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**STATE, MARKET AND INSTITUTION IN GERMAN  
HIGHER EDUCATION – NEW GOVERNANCE  
MECHANISMS BEYOND STATE REGULATION AND  
MARKET DYNAMICS**

INTRODUCTION

In many, perhaps nearly all European countries, national higher education systems have been subjected to far-reaching reforms at system and at institutional level during the last decades. One of the most significant reforms embraced the implementation of new steering concepts and procedures. The modernization of organization, governance, management and funding of higher education systems and institutions has become a central concern in most European countries even if there are still many national variations in the reform process. One of the key words in this process has been “market”, referring to the establishment of market-oriented procedures of steering, despite the fact that it has often been not really clear what a market is in higher education.

In nearly all modern post-industrial societies, higher education is subject to growing public, social and economic expectations. Because higher education has become a driving force of social and economic development in the face of a rising knowledge-based society, universities have become more and more instances of rationalization of the scientific-technical civilization. The other side of this coin is the necessity to adapt higher education systems and institutions to these new or at least growing functional requirements in order to make institutions more effective and productive. Institutions have been confronted with the demand to increase their performances and outcomes in teaching and research. Therefore, while on the one hand, universities have become more and more institutions of social rationalization, they have been forced, on the other hand, to increasingly rationalize their performance production.

In this context, governance – however we understand under this term – is of central importance in the adjustment of higher education institutions to these requirements. Suitable structures of decision-making are an inevitable precondition for every substantial reform. Hence, new structures and procedures of governance and management have been established in many European countries linking state, market and institutional mechanisms in innovative ways and patterns. Steering and governance have become key concepts to enable universities to fulfil their social functions in society.

COMMON TRENDS AND PATTERNS IN GOVERNANCE REGIMES IN EUROPE

Eleven years ago, in the year 2000, a Eurydice<sup>1</sup> study took stock of – as indicated by the title of the study – “two decades of reform in higher education in Europe” and found that a series of reforms had already been initiated and carried out during the 1980s and 1990s. This might be called the first wave of reform in European higher education (Eurydice, 2000). The study drew the following conclusions, and these conclusions also describe the current situation in some respects:

- The reform dynamic or the speed of reforms varied a lot between different European countries. There were countries leading the way (e.g. the United Kingdom or the Netherlands) and there were latecomers, especially in continental Europe. All in all, Germany was a latecomer, a “delayed” nation in the area of higher education reforms.
- On the one hand, a wide-ranging consensus on the general objectives of national higher education policies could be observed. Often reformers had used the same key words to justify their reform policy – and “market” seemed to be such a key word. On the other hand, there were considerable variations in the legal and policy instruments and in the detailed reform concepts. There were divergent developments as well as convergent trends.

Of course, such reforms and changes in the formal and organizational structures of higher education are only part of a more comprehensive reform agenda developed by the European countries (Wolter, 2004); and since the late 1990s, at the same time the Eurydice study was finished, a new wave of reforms has evolved. Many of these have been initiated in the context of the so-called Bologna Process begun in 1999, the project intended to establish a “European higher education area” in which 45 countries currently participate. Bologna has become the main driving stimulus to reform higher education systems in Europe during the last 10 years. The so-called Lisbon Strategy that the EU committed to in the year 2000 has been a further stimulus for the modernization of higher education in Europe. One of the messages of the Lisbon Strategy is that higher education should play a decisive role in forming the future European knowledge-based economy as the most competitive and dynamic area – or at least one of the most dynamic areas – in the world. Even if we ignore the rhetorical excess of this phrase, the challenge behind it is quite clear.

However, Bologna focuses primarily on the adoption of a comparable architecture of studies and degrees, quality assurance, the implementation of lifelong learning structures, student social policy, doctoral studies, internationalization of higher education and many other related issues more than on governance and management. But there are interrelationships between the field of reforming studies and that of governance and management, not only in the areas of quality management, evaluation and accreditation. Bologna has increased the requirements for the stakeholders, particularly university management, to implement this comprehensive and ambitious concept to reform higher education.

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<sup>1</sup> Eurydice: The Information Network on Education in Europe.

The implementation of Bologna has required strong institutional responsibility and management structures.

As a consequence of changing societal requirements and conditions for higher education institutions, there have been several common trends and similar patterns in the development of governance structures, which can be observed throughout European countries, despite the fact that there are many differences and the particular features are specific to individual countries and national contexts.<sup>2</sup> In any case, there have been two influential policy concepts for the reform of governance structures in Europe, in particular in Germany: the Dutch model of “steering at a distance” for the relationships between state and institution, which Guy Neave and Frans van Vught (1991) had already characterized nearly 20 years ago as the shift from the “interventionary state” towards a “facilitatory state”; and the American model of strong management for the decision-making processes within the institution.

Even though general, overarching models of governance and of relationships among state, market and institution cannot be identified throughout Europe, recent OECD, EU and studies by other authors have described five pre-dominant patterns in the development of governance regimes (CHEPS, 2007; Maassen, 2006; OECD, 2003, 2008; Paradesi, Reale, Bleiklie, & Ferlie, 2009; Weiler, 2001).

*The reduction of detailed state control and the widening of institutional autonomy*

Many countries have found that the capability of the state to intervene increasingly into complex social institutions as universities is limited and that the relationships between state and institution must be reorganized. This move can take two different manifestations: a kind of “de-nationalization”, for example, the transformation of institutions from state agencies to legal entities such as public corporations, or, in Germany, foundations, or the delegation of substantial operating responsibility from state to institutional level (Maassen, 2006). The fields in which universities are now enjoying enhanced autonomy vary – from financial management to recruiting academic staff, the organization of programs and courses, access and admission, and strategic development. So, institutional autonomy can assume many forms. The new re-defined role of the state can also imply different forms: setting strategic targets, regulating the legal framework and the general design of the higher education system, steering institutions by incentives, regulating the procedures of funding, allocation and more.

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<sup>2</sup> For example, there seems to be a general trend to reduce state control and to widen institutional autonomy. This is true particularly for those countries with previously a very high degree of state regulation whereas in a few countries with a previously lower level of state responsibility, state influence can be intensified to force institutions to reform.

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*Strengthening institutional management and professionalizing university management*

Often the strategy of deregulating state competencies and enhancing institutional responsibility – including the reorganization of intra-institutional decision-making – is called the “new steering model” (Braun & Merrien, 1999; Kehm & Lanzendorf, 2005, 2007; Wolter, 2007) and, on the side of internal governance structures, the “rise of managerialism” (Amaral, Meek, & Larsen, 2003). This trend is complementary to increasing institutional autonomy, as its main purpose is to convert the university from a loosely-coupled organization and consensus-oriented institution into a professional organization. The new steering model includes also different elements:

- the enhancement of responsibility of the executive authorities at central and faculty level;
- the redistribution of influence from collegial bodies to the management;
- the establishment of new steering procedures such as target agreements and performance-based allocation within the institutions;
- the changing of selection procedures, e.g. more frequent external recruitment, and the involvement of external boards and head-hunting agencies even though the majority of university managers continue to have academic backgrounds.

*Quality assessment, accreditation and public accountability*

In most European countries the extension of institutional autonomy has been linked with the institutionalization of new procedures of quality assurance such as evaluation or accreditation (Kehm, 2007; Schwarz & Westerheijden, 2004; Wolter & Kerst, 2008). During the last 15 years, the introduction of new structures responsible for quality issues has been a central element of the Bologna Process. Sometimes such instances have been established within universities, sometimes as intermediate, independent or state agencies. Agencies can be organized at regional or national levels; they can be subject-related or cross-sectional. Often they focus on teaching and studies, and sometimes also on research. Accreditation can include programs or institutions (then often called audits) or both. Another trend embraces the involvement of stakeholders in the form of executive bodies or boards, sometimes with decision-making abilities and sometimes only with advisory competencies.

*Growing emphasis on competition and market-like mechanisms*

In many European and non-European countries, the market rhetoric has become a firm part of higher education policy debates (Teixeira, Jongbloed, Dill, & Amaral, 2004). In most cases that means the introduction or extension of competition-based forms of steering and allocation with the purpose of improving the efficiency and quality of higher education. National differences are related to the degree to which institutions are confronted with competition, the fields in which competition take

place (e.g. recruitment of scholars, allocation of funding), and the incentives for institutions or academics. The increasing spread of ranking procedures to enhance transparency, visibility and reputation is another medium of competition. In some countries extending competition also includes the growth of the private sector in higher education which can take very different forms, at times representing the elite, at other times the mass sector of higher education or some institutional niches. But, as an OECD study (2008) argues, in most OECD countries (in particular in Western Europe) “recent policy activities ... have concentrated on the balance between government regulation and market-type mechanisms rather than on the development of a private tertiary sector as a substitute to the public sector” (OECD, 2008, p. 84).

#### *New funding and allocation procedures*

In many European countries higher education institutions have to cope with two challenges.

According to a CHEPS study (2007) there is some evidence that the level of public funding of higher education in Europe has not changed during the last decade – neither decreasing nor increasing. However, because of limited public resources in the face of a growing higher education sector, the first challenge is that institutions are expected to extend their funding basis by their own efforts, to supplement public with private revenue through third-party funding, private sponsorship, academic entrepreneurship (e.g. continuing higher education), or public-private partnerships. A few countries have introduced tuitions fees during the last 10 years. But with respect to fees, there is also a wide variety of developments throughout the EU (CHEPS, 2007) concerning such issues as how much tuition may be charged; whether fees are set at national, regional or institutional level, for all programs and students; or only for selected programs and groups of students.

The second challenge includes the introduction of new budgeting and allocation models on two levels, the external level between state and institution and the internal levels within the institution. Institutions seem to have gained a certain degree of freedom to distribute their budget in line with self-regulated criteria and procedures. In many countries performance-, indicator- or formula-based procedures of allocation have been established in accordance with the expectation that public resources are efficiently spent.

To sum up, it is possible to say that there has been a considerable extent of governance reform across Europe. In reality, however, we can observe a lot of diversity, in particular in the predominance of mixed models linking traditional and new forms of steering. National or, in the case of Germany, state governments and institutional management play crucial roles in the process of decision-making, whereas the traditional forms of collegial and consensus-based forms of participation have come under pressure but have not yet disappeared. New stakeholders such as boards or agencies have appeared (Amaral & Magalhaes, 2002). There is a clear trend to enlarge institutional responsibility but it is an open

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question whether the state has really abandoned its influence or has only re-arranged it in more sophisticated ways. The deregulation of responsibility from state to institution does not imply automatically that the state is stepping back, but that influence is exercised in new forms.

#### GOVERNANCE OF HIGHER EDUCATION: CONCEPT AND DIFFERENT MECHANISMS

Governance has become one of the most prominent terms in the academic and political discourse for analyzing and discussing changes in the organization, steering, control and management of higher education (Amaral et al., 2002; Paradeise et al., 2009). Markets have been frequently considered as a particular instance of governance. However, it is often not really clear what is meant by governance. Indeed, there is no academic consensus about the definition and use of this term. Governance can be an analytical or a descriptive term, but also a normative notion, as in “good governance”.

Governance as defined in this paper concerns the coordination and regulation of the collective action of actors or stakeholders in the context of systems, institutions or organizations (Benz et al., 2007; Mayntz, 2009). Governance analysis is interested in the explanation of structures and processes of how individual or institutional actors cope with the interdependencies between individuals, institutions, networks or organizations. Instances of governance in higher education include the government, institutional management, the market(s), the academic community, external stakeholders, intermediate institutions and many others. Forms of governance relate to the structure of regulation whereas mechanisms of governance primarily focus on the processes in the context of those structures. This actor-oriented and collective-action-directed approach makes governance a worthwhile concept also for higher education research.

In a wider meaning defined by an OECD study (2008), governance connotes

the structures, relationships and processes through which, at both national and institutional levels, policies for tertiary education are developed, implemented and reviewed. Governance comprises a complex web including the legislative framework, the characteristics of institutions and how they relate to the whole system, how money is allocated to institutions and how they are accountable for the way it is spent. (p. 68)

But it is important to take into account that governance analysis concerns particularly the instances, forms and mechanisms of coordination between the individual or collective actors involved.

Based on this concept of governance, five different mechanisms have been distinguished in German higher education research (Schimank, 2007, 2009, partly based on Clark, 1983):

(1) *Direct state regulation of higher education*, e.g. by law or other legal administrative instruments, as a type of hierarchical steering. State in this sense

means not only the government and the state administration but also the parliament which in some countries, especially in Germany, has the final responsibility for the budget.

(2) *External target-oriented steering of institutions*, e.g. by contract management, indicator-based resource allocation or intermediate bodies. Several procedures have to be distinguished:

- State and institution agree about contracts or target agreements with pre-set targets (e.g. to increase the number of students or the share of female faculty) linked with funding consequences; the same procedure can take place within the institutions between central and faculty level.
- A similar steering effect is expected from indicator-based budgeting; in this case the activities of the institution are to be determined by the indicators in the desired direction (e.g. to increase the number of graduates).
- The establishment of external intermediate institutions such as agencies (for evaluation or accreditation) follows basically the same purpose, e.g. to assure or increase the quality of studies.

(3) *Academic self-organization of the university*. This is the traditional core of the European, in particular the German university, as an academic corporation, consisting of a community of equal scholars and based on the participation of all members with a flat hierarchy between the individual scholar and the university management.

(4) *Internal hierarchical self-steering of institutions*, basically by the same instruments utilized at the level between state and institution, e.g., contracts, target agreements, performance-based budgeting and so on.

(5) *Inter- or intra-institutional forms of competition* which also comprise different forms: competition between persons (students or scholars), between institutions (e.g. private and public universities, but also between public universities) and within institutions. Furthermore, the incentives of competition vary, sometimes reputation, sometimes money or study places. It is important to take into account that, different from economic markets, the main medium of competition in higher education is often academic reputation and distinction.

Higher education systems are characterized by a particular configuration of these five mechanisms. So, systems can be described and analyzed with the help of this scheme. For example, the traditional German higher education system in its state before the current reforms distinguished itself through

- a very high degree of state regulation or over-regulation by a proliferation of state decrees,
- non-existence of external intermediate target-oriented steering except a very few advisory bodies,
- a strong position of the academic self-organization as the second pillar of university governance besides the state,

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- a collegial- and consensus-oriented form of internal governance, based on the high degree of formal individual autonomy the legal status of professorship guarantees, and
- a low level of competition.

For Germany, there is some evidence that – to put it bluntly – the traditional idea of higher education as a public and unselfish institution organized as an academic republic clashes with the new model of the university as a professionally managed enterprise, operating in various markets as a service institution. Of course, there are more models of governance than these two idealized concepts just described, but both play a very prominent role in the current German debate on higher education reform.

#### THE CHANGING GOVERNANCE REGIME IN GERMAN HIGHER EDUCATION

As just explained, the traditional governance regime of German higher education can be described as a combination of the pre-dominance of state regulation together with a less powerful but influential position of the academic community. The policy debate about necessary reforms of university governance arose in the middle and second half of the 1990s. After the early and controversial reform period in the late 1960s and early 1970s there was a period of nearly 20 years characterized by a de-facto moratorium on reforms, except the brief period around 1990 when German re-unification necessitated some – very few – changes to bring former East German higher education institutions into the system. Obviously, the traditional governance model embracing a powerful state and a less powerful but still influential academic self-organization is now in a crisis.

Both main actors seemed to be overtaxed with the enormous growth of the German higher education system during the last decades. On the one hand, the state was confronted with the massively increasing funding requirements of a permanently expanding system that could no longer be steered by the traditional procedures of budgeting and state administration. On the other hand, universities had turned from small institutions into complex large-scale organizations but still with amateurish, unprofessional kinds of management.

During this time universities came to be seen more and more as an endless drain on public resources with a remarkable lack of efficiency. The decision-making capability of the academic self-organization came to be doubted. Particularly the model of the so-called group university in which all members of the university including students and non-academic staff participate has come to be mistrusted because it was thought to be only an impediment in the decision-making process. “Organized irresponsibility” was one of the slogans criticizing the traditional form of internal governance. Therefore, since the end of the 1990s, many reforms involving governance mechanisms in German higher education have been implemented (Krücken et al., 2009; Schimank & Lange, 2009; Wolter, 2004, 2007).

Following are descriptions of the recent main developments that support the five governance mechanisms presented earlier:



*Direct state regulation*

It is important to realize that, in Germany, state responsibility for higher education is primarily institutionalized at the level of the 16 states and not at national level. The traditional German notion of a federally organized *Kulturstaat* with the principle of state sovereignty in educational affairs was reinforced yet again by the so-called great federalism reform of 2006 which substantially reduced the competencies of the national level in higher education policy that were already small to begin with. As a consequence, it is fair to say that Germany has established an overly complex model of regulation consisting of

- very limited responsibilities at national level (e.g. for access and degrees), while
- the main competencies are at state level;
- a very complex mechanism of coordination between the states;
- the institutional level;
- and lastly the growing importance of the European level in higher education issues, as the Bologna Process shows.

The coordination instances between the 16 states, in particular the so-called standing conference of Education Ministers, provide for a minimum of common regulations and developments. However, different political programs and the varying economic and financial capabilities of the states have fostered not only competition but also some but moderate divergent developments among the states – a manifestation of so-called “competitive federalism”. One of the consequences of the federal organization of state responsibilities is that the implementation of the new governance regime varies from state to state (König, 2009; Lanzendorf & Pasternack, 2009; Orr, 2009) with both marked differences in the architecture of the models and in the speed of reform. In some states the government and its administration have reduced their competencies to a large extent, for example, in Nord Rhine-Westfalia, Baden-Wuerttemberg, and Lower Saxony. Other states have been more hesitant, for example Bavaria, Brandenburg, and Mecklenburg-Vorpommern.

However, apart from these differences, there are also many similarities between the German states. In the meantime, deregulation of responsibilities from state level to the institutional level has taken place in the majority of German states. Deregulation includes the shift from former block-grants to one-line budgeting, the transmission of appointment competencies to the institution, and the transmission of the responsibility for the approval of studies from ministries to institutions complemented by the establishment of accreditation agencies. The extent and forms of deregulation vary between the states. There are only two states (Lower Saxony and Hestia) in which some universities have been converted from state institutions into public foundations or similar constructs with a considerably higher degree of autonomy. Their main problem is the lack of their own capital stock so that even foundation universities depend primarily on state funding.

Contract management between state and institution has also been introduced in the majority of states (König, 2007). This hybrid type of management can follow from different types of logic, hierarchical or cooperative (König, 2009; Kracht, 2007). In

some aspects, it is a form of state regulation because of the hierarchical, asymmetrical relationship between state and institution. On the other hand, contract management is also an example of the second type of governance mechanism – target-oriented external steering. It is necessary to distinguish between different types of contract management, namely contracts between the state government and all universities (called pacts) and contracts between the government and individual universities (called target agreements).

Both have been put into practice in almost all German states. Often financial cuts are the reason for such contracts (Breitbach, 2007). In return the state often promises financial planning reliability for the institutions. Differences between states include primarily the varying obligatory status of such agreements. This is exactly the main problem with contract management: the unclear legal character and the reliability of such contracts, in particular with respect to the promises made on behalf of the state. There is some empirical evidence showing that the legal form of a contract does not stop the state from not meeting its obligations.

#### *External target-oriented steering*

External target-oriented steering primarily implies the establishment of procedures or bodies outside the university to direct academic and institutional performances towards politically desirable targets, often by means of intermediate or buffer institutions such as boards or agencies. Such institutions are a relatively new phenomenon in German higher education, whereas before it was usual practice for the state to set up independent committees on occasion to evaluate higher education institutions or the complete system and to work out recommendations for reform.

The state can also operate in part as an instance of external target-oriented steering. Contract management is an example of a hybrid procedure between state regulation and target-oriented steering. The same is true for indicator- or formula-based resource allocation. Common to all these instruments is the purpose of directing the activities of institutions towards complying with defined targets and indicators. As of 2009, nearly all German states have concluded agreements with their universities. Often such agreements imply a funding component as an incentive. All in all, practice shows that such target agreements are top-down dictates by the state rather than reciprocal agreements between state and institution. Two further major problems have become evident: the evaluation of the outcomes or results at the end of the contract period and the link between targets and target realization on the one hand and the incentives and rewards on the other hand.

Indicator- and formula-based procedures of funding and allocation have also been introduced in all German states (Jäger, 2009). The steering effects of such models depend primarily on the selected indicators and on the proportion of the budget that can be redistributed. There is a clear trend in all states to use the same criteria – for example, the number of graduates in the area of studies and the volume of third-party funding as a research-related criterion – and to limit the redistribution effects to a small proportion of an institution's budget.

Another instance of external steering consists of agencies for quality assurance, partly for evaluation, partly for accreditation, or for both (Kehm, 2007; Wolter & Kerst, 2008). Several of these institutions have been established since the mid-1990s, at first for the purpose of evaluation and later for accreditation. Instead of the traditional approval of courses through state authority, it has now become common to accredit and re-accredit courses or programs on the basis of recommendations from one of the several independent agencies in Germany, which have to be licensed by a central accreditation board run as a joint venture by the state and the universities. Because nearly all courses and programs, with very few exceptions, have to be reformed as a consequence of the Bologna Process, all of them have already been or will be submitted to such accreditation procedures.

Finally, another important instrument of external target-oriented steering is the installation of university boards (Gerber et al., 2009). All German states have installed such committees during the last few years, but their composition and competencies vary from state to state: some have clear decision-making competences, others only advisory ones. The establishment of such boards was a consequence of the widespread criticism of academic self-organization. The introduction of boards is thought to strengthen the institutional management vis-à-vis the collegial bodies and to protect the university against too many state interventions. In the end, the actual influence of such boards depends on their legal status. Particularly in the case of foundation universities, boards have gained a central importance as a governance mechanism. In the case where boards have gained legally influential positions, there have sometimes been massive conflicts between the boards and the academic world.

#### *Academic self-organization*

Academic self-organization is the core of traditional governance structures in German higher education. It derived from the corporative origins of the modern university and was reinforced in the course of the university reforms in the early 19<sup>th</sup> century. Although the state continuously extended its intervention and responsibilities after World War II, institutional decision-making has remained inherent in the academic self-organization. The most important innovation since the early 1970s was the shift from the *Ordinarienuniversität*, based only on the participation of professors in the decision-making processes, to the so-called group university with differentiated participation rights of the other member groups limited by a Constitutional Court's ruling in 1973.

But this extended form of self-governance with its preference for consensus-based decisions has permanently been under criticism because of its alleged tendency to block decisions, its lack of fortitude in upholding decisions, and its lack of effectiveness and dependence on particular interests. So, academic self-organization and efficient leadership have often been considered as a contrast. And the intent of new concepts in higher education management is typically to strengthen institutional management at the expense of the collegial committees. As a consequence, most state higher education laws have been amended during the last

10 years to empower university management and to weaken the rights of the collegial bodies, in particular those of the academic senate. There has been a significant shift in the authority structure of the German university from the academic community, often with oligarchic traits, and from the individual scholar to the university management at central level and in a more moderate way to the faculty level.

But in practice at both levels, institutional management and academic self-organization have often entered into compromises and mixed forms of governance because it has proved to be difficult in the long run to lead such complex organizations as universities against the majority of the academic community. So, parts of the traditional consensus culture have survived despite the fact that a new class of executives has evolved as a distinct group in the university. From an empirical point of view, discrepancies have often been observed between the far-reaching ambitions of the concept of managerialism and the continuously still-limited range of management influence (Amaral et. al., 2003), which indicates that universities with their still-high degree of scholar autonomy are very obstinate institutions.

#### *Institutional management*

The implementation of internal target agreements and new allocation models is seen as a way, firstly, to strengthen institutional leadership within the university; and, secondly, as a procedure to provoke more competition between faculties and individual scholars by setting up some incentives. Almost all German universities have introduced formula- or indicator-based procedures of budgeting during recent years (Jäger, 2009). Most frequently, the allocation within an institution – from central to faculty level – occurs in two ways: a basic budget in accordance with the size of the unit, and a performance-based budget. But the achievement component normally includes only a small proportion of the budget which obviously limits the steering effects. The indicators used are mostly the same as at the level between state and institution, i.e. number of first year students, number of graduates, in particular with a PhD, volume of third-party funding, and so on. As already is the case between state and institution, there is a clear trend to more homogeneity instead of profiling because institutions and faculties follow the same standards and criteria – a special case of “mimetic isomorphism” (Meier & Schimank, 2002, based on DiMaggio & Powell, 1983).

Target agreements within the university are very new instruments and so far not as widespread as between state and institution and as indicator-based budgeting. They are expected to operate as instruments of strategic steering, of organizational and staff development, linked with funding consequences. Two kinds of such agreements have to be distinguished: agreements with organizational units, e.g. between president and faculties, and those with individual academics, e.g. in the case of appointments. Often such agreements are considered to be a procedure of participative management based on mutuality between top-down and bottom-up. In practice, of course, there is rather an asymmetrical relationship.

*Competition and markets*

Besides the other instances mentioned, markets are a further medium of coordination. As explained before, “market” has become a very prominent slogan in European and German higher education policy, but it is seldom really clear what markets in higher education actually are (Becker & Round, 2009; Teixeira et. al., 2004). Often market means only competition, but in a strict sense markets are substantially more than that. Competition alone does not constitute a market. Talking about a market or about markets implies at least the following (partly based on Jongbloed 2003):

- A market is a mechanism to coordinate between demand (consumer or client) and supply (provider or producer);
- Goods or services are exchanged on a market, based on price and quality;
- The existence of some competition is a pre-condition for a market;
- There are several types of arrangements which facilitate communication or coordination between the market participants;
- On the side of the client or consumer, there are certain degrees of freedom to choose, reject or prefer an alternative;
- At least on the side of the provider there is an interest of either making a profit or gaining other advantages.

Of course, certain forms of markets or at least of competition have been in existence in European or German higher education for a long time: the competition of universities in the area of recruitment of scholars, for third-party funding, or academic distinction. It is important to take into account, as stated earlier, that currency in higher education is often academic reputation or visibility, not money. But according to the criteria just mentioned, higher education is not really a single or homogeneous market. It makes sense, therefore, to speak of multiple markets, a limited number of real sub-markets, and of quasi-markets (Dill et al., 2004).

- Firstly, higher education is characterized by the co-existence of multiple markets or fields of competition – funding, reputation, top students, foreign students, degrees, scholars, and so on.
- Secondly, there are real sub-markets, for example, the market for continuing higher education where universities have to compete with other providers, and the market is mediated primarily by price and quality. The labor market for graduates or for scholars is a real market too, of course.
- Thirdly, there are quasi-markets, areas in which only some but not all of the criteria mentioned above are fulfilled. Dill et al. (2004) argue that quasi-markets differ from real markets in higher education in that they are publicly funded and settled in state-regulated systems. Quasi-markets operate only under state-determined conditions.

Usually, state regulation and market orientation are considered as alternative paradigms. On the one hand, the pre-dominant role of the state in higher education is often justified as a response to market failure, the perception that “market” is not able to regulate higher education because of the many undesirable side effects. The most important justification for state interventions is the argument of equity and

compensation of deficits and imbalances. On the other hand, the opposite of this argument may also be true: The introduction of market-type procedures may be a response to “state failure”, for example, to bureaucratic overregulation or growing public underfunding. There is a frequent differentiation between higher education as a public or a private commodity or good, but in reality universities produce both, or a mixture that includes individual as well as social returns.

In many European countries including Germany, there have been several attempts to introduce market-type mechanisms in different forms – a process that has been called “marketization” (Dolenec, 2006; Enders & Jongbloed, 2009; Jongbloed, 2003; Levidow, 2002; Wedlin, 2008). The reasons for marketization include the intention to increase institutional quality, outcome and efficiency; to extend the funding base of the university; or to reinforce the responsiveness of the university to society. Often, marketization and commodification are confused, but the latter is only one manifestation of the former. Marketization means that market rules and procedures have become established in the modes of institutional operations. This can take different forms (partly based on Enders & Jongbloed, 2009):

- competition between institutions, e.g. for funding;
- competition between students;
- competition between scholars, for example in the case of performance-based payment which has been introduced in Germany recently;
- privatization of higher education, which can also mean various things – privatization of the costs of studying, or founding privately-run institutions;
- promotion of the economic rationality of institutions, for example by fundraising, commercialization of products or sometimes degrees, public-private-partnerships or even by funding procedures based on performance indicators.

In Germany, it is possible to identify many examples for all these different patterns. As already shown, many new elements of competition have been established, either at inter-institutional or intra-institutional level, in particular in the area of funding and allocation. The expanding costs of higher education compel institutions to look for new sources of revenue and to diversify their activities. That means they have to behave in a more market-like way.

It is necessary to mention two other areas of central importance with regard to competition. The first area comprises the dynamic extension of privately-run institutions, the second the strategy to select excellence universities. Both areas concern the issue of institutional differentiation of higher education. Traditionally, German higher education is an example of a publicly organized system with a low degree of vertical differentiation. Except for the segmentation between the two sectors of universities and *Fachhochschulen* (polytechnics), institutions have more or less the same status and reputation and are assumed to be fairly equal in quality. Distinctions between institutions have been relatively small and informal. This more or less homogeneous system is now faced with two developments.

The number of non-state institutions has grown rapidly and now represents one-third of all institutions. German higher education laws make a difference between

such institutions run by the churches and those run privately, which are mainly non-profit; both together are summarized as non-state. This non-state sector has increased from 60 (1995) to approximately 130 institutions (2009), primarily in the sector of *Fachhochschulen*. About 40 of them are run by one of the churches. There are only a very small number of non-state universities. The proportion of students enrolled is still very low, but it has increased from 1% in 1990 to 5% currently (Goll, 2009). Because the private university is highly selective and charges high tuition fees, most institutions are very small – less than 1000 students – and provide only a limited range of subjects (mainly business and computer studies). So, privatization in Germany is taking place on a much lower level than in many Latin American and other countries (Darraz et al., 2009; Reisz & Stock, 2008). Despite the fact that the majority of private institutions is not involved in any research activities, they define themselves often as elite institutions, expressing their claim to compete with or to be even better than public institutions.

Recently, the federal government and the states started a joint initiative for a competition to select excellence universities and to reward them with additional funding (Sondermann et al., 2008). The competition comprised three areas: networks of science, graduate (doctoral) schools and, as the main area, concepts of future excellence development. From an international point of view, the selection procedure was a little bit peculiar. Universities could apply for the status of excellence with an advanced development concept, and then a small number were chosen in formal proceedings by representatives from the state and some academic institutions. This may be a good example for competition without a market. Nine universities have been selected in the main field of this competition – awarding universities with the status of excellence. However, the excellence initiative has mainly served to cause increased pressure on all universities to cultivate their strengths and to eliminate their weaknesses in the face of more competition and vertical differentiation.

#### CONCLUSIONS: THE HYBRID CHARACTER OF NEW GOVERNANCE STRUCTURES

In Europe as in Germany, higher education has been undergoing numerous changes as part of the transformation of the public sector from a bureaucratic organization to a service sector based on public management (Ferlie et al., 2009). It is important to realize that reforming governance in higher education is not an isolated process but part of the comprehensive re-structuring of the entire public sector. Part of this change in higher education is the introduction of market-driven forms of coordination.

Beyond the idealized antagonism of state and market, it rather seems that the boundaries between state and market have become blurred in higher education. So, state and market should not be considered as opposite but as different manifestations of new governance systems with much overlapping and many interfaces. State higher education policy has adopted new market-like strategies and concepts and, in this way, has adapted the traditional state steering model to a

mixed model. This is not only true for the relationship between state and market but also for that between institutional management and academic self-organization. Although there has been a clear shift in the authority structure of the university from the academic community to management, a continuous parallel existence of both can be observed. Management has been strengthened but cannot lead the university without or against the traditional academic oligarchy. Thus the predominant feature of new governance is its hybrid character in many respects. The previous dualism of state and academic self-organization has given way to a multi-actor governance regime in which processes at supra-national, national, state, inter-institutional, intra-institutional and external level have become intertwined. But the state has retained its pre-dominant role although in more indirect and sophisticated ways, and this feature will remain as the main difference to the American model in the future.

So, have higher education institutions become business-like enterprises or are they specific organizations (Musselin, 2007)? Primarily, they are a special type of organization integrating experts with the specific mission of producing and disseminating knowledge. In the long run, despite all organizational reforms, they will remain “loosely coupled organizations” simply because of their creative character; that means their objective is knowledge creation and dissemination particularly through education. The particular mission of the university necessitates a particular form of organization. Universities are very obstinate institutions. Higher education institutions have a substantial mission and not a financial purpose. To increase revenue is just a means, albeit sometimes an important one, to realize academic objectives and to facilitate knowledge production through intellectual curiosity. In the end, the functional requirements of productive, creative and innovative intellectual work exist outside of the range of the new governance models.

This argument automatically raises the question of the impacts that the new governance model has on the outcomes of higher education, in the area of education as well as in the area of research. Has the university become better or more productive – or *will* it become better or more productive – under the auspices of new governance? Unfortunately, there has so far been very little empirical research on this issue due to the short time span of practice and experience. And of course, this may also be a very controversial issue because the criteria for proving quality and effectiveness differ depending on the several factions of stakeholders, for example, university management and the academic community. So, intensifying empirically-based research with a multidimensional perspective on the mission and outcomes of higher education should be the next important task – the crucial test for proving the effectiveness of the new governance model.

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