.

<sup>23</sup> The BA gives access to the *gehobener Dienst*, and the MA to the *höherer Dienst* categories of public service. Normally an MA would be expected for access to PhD studies.

there should be a quota of about 50 percent going on from a BA to an MA. He justifies this on the grounds that there is no point in replacing one long course (the *Diplom*) by another equally long one.<sup>24</sup> There is also concern that students may remain at university to pursue the MA if the job market is tight, using the program as an academic parking lot. Originally, those with vested interests in universities suggested that the more practically oriented *Fachhochschulen* should offer lower-level BA programs, while the universities would offer theoretically challenging MA degrees, but this notion did not prevail, and courses are now being shared by both types of institutions. However, it remains to be seen how this will work in practice. For significant numbers of students to finish the BA in the allocated time, student support structures would need to improve, and the numbers of teachers would need to increase. To get students through their modules quickly and efficiently, cheap teachers would be needed, not all of whom would be high-grade researchers. New materials are now being developed for the Bologna courses, so the implications of the change to BA/MA are likely to be widely felt and may include changes in epistemology and in academic freedom.

Politically and constitutionally, the absence of fees, championed particularly by the *Sozialdemokratische Partei Deutschlands*, was meant to ensure equality of opportunity. However, free higher education conflicted with the promotion of interinstitutional competition and the introduction of market forces. It also made it difficult for the universities to obtain enough money to run their courses.<sup>25</sup> Five *Länder* (Baden-Württemberg, Bavaria, Hamburg, Hesse, and Saarland) took legal action against the Federal Framework Act because they felt that prohibiting fees trespassed on their *Länder* competence. They won their case, making it possible for federal states to charge fees for initial degrees. The effect of lifting the bar on fees remains to be seen. At present, the authorities are intending to require payment for the BA and MA not during but at the end of the program so as to mitigate social injustice. However, the tendency of 82 percent of present-day students to begin studies in a university that is in their home region may militate against the potential of fees to promote a higher education market.<sup>26</sup> A frequently uttered fear is that the state will reduce block funding by an amount commensurate with fee income.

It is notable that the central government (*Bund*) does not always succeed in introducing enduring legislation. Even when it perceives clearly what needs

<sup>24</sup> Quoted in Gero Lenhardt, "Europäische und deutsche Perspektiven der Hochschulpolitik," *die hochschule* 13, no. 2 (2004): 20.

<sup>25</sup> A survey conducted in 1998, reported by Alexander Dilger ("Quo Vadis, Studiengebühr?" *Forschung und Lehre* 8 [1999]: 403), reveals that most people reject fees if they believe that the money will be absorbed into the general finances of the *Land* and will lead to a reduction in state funding for higher education.

<sup>26</sup> Hochschul-Informationssystem, *Studienanfänger im Wintersemester 2000/2001* (Hannover: Hochschul-Informationssystem, 2001), 36.

to be done, some of its provisions become targets for legal counterattack. There is intensive debate between the federal government and the *Länder* about the measures necessary for reform, and the legislation introduced by the *Bund* is often diluted and attenuated by the federal states, which are very jealous of their power in educational matters. The laws are intended as the major tool in bringing about higher education reform but are felt to be heavy and restrictive. Managers and senior academics have called on the minister, Edelgard Bulmahn, to reduce the extent of legislation so that only the most minimal provisions remain.<sup>27</sup> This represents a trend toward dejuridification that is new in Germany but is typical of countries undergoing market restructuring. Guy Neave characterizes it as a movement from legal homogeneity to the negotiated coordination of diversity.<sup>28</sup> However, this does not come very easily to a country like Germany where HE quality differences have traditionally been small, ignored, or minimized. It represents a considerable change in attitudes toward state power.<sup>29</sup> Despite a trend toward dejuridification at the *Bund* level, there is still the possibility—even the likelihood—of heavy, detailed legislation at the *Land* level. With it will come the renewed danger of centralism, but at a regional rather than at a national level. Article 9 of the Federal Framework Act for Higher Education makes the *Länder* jointly responsible for ensuring equivalence of degrees, but there are already some problems with mutual (inter-*Land*) recognition of qualifications. If the *Länder* laws diverge too widely from each other, individual mobility will be hindered, and Germany will experience the same lack of national consistency that originally prompted the 1976 Federal Framework Act.

#### Management and Governance Strategies to Promote the Market

The Federal Framework Act aims to steer the institutions by market competition rather than by state planning and involves the ministries stepping back from their former interventionist role. This requires certain changes in governance, including broader representation and a new supervisory organ closer to the institutions themselves. Hence, to some extent inspired by America, boards of trustees are proposed and have been introduced in Baden-

<sup>27</sup> Jürgen Mlynek, ed., *Und sie bewegt sich doch! Universität heute: Zwischen Bewährtem und Veränderungsdruck—Finanznot und Wettbewerb als Chancen für Innovation?* (Cologne: Hanns Martin Schleyer-Stiftung, 2004).

<sup>28</sup> Guy Neave, "Homogenization, Integration and Convergence: The Cheshire Cats of Higher Education Analysis," in *The Mockers and the Mocked: Comparative Perspectives on Differentiation, Convergence and Diversity in Higher Education*, ed. V. Lynn Meek, Leo Goedegebuure, Osmo Kivinen, and Risto Rinne (Oxford: Pergamon, 1996), 26–41.

<sup>29</sup> Ulrich Teichler, "Diversity in Higher Education in Germany: The Two Type Structure," in Meek et al., *The Mockers and the Mocked*, 118.

Württemberg, Bavaria, Brandenburg, Hesse, Saxony, and Thuringia.<sup>30</sup> These can be constituted in a variety of ways. They may be responsible to the *Land* government or to the HEI. Some are purely advisory while others have veto and decision-making powers. The board in Dresden, for example, has carried out reforms of financial controls and accounting methods, which Renate Mayntz calls “a feat that has been regarded as one of the six most outstanding reforms in German universities.”<sup>31</sup> In Baden-Württemberg, the board of trustees consists of 13 members, of whom six must be from outside the university. Its function is to supervise the *Rektorat* (vice chancellor’s management team) and to assist in strategic decision making. In a wider sense, it also helps link the university with the community and reconcile pure scholarship with the service function of knowledge.<sup>32</sup>

These boards are controversial. Those opposed to them see them as a foreign body in corporately organized institutions and condemn them as lacking legitimacy and the inner knowledge of the HEI. They also fear that they will usurp the rights of the traditional governance organs such as the Senate. If the budget is frozen, they are powerless to bring about change that would require more funds. Those in favor of the boards claim that they help open HEIs to society by means of external representation, as well as assuring accountability.<sup>33</sup> Advocates believe that they can reduce the influence of the ministerial bureaucracy, make HEI leaders more independent, upgrade planning and decision making, and form a bridge between higher education and the *Land* ministry. However, the new boards of trustees are not as influential as their American equivalents, and their influence is far short of what the supporters claim. A member of BMBF states that they have a predominantly consultative function in linking HEIs and society but “in no way restrict the influence of the Ministry” (personal communication). This is a very telling comment from a highly placed official as it shows a reluctance to let go. While paying lip service to setting the institutions free, there is still a ministerial desire to retain power. Perhaps these councils constitute a modest innovation that is unlikely to end up with the same result as in the United Kingdom where, as two American researchers commented, “the system lost autonomy because of major changes in governance structures and professors lost many of their prerogatives with regard to control over their work.”<sup>34</sup>

<sup>30</sup> Various called *Universitätsräte*, *Hochschulräte*, or *Kuratoria*. The translation “board of trustees” has been preferred by me because a UK “University Council” is different from the German entity under discussion—e.g., in size.

<sup>31</sup> Renate Mayntz, “University Councils: An Institutional Innovation in German Universities,” *European Journal of Education* 37, no. 1 (2002): 26.

<sup>32</sup> Michael Sieber (secretary of state for the Ministry of Higher Education, Research and Art of Baden-Württemberg), “Einführung von Hochschulräten—Chancen und Risiken,” in Goebels and Greitzke, *Hochschulräte als Steuerungsinstrumente von Hochschulen, Beiträge zur Hochschulpolitik*, 19.

<sup>33</sup> *Ibid.*, 22.

<sup>34</sup> Sheila Slaughter and Larry L. Leslie, *Academic Capitalism: Politics, Policies and the Entrepreneurial University* (Baltimore: Johns Hopkins University Press, 1999), 41.

What about the reform of executive management? Burton Clark suggests the notion of the central steering core. Clark argues that ambitious universities in an age of potentially threatening competition cannot depend on weak steering. Therefore, they need to embrace central managerial values and academic departments in order “to become quicker, more flexible, and especially more focused in reaction to expanding and changing demands.”<sup>35</sup> This is very different from the traditional approach in German HE, wherein senior administrators are elected rather than appointed. Traditionally, the elected staff serve in office for relatively short periods: typically, the vice-chancellor serves for 4–6 years, and the pro-vice-chancellor for 2–4 years. Most pro-vice-chancellors receive an additional payment of about €160 per month and do half their teaching. Therefore, their commitment to management functions is limited and only partially professionalized. Deans are in a similar situation, being paid about €80 per month for their additional work. Although some universities have professionalized their management posts and have increased the administrative salaries, in general the top administrative posts are not so much a mark of distinction or an opportunity for promotion as an unwelcome burden that may be forced on academics.

In this context, management remains the preserve of the amateur in most universities. Even vice-chancellors may have problems demarcating their role because, traditionally, the head of administration (*Kanzler*) occupied a permanent post in most universities. While the vice-chancellor may be new to the position, the *Kanzler* of long standing may be more knowledgeable and experienced. The fact that he or she may know the job better than the vice-chancellor can lead to conflict and make it difficult for the latter to assert his or her authority. Historically, there has been a tendency for the electing body to prefer senior academic candidates who will not be too interventionist and so will not pose a challenge to the electors (who may want a comfortable status quo). One factor that contributes to weak management is that, because middle managers like deans are only in office for a short time, it is difficult to let them have complete control over money. For their part, they are sometimes unwilling to make hard decisions that are unpopular and create distance between them and their colleagues. As has been observed in research on the United Kingdom, whether or not managers intend to return to the academic ranks in a research and teaching role can make a real difference to management style.<sup>36</sup> If they do not, they may collude with the power of the budget, but if they are going to return to the faculty in a teaching and research role, they may need to learn to take on the new

<sup>35</sup> Burton R. Clark, *Creating Entrepreneurial Universities: Organizational Pathways of Transformation* (Oxford: Pergamon, 1998), 5–6.

<sup>36</sup> Rosemary Deem, “New Managerialism in UK Universities: Manager-Academic Accounts of Change,” in *Globalization and Reform in Higher Education*, ed. Heather Eggins (Maidenhead, UK: Society for Research into Higher Education, 2003), 55–67.

language of business when managing but to retain core academic values when collaborating with colleagues.

This state of affairs is slowly changing. In a climate of financial stringency and international competition, there is a greater willingness to accept or even prefer senior managers who will help institutions compete. The academic head of the institution may be either a *Rektor* or a president. The former, normally a professor, rises within his or her own HEI, whereas the latter does not have to come from within the HEI at all and does not have to be a professor. The rectoral constitution is more collegial, and the presidential is more executive, sometimes including the right of the president to act as employer instead of the ministry. The debate about president versus *Rektor* began during the 1970s when it was difficult to get committees to represent university-wide interests. The Third Amendment to the Federal Framework Act already offered the possibility of a presidential constitution in 1985.<sup>37</sup> Increasingly, presidential forms of leadership are being adopted, and the powers of *Rektoren* strengthened and widened. This is one of the more significant changes in recent university management. In some *Länder*, there is also a move to fix the length of the *Kanzlers'* terms, thereby leveling out the power disparities between them and the *Rektor-President*. The Humboldt University Berlin has done away with the office of *Kanzler* altogether. Since 1999, it has had a new constitution under which one of the four pro-vice-chancellors assumes the *Kanzler's* functions, and Humboldt now has a fully professionalized leadership. According to several analysts, the main obstacles to such a management generally are the desire of some academics for a life free from pressure to change, as well as institutional difficulty in learning the responsible exercise of power and ministerial unwillingness to cede authority.<sup>38</sup>

#### Changes in Financing to Make Universities More Responsive to Market Forces

Historically, the market has played no role in German higher education because the funding of research and teaching has been paid for by public taxes and because the state acts as a buffer between the universities and the economy, insulating them from the effects of the market (rather like the University Grants Committee, which was used to buffer the British universities from the state).<sup>39</sup> Clark gives figures for private expenditures as a percentage of total higher education spending, and they indicate that in international comparison German HE is heavily state-reliant: Chile 76 percent, Korea 83

<sup>37</sup> Johann Störle, "Die Entwicklung des Hochschulrechts in Bayern: 25 Jahre Bayerisches Hochschulgesetz," *Beiträge zur Hochschulforschung* 22, nos. 1–2 (2000): 50.

<sup>38</sup> Ludwig Kronthaler, "Autonomie muss gelernt werden," in *Reformuniversitäten: Leistungsfähigkeit durch Eigenverantwortung*, ed. V. Meyer-Guckel and M. Sonnabend (Essen: Stifterverband für Deutsche Wissenschaft, 2000), 68–73.

<sup>39</sup> Reinhard Kreckel, "Die Universität im Zeitalter ihrer ökonomischen Rationalisierung," *hochschule ost* 3–4 (2000): 263.

percent, Thailand 67 percent, the United States 53 percent, Australia 44 percent, Canada 43 percent, the United Kingdom 37 percent, France 14 percent, and Germany 8 percent.<sup>40</sup> State intervention can be highly restrictive in terms of granting or denying posts and budgets. Now the aim in the Federal Republic is to move to output-oriented budgeting by allocating funds according to the type, costs, and quantity of the achievements. Line-by-line budgets (*Kameralistik*) are being phased out in favor of global budgets with a greatly reduced number of headings, and much more virement is allowed giving increased flexibility.<sup>41</sup> There is cost-benefit analysis, and budgets are being linked with mission-based goal agreements (see below). The real purpose in the debate about HE budgeting is to help achieve the desired performance and to change the behavior of the individual actors.<sup>42</sup> Performance indicators include numbers of research grants won, postdoctoral theses successfully completed, and students who complete their programs in the minimum time officially allocated. Equity goals (usually gender-related) can also be tied into the formula funding and are being officially encouraged as an aim of higher education.<sup>43</sup> “Controlling” involves putting together and evaluating all the data. In the past, few resources (no more than 5–6 percent) were distributed according to student recruitment, teaching, or research, but the aim is now to create a balance between the security of floor funding and incentive-based funding.

“Goal agreements” are being introduced in several *Länder*. They involve a type of management by objectives based on a simple procedure: fix targets by consensus, give the funding, and evaluate the results.<sup>44</sup> They are a core part of financial policy instruments in *Länder* such as Hesse, Lower Saxony, and North Rhine Westphalia, and if the university delivers its part of the bargain, they can be used to guarantee state support for a number of years. Success is related to available resources such as time, money, and labor, and criteria for judging success may range from the very general (mission, values, priorities, aims, processes, and priorities) to the more specific (winning research grants and increasing the number of people who finish their courses in the allocated period). As with the formula funding, equity objectives may be built into these mission-based agreements as well, allocating money as a reward for the proportion of female professors, female academic staff, and

<sup>40</sup> Burton R. Clark, *Sustaining Change in Universities: Continuities in Case Studies and Concepts* (Maidenhead, UK: Open University Press, 2004), 120.

<sup>41</sup> Peer Pasternak, ed., *Flexibilisierung der Hochschulhaushalte* (Marburg: Schüren, 2001), 300–301; Graham Bannock, Ron E. Baxter, and Evan Rees, *The Penguin Dictionary of Economics* (London: Penguin, 1992).

<sup>42</sup> Diethard Kuhne, “Erfordert die Haushaltsbudgetierung ein neues Personalmanagement an den Hochschulen?” *hochschule ost* 3–4 (2000): 93–105.

<sup>43</sup> Federal Framework Act 2002, Articles 3 and 42.

<sup>44</sup> Thomas Schöck, “Ziele vergeben, Budgets bereitstellen,” *Forschung und Lehre* 4 (2002): 180–82.

women doing doctorates and postdoctoral theses.<sup>45</sup> The new funding approaches are different for each *Land* and take into account its profile, size, and financial power. Thus, Lydia Hartwig describes in detail the budgets for six *Länder*, based on principles such as performance, student numbers, innovation, manpower allocation, space management, real estate, and evaluation procedures.<sup>46</sup>

Goal agreements may have an effect on the power relationships right across a given institution. They affect the power hierarchy by promoting horizontal relations instead of the former vertical hierarchy; the transfer of budgetary competence and subject overview make the traditional administrative service provided by the head of administration (*Kanzler*) redundant.<sup>47</sup> In certain cases, therefore, goal agreements may promote a departure from the monocratic model whereby leadership is the exclusive prerogative of the president. Though their legal position is not a strong one, they can become an alternative to ministerial bureaucracy and a way of linking up management demands and academic culture.<sup>48</sup>

In a study of organizational and management structures at German universities, Ingo Liefner, Ludwig Schätzl, and Thomas Schröder point out that the share of income distributed through resource allocation models on average does not exceed 5 percent, which is in marked contrast to the Texan, British, and Dutch systems where a much higher proportion is involved.<sup>49</sup> An exception is the federal state of Lower Saxony where about 10 percent of the universities' total income is redistributed. In an associated survey comprising 54 in-depth interviews with academics, it transpired that most did not view resource allocation models as an instrument to promote internal competition and thought that such models would have little or no influence on their personal behavior and performance. Their primary value was academic freedom rather than competition, though they did fear the negative impact of market-oriented change in the long term. The authors speculate that acceptance of recent developments may, however, increase as experience of new kinds of funding mechanisms grows.

The impact of using these new methods of fund allocation goes beyond the financial and technical, touching on psychological, political, and edu-

<sup>45</sup> See Lydia Hartwig, *National Report of Germany for the OECD/IMHE-HEFCE Project on Financial Management and Governance of Higher Education Institutions* (Munich: State Institute for Higher Education Research and Planning, 2004).

<sup>46</sup> *Ibid.*, 14–36.

<sup>47</sup> Sigrun Nickel and Lothar Zechlin, "Zielvereinbarungen," in *Hochschulen Managen? Zur Reformierbarkeit der Hochschulen nach Managementprinzipien*, ed. A. Hanft (Neuwied: Luchterhand, 2000), 153–69.

<sup>48</sup> Hanns H. Seidler, "Tendenzen eines neuen Hochschulrechnungswesens in Deutschland," *Beiträge zur Hochschulforschung* 23, no. 1 (2001): 70–77; Müller-Böling, *Die entfesselte Universität*, 58–61.

<sup>49</sup> Ingo Liefner, Ludwig Schätzl, and Thomas Schröder, "Reforms in German Higher Education: Implementing and Adapting Anglo-American Organizational and Management Structures at German Universities," *Higher Education Policy* 17, no. 1 (2004): 23–38, 16.

cational aspects. Making hard decisions arising from market imperatives entails putting additional resources into successful concerns and withdrawing money from the unsuccessful ones. This is contrary to how the funding of HE has traditionally operated in the Federal Republic. Budgetary devolution affects the role of the state because the ministry abandons part of its directive power by refraining from detailed regulation. As has already been implied above, some ministries may be unwilling to renounce such power. Experience from other countries shows that mechanistic formula funding has disadvantages such as short-termism, and it may sometimes be educationally desirable to support a loss-making subject.

German mission-based agreements are subject to criticisms of the kind that are current in any restructured system. In Australia, for example, Tony Coady complains that such an approach results in a shortsighted perception of universities as no more than corporate operations aimed at generating products.<sup>50</sup> Judith Brett is convinced that whenever academics think of their contributions in terms of measures of efficiency, much of what they do for free will come into question.<sup>51</sup> Some see in them a new control instrument taken over by politicians from business where it is normally used to measure turnover and profit but unsuitable for higher education.<sup>52</sup> The motivation for running the institutions thus becomes a materialist-extrinsic one based on finance. The state's claim to let the HEIs have more autonomy is insincere. There is also the question of how far these new budgetary principles accord with the essential nature of HE and with the Basic Law (Constitution). Hubert Detmer, working as a lawyer for the *Deutscher Hochschulverband* (the professional association of university academics), addresses the relationship between the constitutional guarantee of freedom of teaching and learning, and the current mission-based agreements and performance indicators.<sup>53</sup> He argues that those who run higher education institutions must ensure that they fulfill the requirements of Article 5 (3) in the Basic Law guaranteeing the freedom of teaching and learning. An HEI with what he terms "commando structures" cannot claim to be doing this, and no university should make decisions that have a negative impact on the freedom of their members. In his view, the steering of research and teaching is only permissible to the extent that the free exercise of research and teaching is not narrowed or restricted. Thus, the force of constitutional law may mitigate the full impact of market forces

<sup>50</sup> Tony Coady, "Universities and the Ideals of Enquiry," in *Why Universities Matter*, ed. Tony Coady (St. Leonards, New South Wales: Allen & Unwin, 2000), 10.

<sup>51</sup> Judith Brett, "Competition and Collegiality," in Coady, *Why Universities Matter*, 152.

<sup>52</sup> Ruth Wagner, "Zielvereinbarungen," *Forschung und Lehre* 4 (2000): 188.

<sup>53</sup> Hubert Detmer, "Zielvereinbarungen und Leistungsverträge mit Hochschullehrern—oder: Wieviel Vertragsfreiheit verträgt das Amt des Universitätsprofessors?" in *Die Macht des Geistes: Festschrift für Hartmut Schiedermaier*, ed. Dieter Dörr, Udo Fink, Christian Hillgruber, Bernhard Kempen, and Dietrich Murswiek (Heidelberg: Müller, 1999), 605–21.

on the institutions, and this opens up a gap between policy intentions and policy in practice.

#### Applications of Quality Assurance

Moves to reduce central state power and steer higher education through market forces are occurring in many countries. However, increased regulation normally accompanies these moves so as to ensure that quality does not decline as a result of financial pressure. Quality assurance (QA) has been described as a global movement with local variations.<sup>54</sup> In the United Kingdom, it has been possible to implement QA in a highly centralized manner.<sup>55</sup> The German model is decentralized federally, but centralized at *Land* level. Germany's historic postwar avoidance of the authoritarian procedures associated with fascism has contributed to a much softer model of QA than the one in the United Kingdom.

There is no centrally conducted evaluation procedure. However, at the regional level, universities are forming consortia for evaluation. One of these, established in 1994, is the *Verbund Norddeutscher Universitäten* (Association of North German Universities), which includes the universities of Bremen, Greifswald, Hamburg, Kiel, Oldenburg, and Rostock. These work in collaboration with the University of Groningen, because the Netherlands constitutes an important reference model for the North Germans. The association, whose head office is in Hamburg, is supported by the CHE in Gütersloh. Its procedures for evaluation have three components: (1) an internal evaluation by the subject teachers themselves using a checklist to establish strengths and weaknesses; (2) an external evaluation, which consists of experts visiting the subject and producing a report that they discuss with colleagues and then publish; and (3) recommendations resulting in mission-based agreements between the subject representatives and the management of the university. These agreements are formally signed and reviewed after 2 years. If implementations require support, they may attract start-up funding, for example, from the Volkswagen Foundation. The content of the actual targets may be narrowly subject specific but may also have university-wide implications.

Article 6 of the Federal Framework Act specifies that the HEIs' work and fulfillment of equity objectives are to be regularly evaluated, that students should take part in the evaluation of teaching, and that the results of these assessments must be published. The highest advisory body in the country, the *Wissenschaftsrat*, has recommended the introduction of Teaching Reports (*Lehrberichte*) as part of the apparatus for evaluation, and the *Länder* are implementing this demand. According to Article 39a (3) of the Bavarian

<sup>54</sup> David Dunkerley and Wai Sum Wong, *Global Perspectives on Quality in Higher Education* (Aldershot: Ashgate, 2001).

<sup>55</sup> Jethro Newton, "Feeding the Beast or Improving Quality? Academics' Perceptions of Quality Assurance and Quality Monitoring," *Quality in Higher Education* 6 (2002): 153–63.

Higher Education Law, the HEIs are supposed to provide information regarding the organization and delivery of teaching and study, student evaluations of teaching in individual courses, and external assessments if appropriate.<sup>56</sup> The Munich-based State Institute for Higher Education Research and Planning has carried out a survey of 156 such reports from the 1999 and 2000 sessions covering all the Bavarian universities.<sup>57</sup> More than the assessment of teaching is covered. In addition, the reports offer statistical data and information about courses, innovation, the situation of students and staff, internationalization, and faculty evaluation. Critical points that emerge are questions about timetable clashes, libraries, computers, the lack of space and of common rooms, and the dispersed location of lecture rooms.

Thus far, poor performance in QA has not been punished by financial sanctions. However, this may be due to institutional indifference about teaching evaluation. One report on the Free University of Berlin claims that neither teachers nor learners were interested in the results of student questionnaires. In addition, as instruments the questionnaires were seen as too blunt to discover anything worthwhile about teaching. The results were considered banal and too complicated to form the basis of performance-oriented funding.<sup>58</sup> Quality assurance involves a reorientation from input and process control in favor of output control, and there is a wide protest against it, some at a very high level. Klaus Landfried, former president of the Conference of Higher Education Rectors, states that evaluation should not be used to legitimize cuts.<sup>59</sup> Some have even argued that evaluations of teaching and learning are unconstitutional because they contravene academic freedom.<sup>60</sup> It is likely that, if German universities have been slow to institutionalize quality control, there are political explanations. Evaluation is not intended to be confrontational, and the language of an authoritarian state must be avoided in both spoken and written communications. In a country that once fell victim to fascism, this avoidance is regarded as vital to the maintenance of democracy.

#### **Responses of the Academic Profession to the Spread of Market Forces**

In her study of the United Kingdom, Mary Henkel has observed that total quality management implies a power-coercive model of change.<sup>61</sup> How-

<sup>56</sup> Bavarian Higher Education Act, version of October 2, 1998.

<sup>57</sup> Gerdi Stewart, "Focus auf die Lehre: Lehrberichte an bayerischen Universitäten," *Beiträge zur Hochschulforschung* 23 (2001): 58–79.

<sup>58</sup> Heinz Gralki, "Professor Mustermann hat es nicht leicht . . . Evaluation der Lehre an der Freien Universität Berlin," *Forschung und Lehre* 3 (1999): 128–29.

<sup>59</sup> Klaus Landfried, "Conditions for Successful Quality Assurance in Study and Teaching," in *Much Ado about Nothing? Evaluation of Learning and Teaching and Its Consequences*, ed. G. Schreier (Bonn: Hochschulkonferenz, 1999), 26.

<sup>60</sup> Maïke Buss, "Wissenschaftsfreiheit ade," *Forschung und Lehre* 4 (2000): 190–92.

<sup>61</sup> See Mary Henkel, *Academic Identities and Policy Change in Higher Education* (London: Kingsley,

ever, as we have seen, there is reluctance in the Federal Republic to link quality evaluation with funding. This reluctance derives from a distinctive federal antiauthoritarian culture and from the traditional respect in which university teachers are held. Their prestige, authority, and influence inhibit but do not entirely prevent attacks on them. It is possible that in many countries undergoing restructuring, the real target of reforms is the professoriate.<sup>62</sup> Hence, we must examine how university staff are treated amid attempts to modernize and marketize German higher education. Significant changes are occurring in entry qualifications for academia, career structures, university salaries, and performance assessments.

The traditional relationship between full professors and those aspiring to professorial posts has often been claimed to be one of servility. Members of the *Mittelbau* (subprofessorial middle-rank academics) are said to be overly dependent on the established senior professors for patronage and support.<sup>63</sup> Peer Pasternak states that “the free development of the professor takes place at the expense of those who are not professors.”<sup>64</sup> In the Carnegie Study of the International Academic Profession, Jürgen Enders and Ulrich Teichler affirm that in Germany, the junior staff perceive themselves as having particularly limited influence in shaping affairs at their institute or department.<sup>65</sup>

Winning a chair normally depends on successful completion of an elaborate and difficult postdoctoral thesis (*Habilitation*). By the time they are appointed to their first chairs, most German scholars are over age 40. The *Habilitation* is so demanding that it causes many people to leave the academic profession and is especially discouraging for women who wish to reconcile a family with their profession. The appointment procedure for a chair is cumbersome and drawn out. It may take 18–32 months before a post can be filled. If the selected candidate ultimately does not accept the post, the process must be initiated again with the result that filling it can take several years.<sup>66</sup> In the interim, students are often left without adequate teaching. Currently,

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2000). This view is consistent with the international study by John Brennan and Tarla Shah, *Managing Quality in Higher Education* (Buckingham: Society for Research into Higher Education, 2000).

<sup>62</sup> Maurice Kogan, “Academic and Administrative Interface,” in *Changing Relationships between Higher Education and the State*, ed. Mary Henkel and Brenda Little (London: Kingsley, 1999), 263–79.

<sup>63</sup> The *Fachhochschulen* (FHS; Universities of Applied Science) do not have a *Mittelbau*, and one view is that the MA qualification of a FHS should not be recognized as being of the same standard as that of a university in cases where the BA and MA are offered.

<sup>64</sup> Peer Pasternak, “Juniorprof: Junior-ProfessorInnen oder verjüngte Professorenschaft?” *hochschule ost* 3–4 (2001): 185.

<sup>65</sup> “When compared with other countries, we note that German junior staff feel they have the least influence in this respect. . . . Junior staff at German universities feel less free than their colleagues in all the other countries surveyed in determining the focus of their research. . . . It is the German professors who perceive themselves as having the greatest control in determining their core activities, whereas the junior staff feel the least free” (Jürgen Enders and Ulrich Teichler, “The Academic Profession in Germany,” in *The International Academic Profession: Portraits of Fourteen Countries*, ed. P. Altbach [Princeton, NJ: Carnegie Foundation for the Advancement of Teaching, 1996], 465, 468).

<sup>66</sup> Rainer Kuhlen, “Berufungsverfahren an deutschen Universitäten—eine gravierende Strukturchwäche,” *hochschule ost* 3–4 (1999): 159–70.

the government seeks to recruit younger professors. It urgently needs to increase the pool of potential appointees to chairs because a high percentage are reaching retirement age. It is also very conscious of the brain drain of able scholars out of Germany and would like to attract them back home.

The Fifth Amendment to the Framework Act therefore stipulated that the basic qualification for appointment to an academic chair was to be a high-quality doctorate, not a *Habilitation*.<sup>67</sup> This law was declared null and void by the Federal Constitutional Court on July 27, 2004, but it was quickly “repaired” by a subsequent verdict that allowed reinstatement of some provisions but did not permit the wholesale abolition of the *Habilitation*.<sup>68</sup> So-called junior professors have been introduced. They have the right to supervise doctorates, to receive and administer their own budgets, and to apply for research grants in their own name. The government has provided start-up funding of €180 million to support the *Länder* in this reform of staff structure and to equip the first 3,000 of the 6,000 new staff anticipated. More than 50 universities in all the *Länder* have already applied for this money, within a wide variety of subject areas.<sup>69</sup> The Federal Framework Act (Articles 47 and 48) sets a limit of 12 years on contract research posts (6 years must be postdoctoral), after which those who have not attained full tenured professorships will have to leave the university.

New salary scales have been introduced for those entering the profession for the first time. The older C1–C4 salary scales were replaced by W1 (lowest), W2, and W3 (highest) scales for new entrants and for C-scale professors who change institutions.<sup>70</sup> There is no automatic legal right to age-related salary increments, but the basic scales may be raised by special achievement. The W-scales have a much higher ceiling than the C-salary scales, and this financial “headroom” can be used to reward outstanding performance and attract top people, thus introducing greater competition between colleagues and universities.<sup>71</sup> The fund of money available for salaries has to remain the same as the previous year whenever it is introduced by a *Land*. It is composed of a fixed and a variable element, of which the former is lower under the W-scales than previously. The latter must be paid selectively so that the overall *Land*

<sup>67</sup> Federal Framework Act, 2002, Articles 44 and 47.

<sup>68</sup> Gesetz zur Änderung dienst- und arbeitsrechtlicher Vorschriften im Hochschulbereich (Law for the alteration of service and labor regulations in the higher education sector), available at <http://dip.bundestag.de/btd/15/041/1504132.pdf>.

<sup>69</sup> BMBF Pressemitteilung, “Grosse Resonanz auf millionenschweres BMBF-Förderprogramm für Juniorprofessuren” (press release, BMBF, Berlin, November 11, 2001).

<sup>70</sup> The basic salary groups in monthly amounts are (as of August 2004): scale W1, €3,405.34 (US\$4,068); W2, €3,890.03 (US\$4,647); and W3, €4,723.61 (US\$5,643). The previous maximum for a C4 professor from the age of 49 was €5,782 (US\$6,939), though, of course, the W3 basic salary may be raised by performance-enhanced supplements. The data are from Hubert Detmer and Ulrike Preissler, “Die ‘neue’ Professorenbesoldung,” *Forschung und Lehre* 5 (2005): 256–58.

<sup>71</sup> The ceiling must not normally exceed the difference between the W3 and the B10 scales, which in August 2004 was €5,241.48 (*ibid.*, 257).

salary budget remains the same. Salary scales in the new *Bundesländer* are only about 92 percent of the old *Bundesländer*. The salary distribution will likely become more skewed, and the median will become lower though the mean will remain the same. Provisions such as these are attempts to undermine the most authoritarian chair system in Europe.

The radical changes in qualifications, staff structure, and salary need to be discussed in relation to each other since they are interconnected. Some of the subject disciplines have strong objections to the downgrading or abolition of the *Habilitation*. A survey by researchers from the Bavarian State Institute for Higher Education Research and Planning (IHF) contacted 600 people who had achieved their postdoctoral qualification during the years 1993–98, and 400 who were still engaged upon it.<sup>72</sup> The central finding was that 60 percent of their respondents wanted to keep the *Habilitation*, but, at the same time, most desired to reform it. *Habilitation* was more desired by respondents in the humanities than by those in the natural sciences. The IHF authors conclude by advising against a “qualification monopoly,” and they advocate having more than one way to become a professor. Some of the IHF findings concur with those by Henning Hopf and Wolfram Koch who also defend the *Habilitation*.<sup>73</sup> By the time their sample of chemists completed their *Habilitation* theses, 86 percent were leading their own research groups. The authors suggest that introducing junior professors will deprive young scholars of a valuable source of protection and mentoring and make them vulnerable to isolation. Although the status of the title “professor” is attractive, as is the increased security of clearly defined posts, there is the downside of the cost-neutral funding structure. What is to become of those junior professors who do not make it to permanent posts?<sup>74</sup>

In view of objections to doing away with the *Habilitation*, it is not surprising that Bavaria, Saxony, and Thuringia initiated litigation against the Fifth Amendment to the Framework Act. In the judgment of July 27, 2004, the Constitutional Court decided that the *Bund* had overreached its competences and had created rules that should rightfully be the prerogative of the *Länder*. This threw the entire law into doubt. The *Länder* reacted in various ways. The Bavarian prime minister claimed that the verdict was of historical importance for the *Länder* and called for the abolition of the entire Framework Act as well as the strengthening of *Länder* powers; the Thuringian minister of justice claimed that the verdict strengthened federalism and that junior

<sup>72</sup> Ewald Berning, Louis von Harnier, and Yvette Hofmann, *Das Habilitationswesen an den Universitäten in Bayern: Praxis und Perspektiven* (Munich: Bayerisches Staatsinstitut für Hochschulforschung und Hochschulplanung, 2001).

<sup>73</sup> Henning Hopf and Wolfram Koch, “Habilitation oder Juniorprofessur—Was sagen die Betroffenen?” *Beiträge zur Hochschulforschung* 23, no. 4 (2001): 28–42.

<sup>74</sup> Back in the 1970s, an unsuccessful attempt was made to introduce assistant professors, and some fear that the junior professors will be just as unsuccessful. People likely to be in a difficult position have set up their own Web site (<http://www.wissenschaftlichernachwuchs.de>) to collect public support for their protest against the new legislation.

professorships as an institution had not been rejected. The federal minister herself called for an increase in the competences of the *Bund*. It is now clear that the *Länder* will all enact their own legislation on this issue and that there will be multiple paths to a chair. Many young scholars who aspire to professorships are still doing *Habilitation* as an insurance policy in case they have to compete for jobs against *Habilitation* bearers who, they fear, may still be privileged. Hence the path to an academic career remains a steep and thorny one, and the policy as initially conceived has failed.

This brings us to the issue of salaries. Reductions in the basic salary levels may make it harder to attract high-quality staff, though at the top end the ceiling has been raised so that differentials can increase. An expensive professorial appointment means that others have to be cheaper to remain within budget, which will have the effect of forcing salaries down for many people. Moreover, the university has to have the money available to pay the supplements. At university level, strong management is needed to make the hard decisions on performance-related pay, and the will to do so may not always be present with the collegial-style management so prevalent in many German universities. Controls will be needed to ensure that the money available for salary increases is in fact spent on them. The new salary scales depend on complicated interactions between the *Bund*, the *Länder*, and the universities themselves. There is already a lack of consistency within this network. The state of Bremen plans to pay performance supplements as one-off payments or for periods of 3 years, whereas most other *Länder* have no fixed-term limit. Only after all universities have finalized their local procedures will the lack of homogeneity become fully obvious.<sup>75</sup>

Some of the C1 and C2 positions on which the *Mittelbau* depended have recently been abolished to help finance the new system. Some of the C3 and C4 positions that were vacant due to retirement are being restructured into cheaper posts, thus leveling down the expected salary for those successful in their professorial application at the beginning of their careers. In some quarters it is felt that the variable, performance-related parts of the salary will not compensate for the lower starting salary in comparison with the old C4 scale. The performance-based supplement will be an unsatisfactory substitute because only part of it will be pensionable, thereby reducing resources for retirement.<sup>76</sup> The junior professors are not all guaranteed civil service status and will have nearly all the work and responsibility of full professors but with less job security and lower financial rewards.<sup>77</sup> Many observers question

<sup>75</sup> Hubert Detmer and Ulrike Preissler, "Abenteuer W—Strategien, Risiken und Chancen: Aktuelles zur W-Besoldung," *Forschung und Lehre* 6 (2004): 308–10.

<sup>76</sup> "Kritik an der Juniorprofessur," *Forschung und Lehre* 7 (2000): 344.

<sup>77</sup> Traditionally, this security of the *Beamten* has been highly valued and has deep roots in history. In 1794, the Prussian Allgemeines Landrecht (art. 73, pt. 2 [12]) gave the professors and officials of the universities the right to become civil servants, and payment was according to office and qualifications rather than achievements (Wolfgang Löwer, "Notwendigkeit oder Privileg? Berufsbeamten für Professoren," *Forschung und Lehre* 10 [2000]: 522, 555).

whether the new salary scales are sufficiently attractive to motivate young scholars to tread the long road into academe, and some fear that lower basic salaries will lead to the downward mobility of the academic profession.

### **Institutional Differentiation**

The competition between institutions under a market system leads to differentiation and diversity. Whereas systems such as those in Australia, Sweden, and the United Kingdom are formally unified, those in countries such as Canada, Finland, the Netherlands, and Germany manifest a binary divide.<sup>78</sup> Market forces subject HEIs to competition and help establish a hierarchy of prestige and resources. The nominal integration of the British system is deceptive, because research rankings tied to differential funding create differentiation between the institutions. Traditionally, the rhetoric of German higher education has been that universities are equally good and that there is little or no difference between them. As institutions, they have not attracted a fraction of the loyalty from either staff or students that American universities enjoy, and which in Europe is increasingly being seen as necessary to raise money from donors. One factor that militates against interinstitutional competition and profiling is the difficulty for German universities in selecting their students. The free choice of a course program and career for the individual is a right under the Basic Law. This conflicts with the exercise of student selection on the part of the institutions. According to a 1972 verdict of the Constitutional Court, entry restrictions are barely acceptable, and HEIs must use their existing capacity fully before restricting entry (so-called *numerus clausus*). Fairness and openness in university access are especially important in the New *Bundesländer* because political criteria and religious affiliation were used within the German Democratic Republic to determine the HE entry. In view of past wrongs, it is essential that selection, if applied, should be perceived to be fair and open. The Seventh Amendment to the Federal Framework Act now makes it possible for institutions to select up to 60 percent of their entering students. The Federal Ministry hopes that HEIs will use this to create a stronger identification between students and their institutions. In time, this may strengthen alumni associations. Selection criteria may include average scores in the leaving certificate (*Abitur*), subject grades, results of subject aptitude tests, apprenticeship or work experience, admissions interviews, or a combination of these. There are those who see in the application of an additional matriculation test a hollowing out and a devaluing of the *Abitur*. But the fact that 20 percent of places are to be allocated to students scoring highest in the *Abitur* examination shows its prestige.<sup>79</sup> It will be pos-

<sup>78</sup> Leo Goedegebuure, Lynn Meek, Osmo Kivinen, and Risto Rinne, "On Diversity, Differentiation and Convergence," in Meek et al., *The Mockers and the Mocked*, 2–13.

<sup>79</sup> Lenhardt, "Europäische und deutsche Perspektiven der Hochschulpolitik," 22.

sible for these students to pick which HEI they want, thus increasing student choice. The remaining 20 percent of places are allocated according to how long applicants have been waiting for entry to an HEI. It remains to be seen how institutions will use their new right to select students, especially as selection by interview takes much time and trouble. At least the mechanisms for increasing choice have now been provided by the legislation.

Academic conventions loosen the connections between teachers and their HEIs. Normally it is impossible to be promoted to a chair within the institution where one is already employed.<sup>80</sup> Professors, in order to better their positions, have to receive an offer of employment from another university. Moving up usually means moving out for most professors, unless their first university enhances their salary and conditions in order to retain their services. As a result, the identification of faculty with institutions is underdeveloped as compared with countries such as the United Kingdom and the United States. Recently, however, after much contention the *Bund* and *Länder* have agreed to back an “Excellence Initiative” according to which up to 10 “top” universities will each receive on average €21 million. The scheme will be supported by €1.9 milliard up to the year 2011.<sup>81</sup> There is also to be a pact for research and innovation that will give the big research organizations an annual boost of at least 3 percent in order to promote the work of excellent young researchers. Initiatives such as these are controversial because they break with past assumptions of equality between institutions and also because HEIs that receive enhanced funding may reduce the resources available for other institutions.

Recently, the Institute of Higher Education of Shanghai Jiao Tong University produced a ranking of world universities. Only one German HEI, the Technical University of Munich, ranked among the top 50, and this has changed attitudes toward selectivity.<sup>82</sup> And yet, despite tables in popular magazines like *Stern* or *Focus*, there is still opposition to university differentiation or “profiling.” This may arise from the philosophical rationale of the unity of knowledge, resulting in the ideology of a “full university” that offers all subjects, thereby militating against distinctiveness. An eloquent example of this rationale was provided by Dieter Lenzen, president of the Free University of Berlin. Faced with the danger of his institution losing medicine, he defended the right of all universities to offer all subjects, and he argued that the loss of this completeness entails a loss of status.<sup>83</sup>

<sup>80</sup> As Kuhlen remarks, “There is no will to keep potential academic recruits at the very location where they have demonstrated their brilliance” (“Berufungsverfahren an deutschen Universitäten—eine gravierende Strukturschwäche,” 163).

<sup>81</sup> BMBF, “Exzellenzinitiative und Pakt für Forschung und Innovation starten” (press release 147/2005, BMBF, Berlin, June 23, 2005).

<sup>82</sup> Karl Ulrich Mayer, “Yale, Harvard and Co: Mythos oder Modell für Deutschland?” *Forschung und Lehre* 10 (2004): 538–42.

<sup>83</sup> Dieter Lenzen, “Universitas: Nicht ohne Medizin,” *Forschung und Lehre* 4 (2002): 189–90.

## Conclusion

Lawmakers have provided a basis for change in Germany's universities, but many factors combine to frustrate their efforts. Still far off on the horizon is an American-style higher education market with highly differentiated institutions, all costing different amounts and offering different incentive schemes and rewards. The reasons for this are found at many different levels within German society. At a high level of generality, the Basic Law, or Constitution, with its protection for the freedom of teaching and learning, inhibits attempts on the part of government to bludgeon the academics, as has been the case in some other countries attempting to restructure their higher education system. It ensures that change must be cautious and based on consensus as far as possible. State officials themselves are sometimes ambivalent about whether they really want to turn the universities loose within the market force arena, or whether they still want to keep a tight rein on them.<sup>84</sup> However, democratic values make government reluctant to drive through reforms. In any case, federalism and the political parties make it impossible for the central government to impose a universal system on the country as a whole since the 16 *Länder* can sometimes check the plans of the *Bund*.

The mood of the academic staff is unreceptive to marketization from above, yet they are not very proactive within the universities themselves. Many academics see the new policy instruments as a form of compulsion. Available research indicates substantial resistance within the academic body to the abolition of the *Habilitation* and to changes in terms and conditions of service. Karl Ulrich Mayer believes that the commitment of most professors to evaluation defined by quantifiable performance indicators is likely to remain superficial.<sup>85</sup> Even the introduction of fees may take a long time to bring about marketlike choices on the part of the students, that is, selecting an HEI according to its distinctive attractiveness and value-for-money within their price range.

The beginning of this article discussed regulation theory in relation to Germany. From this perspective, codetermination and worker participation make it difficult to engage in dirigisme. The corporatist strategies make unlikely a radical break along strong neoliberal lines.<sup>86</sup> This, too, may help explain why change in German universities is so slow. However, the *Modell Deutschland* is not a monolith. The social model of partnership that served it well for a long time is beginning to creak so badly that the concept of the

<sup>84</sup> As Karl Ulrich Mayer comments: "The state is far from being willing to give up its higher education administrative responsibilities and trusts neither the leadership teams of the HEIs nor the accreditation authorities" ("Misstrauen im Reformprozess," *Forschung und Lehre* 6 [2002]: 299).

<sup>85</sup> Karl Ulrich Mayer, "Das Hochschulwesen," in *Das Bildungswesen in der Bundesrepublik Deutschland: Strukturen und Entwicklungen im Überblick*, ed. Kai S. Cortina, Jürgen Baumert, Achim Leschinsky, Karl Ulrich Mayer, and Luitgard Trommer (Reinbek: Rowohlt, 2003), 581–624.

<sup>86</sup> Jessop, "Conservative Regimes and the Transition to Post-Fordism," 122, 140.

welfare state is being rethought, and the very nature of the state redefined. Change may be slow at the local level of institutions and the *Länder*, but it is taking place within the wider society. Under Chancellor's Schröder's (unpopular) "Agenda 2010," there are far-reaching attempts to reconstruct the German welfare state so as to render it more competitive and entrepreneurial. Federalism is being reconsidered and replanned under a special commission, which is seeking to disentangle the roles of the *Bund* and *Länder*. This may ultimately take most of the responsibility for higher education away from the *Bund* and give it to the federal states, which would make it even more difficult to achieve consistency and homogeneity. These developments are a reflection of a nationally changing spirit that is adapting to market forces and globalization, despite appearances to the contrary. The tension between inertia at local level and macro change at national level has been aptly termed a "glonacal heuristic." The dialectic among global, national, and local forces will eventually hybridize German higher education into its own distinctive, new model.

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