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Government Financing, States' Rights
And Higher Educational Policy in the
German Federal Republic

Joyce Marie Mushaben
THE CRUSADE OF "CULTURAL FEDERALISM:"
GOVERNMENT FINANCING, STATES' RIGHTS
AND HIGHER EDUCATIONAL POLICY IN THE
GERMAN FEDERAL REPUBLIC

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For more than a decade, academic institutions have been under fire. Unlike the Phoenix, however, the principle of university autonomy has not emerged unscathed from the ashes of what has been labeled a "revolution in the relationship of law and social policy" (Kirp and Yudof, 1974). As institutions of higher learning become all the more dependent upon public financing throughout advanced industrial nations, they are steadily being pulled into their respective central political-legal systems. Decisions bearing on the administration as well as on the substance of higher education have become the domain of state legislators, the federal bureaucracies and lately of the courts.

Growing fiscal constraints and concerns over deficit spending at the national level have given rise to the rhetoric of New Federalism in the USA. Similarly, questions regarding the allocation of ever scarcer resources and the redistribution of fiscal responsibilities have also served to modify the character of federalism as practiced in West Germany. This paper explores the changing nature of "cultural federalism" by tracing the evolution of the 1976 German Federal Framework Law for Higher Education. It demonstrates the extent to which the protracted academic reform process turned German universities into a battlefield for competing socio-political factions at the federal and state levels. Government financing of higher educational expansion programs, in particular, was to become the most critical aspect of university administration and, consequently, a major source of constitutional conflict between the Bund
and the Länder. The university finance issue led to a more extensive debate over areas of concurrent jurisdiction and structural reform, resulting in a number of amendments to the Basic Law (Grundgesetz) itself. Crosscutting cleavages between the SPD and CDU factions, politicians and bureaucrats, national and state-level policy makers eventually found expression in the 1976 Federal Framework Law, but only after the Constitutional Court stepped in for the purpose of creating a "temporary" political consensus.

The paper begins with a definition of the concept of cultural federalism and its relation to the higher educational policy process in the FRG. It then provides a general history of the reform process, arguing that changes within the German institutions of higher learning over the last ten years have, for the most part, have been externally induced. The reform process is treated in three phases, "expansion," "standardization" and "rationalization," each corresponding to marked shifts in academic reform objectives. The paper then concentrates on the interplay of various parliamentary developments and concludes with a summary of reform accomplishments to date.

A. THE CONCEPT OF CULTURAL FEDERALISM

As a safeguard against recurrent or possible future abuses of centralized control, the "provisional" constitution (Grundgesetz) promulgated in 1949 placed strong limitations on the exercise of federal powers in the FRG. Article 20 of the Basic Law underlined the democratic and "social-federal" character of the new German state, guaranteeing popular sovereignty, separation of powers and the right to resistance. Article 28 moreover obliged the Länder governments to comply in protecting the basic freedoms ascribed to the federal order. Article 30 nonetheless made provision for the exercise of states' rights, holding that the discharge of government functions was incumbent upon the Länder unless otherwise prescribed by the Basic Law. In such cases, federal law was to override Land law, according to Article 31 GG.
The promulgation of the Länder constitutions shortly after national ratification of the Grundgesetz in May, 1949 demonstrated how seriously the states committed themselves to the strict division of labor foreseen in the cultural-educational arena. The Länder statutes moreover testified to starkly contrasting cultural differences and educational principles:

When for instance Bavaria (Art. 131, Section 2) and other states have placed the fear of God, Hessen the development of the moral personality (Art. 56, Section 4), Bremen the inculcation of a sense of community (Art. 26, Section 1), or Hamburg the preparation for life's contingencies at the beginning of their respective catalogues of educational tasks and objectives, this means that there are already principally different premises upon which their school systems rest (Faulstich, 1977, pp. 150-151).

State sovereignty in the cultural and educational domains (Kulturhoheit) covered a broad range of activities in a variety of educational facilities:

- legislation and administration for the entire elementary and vocational school system, as well as for the technical and engineering schools;

- determination and regulation of the budgetary process for post-secondary education and training;

- and the provision of state subsidies for theaters, museums and libraries, in addition to all facilities involved in adult education (Frey, 1961, p. 196).

States were to fulfill these tasks "as their own responsibility;" under no circumstances was the national government to assume primary responsibility for these areas. The preparation of God-fearing, community-minded or life-adjusted citizens under the auspices of individual state educational ministers was conducted without special attention to potential, over-arching political-economic constraints.

The concept of federalism outlined in the Basic Law had an instrumental character: its aim was to promote the political liberalization of an historically authoritarian decision-making structure. A few areas of concurrent jurisdiction were introduced to ensure competition between the two levels of government as part of a new "checks and balances" system. Subsequent efforts to reform the German university system illustrate the extent to which these very
constitutional provisions resulted in a petrification of federal-state interactions, rather than in a liberalization of these relations. For the Länder, the maintenance of the existing federal division of labor became an end in itself, rather than the means for securing substantive educational rights.

In retrospect, the limitations inherent in "cultural federalism" contributed to, but did not single-handedly cause the "university problem" that was to plague German policy makers from the 1960's up through the 1980's. Substantive conflicts of interests have extended or intensified those inherent in federal state relations. As Wolf-Dieter Fuhrig observes,

Cultural autonomy has been a symbol of federalism, but not a contribution to pragmatic democracy. Just as academic freedom has become a shibboleth for the protection of the academic establishment, so cultural autonomy has turned into a shibboleth for the professional and political interests which stand to lose from a centralized management of the country's cultural institutions. The most influential people thus affected are the thousands of politicians and bureaucrats who owe their livelihood and status to the existence of the states (Fuhrig, 1966, pp. 187-188).

B. THE SETTING: "HIGH TIME" FOR EDUCATIONAL REFORM

Because of its status as an advanced industrial society, the German Federal Republic could be thought to share many of the goals of its Western neighbors. Yet in a comparison of educational reforms among European Community nations within the last two decades, the FRG clearly lagged behind. In 1965, Torsten Husén maintained that the West German educational system served as "a present day European example of a failure to plan" (Heidenheimer, et al., 1975, p. 51). The "educational catastrophe," first explored in depth by Georg Picht in 1964, was particularly visible at the tertiary level. Academic institutions continued to be dominated by the kinds of hierarchical structures and authoritarian teaching methods that had characterized German education prior to 1939. Reforms in the areas of curricula revision, teacher-training programs, university governance and admissions policies were long overdue. Further, despite the post-war commitment to more democratic forms of socio-political organization, the number
of students from working class families admitted to the universities remained at the level of five to ten percent -- even though enrollments had more than doubled by 1965 (Picht, 1965).

Picht demanded that education be made the nation's number one domestic priority for pedagogical as well as for social and economic reasons. First, he warned that an extreme shortage of teachers and classroom facilities was inevitable, in light of the additional two million children about to descend upon the country's elementary schools -- the first wave of the post-war Baby Boom; obviously the quality of education would be seriously impaired if existing personnel and classroom space were only to be maintained at existing levels. Second, Picht pointed to significant imbalances at the Länder level, owing to the decentralized administration of education; school children in provincial-agricultural regions in particular were not able to meet even the comparatively low-level national standards, and family transfers from state to state disadvantaged elementary-aged pupils more than their elders. Thirdly, Picht projected the end of the Wirtschaftswunder. In an age of technology and specialization, an educational system based on 19th century philosophical principles posed a threat to the economic health of society as a whole. Entrance into the Common Market and increasing international competition required the "production" of ever greater numbers of skilled laborers, which would hike the price (and the value) of education at all levels. The primary financer in Germany has always been the State; but public investment in education had, in fact, decreased from 3.31 percent of the national budget in 1958 to 3.26 percent in 1960 and 2.9 percent in 1962 (Picht, 1965, p. 10). Picht placed the blame on the form of cultural-educational administration: the Länder exercised complete control over legislation and administration, while planning and financing powers not specifically delegated in the Basic Law were coveted by authorities at the national level.

In 1965, sociologist Ralf Dahrendorf underscored Picht's analysis of
impending doom. Then he introduced another critical variable which was to become the bane of university existence, viz. the notion that Bildung ist Bürgerrecht — education, in the larger sense, is a civil right (Dahrendorf, 1968). Dahrendorf emphasized that educational reform was not only crucial in regard to the nation's future economic and scientific demands, but also in light of changing social needs. Affluence, he argued, was only one dimension of freedom in a democratic society. Article 12/1 of the Grundgesetz (the "Basic Law" serving as the provisional constitution) guaranteed all citizens the right to choose freely their vocations, educational facilities and places of work, as did respective articles in the Länder statutes. The State had no alternative but to make Chancengleichheit — equal opportunity — the basis of subsequent educational reforms.

C. CONSTITUTIONAL CHANGE AND EDUCATIONAL CENTRALIZATION

The Basic Law not only committed the Federal Republic to particular distributions of political power. The provisional constitution also imposed a fairly rigid division of fiscal responsibilities. Furthermore, the German constitution rendered the "organization of the Federation into states" and "the basic cooperation of the states in legislation" (through the Bundesrat) un-amendable, according to Article 79/3. As the afterglow of unprecedented economic reconstruction began to fade, finance was to become the most critical aspect of university administration, and consequently, the major source of constitutional conflict between the Bund and the Länder towards the late sixties.

Although the Grundgesetz specifically designates education as a policy area over which the individual Länder are to exercise exclusive control, two Articles originally contained in the Basic Law potentially recognize the need for joint state-federal action in the educational field. The catalogue of responsibilities in Article 74 presumes
concurrent legislative powers shall extend to the following matters: ...

(13) the regulation of educational and training grants and the promotion of scientific research.

Article 75 further provides,

(1) the Federation shall have the right to enact skeleton provisions concerning: ...

(1a) the general principles governing higher education: ...

Moreover, an amendment introduced by the reform-minded Brandt government in 1969 effected rather significant changes in Bund-Länder relations. According to Article 91a,

(1) The Federation shall participate in the discharge of the following responsibilities of the Länder: ...

1. expansion and construction of institutions of higher education including university clinics.

And Article 91b holds,

The Federation and the Länder may pursuant to agreements cooperate in educational planning and in the promotion of institutions and projects of scientific research of supra-regional importance. The apportionment of costs shall be regulated in the pertinent agreements.

Hence, Articles 91a and b foresaw the development of joint tasks or programs (Gemeinschaftsaufgaben), as a means of circumventing the restrictions of the federal budgetary process and avoiding jurisdictional clashes. The amendments authorized the Bund's participation in Länder responsibility for educational planning, on the basis of shared financing for educational experiments (such as Baden-Württemberg's proposed Gesamthochschule, finally constructed in Hessen instead, where political conditions proved more favorable).

One side predictably chose to interpret the statutes more broadly than the other. For educational planners,

the decisive question [Was] whether the executive heads of state [Könnten] be compelled on the basis of BLER-resolutions to include the requisite fiscal items in their legal-budgetary proposals, as intended by §10 of the Law for the Promotion of University Construction (Hbfg) (Staff, 1973, p. 727).

*The Bund-Länder Kommission is the Joint Federal-State Commission for Educational Planning and the Promotion of Research, created in 1970.
For Länder authorities, the issue was strictly a question of voluntary compliance.

Interpretation and implementation of the amendments drew attention to another dimension of the federal checks and balances system. Final approval of the national budget in the FRG rested with the Parliament (cf. Art. 14, 15, 59/2, Art. 105 - 115). Swept away by a sense of "planning euphoria" during the early years of the Brandt government, the Federal Chancellor's Office (FCO) became so enthralled with the possibilities afforded by the American PPBS invention, that it forgot to mind its manners with respect to the dictates of democratic pluralism. The "happy planners" in the FCO were by and large Social Democratic political appointees, little constrained by the short-term electoral interests of the parliamentarians. For their part, the legislators had neither the necessary access to specialized information, not flexible, alternative decision-making procedures at their disposal. Nonetheless, "planning" as an executive function could not be divorced from the political processes of goal-setting, legislating and budgeting (Zeh, 1974). Slowly but surely, all sides came to realize that,

insofar as the reform of the "confederation" concerned, not only a new regulation of the joint programs imperative, but also the introduction of constitutional reform in the area of finance. And in order to combat the danger of displacement, a continuation of whole-scale, government organizational reform became essential, to prevent the removal of preliminary planning decisions from the hands of politically accountable state officials by independent or semi-autonomous advisory and planning organs. (Karpen, 1977, pp. 268-269).

Seeking to expand its own role in the planning process, the German lower house (Bundestag) established the Troeger Commission in 1966, while the Interior Ministry set up a "Project Group for Governmental and Administrative Reform" in 1968. Expanding on this form, the Commission of Inquiry for Constitutional Reform (Enquete Kommission Verfassungsreform = EKV), constituted by Bundestag decree in October, 1970, was to concentrate on multiple, complex issues: "governmentability" (Regierbarkeit), "transparency" of decision-making, democraticization
and expanded participation opportunities for citizen interest groups; the constitutional and legal limits involved in the planning process; development of a federal framework for mid-range as well as long-term task and finance planning (Aufgaben- und Finanzplanung). Following the publication of its preliminary report in September, 1972, the EKV was harshly criticized for its adherence to rational-actor fantasies in the face of obvious political differences. The Planning Department in the FCO had disintegrated (self-destructed, one could argue) for very similar reasons in 1972 (Mushaben, 1977). The federal executive succeeded in introducing a degree of "negative coordination" among the initiators of joint programs at best. The ministerial bureaucracy returned to incremental methods and "business as usual" after this very brief stint with long-term, comprehensive political planning (Mayntz and Scharpf, 1975, p. 147).

Reconstituted by the Parliament in May, 1973, the Enquête Kommission was permitted to continue with its deliberations until it produced its final report in December, 1976. Members of the Bundestag and the Länder Commissions agreed that the joint programs had produced a "mish-mash" of administrative and financial operations which, in effect, reduced political accountability and the degree of administrative transparency on either side. Together they recommended the reformulation of Articles 74 through 77 and the replacement of Articles 91a, 91b and 104a/4 with new Articles 28a and 104b (designating "framework planning" and "investment aid" as areas of concurrent jurisdiction, and guaranteeing the Bund finance rights in post-secondary educational matters). None of these amendments came to pass, but one of the unintended outcomes of the Final Report was nevertheless the assignment of a committee within the Federal Education and Science Ministry (BMBW) to study in greater detail "the structural problems of the federative educational system."

The federal executive reluctantly revealed the findings of its much contested investigatory report in light of mounting public and media pressure in February, 1978; its reasons for wanting to suppress its conclusions are not
immediately clear. The BMBW argued that the national failure to achieve effective standardization of higher learning practices and greater educational opportunity owed largely to state limitations on structural innovation: the problem with "cooperative" cultural federalism was that the Länder wouldn't cooperate, according to summary findings. The KMK* was quick to respond with a 51-page refutation of the "Structural Report" at its April, 1978 plenary session. The Conference of Education Ministers complained that, of the 34 constitutional alterations supported by the Parliament between 1949 - 1978, 29 had worked to the detriment of the states. The plenum held that the Report was one more element in the Bund's constitutional power play which failed to take Länder-specific needs and capabilities into account. The ministers contended that positive inroads had been made, particularly at the elementary level, and that the Bund-Länder Kommission already provided the necessary forum for cooperative educational planning.

In this writer's estimation, the EKV's Final Report, the central government's 1970 "Educational Report" (Bildungsbericht 1970) and the BMBW's "Structural Report" reveal more about developments in the general political environment than they do about the progress of university reform per se. What prompted Länder acquiescence in 1969 when Parliament saw fit to adopt two very important amendments, Articles 91a and 91b? Why was the Structural Report viewed as a power-play tactic, rather than as an attempt to introduce more effective management of federal funding? Briefly, the 1969 provisions authorizing joint programs were part of a larger domestic reform package offered by Brandt. Hence, the states consented to Article 91b in exchange for Article 91a, which provided federal assistance for improvements in regional economic structures, development of the agrarian sectors and preservation of coastal regions (Der Spiegel, No. 10/1969, No. 18/1969). Federal legislation concerning academics required the consent of the Bundesrat, composed of the state government leaders; economic problems in these other areas were too important for the states to disregard.

*The Kultusministerkonferenz is the Standing Conference of State Educational Ministers.
So the Länder stuck in their thumbs and pulled what they thought were plums out of the federal pie, assuming that their Bundesrat representatives in Bonn would watch over the ingredients. When the Federal Finance Ministry started to supervise more of the shopping to counteract inflationary developments, the Länder found their portions significantly pruned instead. Also important are the electoral shifts in party strength that occurred between 1970 and 1972, which jeopardized the Bundesrat's ability to prevail over decisions of the Bundestag.

Article 75 tipped the balance, in essence, replacing the notion of concurrent jurisdiction with "framework" powers for the Bund (Von Schenck, 1976, p. 34). By this point the Länder were forced to direct a good part of their energies inward, intent on waging war against student radicalism and academic politicization. When they focused their attention on Bonn once again, the Bund had made critical jurisdictional advances, supported by the 1972 Federal Constitutional Court ruling on the Numerus Clausus system. So it was that certain constitutional amendments came to pass, and the national government equipped itself with broad framework powers which still required supplementary state legislative and administrative action.

In summary, centralization efforts, instead of simplifying a transfer of academic responsibility from the Länder to the Bund, opened a new Pandora's box filled with complex, conflict-ridden questions of budgetary and broader constitutional reform. Federal officials continued to look to structural reform to cure the educational system of demographic and institutional ills, while the states assiduously devised new strategies of resistance. It should be clear to the reader that many complicated issues were involved, all of which were brought to bear on university reform processes, but few having had the improvement of the higher educational system as their primary objective.
D. REFORM IN THREE PHASES AND THE GENESIS OF THE FEDERAL FRAMEWORK LAW

Under the circumstances, expansion of the tertiary sector was a logical first choice in the search for reform alternatives, beginning in 1965. Recuperating from the radical reductions of 1933-1939, university enrollments returned to normal levels by 1952; stabilization was short-lived, however. Institutions of higher learning experienced a 76 percent increase between 1952 and 1960, and a further enrollment rise of 100 percent during the period 1960-1970. But the real "educational explosion" would occur between 1970 and 1975: the number of students was to skyrocket an additional 180 percent (Wissenschaftsrat, 1976, pp. 9-12).

Phase I, 1965 to 1970, saw educational authorities adopt a variety of expansion strategies, beginning with the creation of eighteen new higher educational institutions. Officials further attacked the space problem by expanding the existing universities; by transforming specialized institutes into "regular" universities; by adding requirements and then accrediting technical schools with higher educational status; by shifting labs and institutes, as well as other support structures to permit better utilization of available spaces. The next step was to swell the rolls of the academic teaching staff, adding a new stratum of junior faculty (Mitteibau) in order to restore student-teacher ratios to the normal levels of the 1950's. In fact, the ranks expanded from 9,000 "assistants" in 1960, to 18,000 in 1965, to 28,000 by 1971 (Grund- und Strukturdaten, 1977, p. 96).

These expansion measures produced two unintended results: 1) the increased supply actually exacerbated the demand for university education in the midst of the baby boom; and 2) rapid institutional growth precipitated internal crises of coordination and authority. Federal expenditures to higher education had increased by 500 percent, while control over the allocation of those monies remained constitutionally vested in the Länder. In order for the Bund to succeed in effectively distributing subsidies to the Länder and to ensure their use for
expansion purposes, federal authorities held that it was necessary to simplify their dealings with the respective recipients. The mode of university administration differed significantly from state to state, and coordination depended upon voluntary compliance by the Länder.

Phase II, extending from 1968 to 1972, was characterized by a more active attempt on the part of state officials at both levels to direct pressing intra-organizational and interinstitutional reforms. Standardization was a strategy intended to aid the national executive in concentrating and managing its "new assistance relationships," while bringing a broad range of conflicting state educational priorities more clearly into line with each other and with national SPD reform orientations (especially after 1969). The Länder viewed standardization as an opportunity for dictating structural reforms (replacing traditional "Faculties" with departments), and streamlining university admissions and governance procedures (switching to a presidential-management system). Authorities moreover became conscious of the need to agree on more unified academic programs to facilitate student transfers across statelines to less crowded universities (Mushaben, 1981).

Overcrowding in fact became the major problem by 1972, making it necessary for individual universities to impose numerical limitations on student admissions. Enrollment projections issued by the new Federal Education Ministry of 280,000 for 1978 and 560,000 for 1980 had been surpassed by 1960 registrations (291,000) and 1971 figures (587,400), respectively. (Rahmenplan, 1978, p. 15). On October 20, 1972, the eleven Länder ministers institutionalized the Numerus clausus system by creating a Central Office for Student Admissions in Dortmund. The Numerus clausus principle applied especially to those seeking to enroll in architecture, biology, chemistry, dentistry, medicine, pharmacy, psychology and the veterinary sciences.

Face to face with the brooding giant of finite fiscal resources that was conjured up by the recession of 1971-72 and the inflationary effects of the
1972-73 energy crisis, the Federal Finance Ministry brought university expansion programs to a dramatic halt. Owing to fiscal constraints, educational authorities were forced to pursue a strategy of rationalization, between 1972 and 1976. The objective of this particular reform exercise was to produce more graduates with higher qualifications in less time at lower cost to concerned German taxpayers. The Länder ministers of education took advantage of the brake on national expansion measures to extend their powers with respect to the regulation of examinations, and with that, to intensify their involvement in the curricular reform process. Steps to streamline curricula and the imposition of tougher exam requirements were intended to "depoliticize" the academic environment, as well as to discipline individual university activists.

By the end of the 1960's, finance had become the most critical aspect of university administration and, consequently, a major source of constitutional conflict between the Bund and the Länder. Amendment 91b led to a number of parliamentary acts dealing with university construction and federal budgetary procedures, which in turn were to lay groundwork for a National Higher Education Act. Federal Educational Minister Leussink presented the first legislative draft to parliament in 1971; but by 1972, political winds had begun to shift. While the SPD consolidated its majority in the Bundestag following the 1972 national elections, state-level elections produced a CDU-dominated Bundesrat, that was ready, willing and able to exercise a suspensive veto against three subsequent drafts of the Framework Law. It goes without saying that the German university was a house divided, owing to the disruptive effects of the anti-Vietnam protests and the student movement. Bund and Länder authorities carried their political differences and jurisdictional disputes into the halls of parliament, each hoping to play the role of "the state to the rescue."

The image of "the state to the rescue" meant that government agencies could skirt the (constitutional) issue of "academic freedom" and legitimate their own efforts to instigate reforms at the "cooperative" federal level, in light of
the broader framework powers contained in Article 75a and 91b. The new powers resulted in new problems for federal policy-makers, however, and new impediments to further reform efforts were by and large of a party-political nature. Parliamentary initiatives geared toward legislating the process of higher educational reform were hindered by tensions at four levels: 1) at the federal finance level; 2) at the level of Bund-Länder relations; 3) at the party level, between the SPD government and the CDU/CSU opposition forces; and 4) at the political-administrative level, between politicians, planners and bureaucrats.

1) By the time the BMBW presented Parliament with the first draft of a Framework Law in 1970-71, the FRG had already experienced one minor and one major recession. The sense of "planning euphoria" which had arrived with Brandt at the FCO was soon dispelled by the brooding giant, and its henchman, the Federal Finance Ministry. In Germany, as elsewhere, the Treasury enjoyed multiple opportunities for intervention and control, and grew ever more reluctant to part with the resources at its disposal, in view of the general economic slowdown. Brandt's preoccupation with Ostpolitik left little time for convincing recalcitrant Cabinet members of the need for expensive educational experiments.

2) Jurisdictional disputes in matters of financing, legislation and administration were complex enough, indicating that Article 91b had not proved as effective in resolving Bund-Länder conflicts as had been hoped. Even more problematic, however, was the heretofore unconsidered process of middle-range and long-range finance planning. Efforts to establish a centralized planning system in the Chancellor's Office collapsed by 1972. Yet the Länder had neither the personnel resources nor the informational overview necessary for coordinated planning systems of their own -- the result was a functional vacuum. The introduction of the Central Admissions Office in Dortmund in 1972, intended to match up an overflow of student applications with an undersupply of university places, only increased the strains on intergovernmental relations (since most of the Länder were bent on saving places for the Landeskinder, e.g. Bavaria).
This and other stop-gap measures, i.e. "capacity ordinances," failed to fill the vacuum in a manner satisfactory to any of the governmental parties involved.

3) and 4) The third and fourth impediments are complexly related and entail much more than the standard complaints one would expect to hear from legislators about bureaucratic inertia at the Länder level. The proposed HMG had become the victim of a three-way tug-of-war. The primary contestants were a) the ruling SPD/FDP vs. the opposing CDU/CSU fractions in Parliament; b) short-term politicians vs. life-tenured civil servants; c) the elected forces of a weakening SPD at the federal level vs. the CDU-dominated bureaucracies in a majority of the states. Growing tensions among these three groups were the indirect consequence of the SPD's electoral victories at the national level in 1969 and 1972, which led to "house-cleaning" at the top and retrenchment at the bottom.

Despite the investiture of framework powers at the national level, the Länder governments, as represented in the Bundesrat, still retained a constitutionally guaranteed veto on all questions pertaining to education and culture; not surprisingly, delegates reacted to parliamentary Framework proposals much in the manner of jealous lovers. Several state governments which had in fact worked to draft higher education acts on their own prior to the federal push had produced radically different results, with institutions in Berlin, Hamburg and Bremen at one end, Munich and Stuttgart at the other, due to control by opposite parties. Playing out the role of national Opposition for the first time in almost 25 years of post-war politics, the CDU/CSU succeeded in weakening social democratic reforms at crucial points throughout the legislative process by virtue of continued strength in the Bundesrat. From 1972 on, the CDU/CSU made ample use of the upper house majority to dilute or delete reform provisions and to add certain "law and order" features to the HMG bill. The outcome of the 1976 elections formalized the party-political deadlock, and conservative gains at the Länder level seemed to reflect a hostile public reaction.
to the student movement and the spread of domestic terrorism. The SPD's slim margin of victory can be attributed in part to satisfaction with Ostpolitik and to Schmidt's skillful management of the national economy.

The political atmosphere did not bode well for the higher educational system. Both sets of concerns, domestic security and the health of the economy, figured heavily in setting the legislative stage for the university reform bill. Even before the BMBW submitted its first official proposal, legislative debates over developments in the tertiary sector left members of parliament with "an aftertaste of something controversial, something problematic and of questionable value" (Von Schenck, p. 38). Pessimistic from the start, their political dispositions led German parliamentarians to sound the death-knell for university autonomy long before they were to succeed in preparing, revising and promulgating the Framework Law.

Reformers had employed a variety of strategies, expansion and experimentation, standardization and rationalization, and still the "university problem" persisted. Indeed, by 1970 the higher educational crisis appeared to have grown much worse. Technological specialization was becoming the sine qua non of a stable German economy, increasing the demands that would be made on the higher educational sector. The Bund had sought to expand its framework powers; now it would be compelled to use them more extensively, politics permitting. The first legislative draft for a national Higher Education Act presented to parliament in 1971 provoked strong partisan reaction. The SPD version foresaw the introduction of the comprehensive university, nationwide, included provisions for curricular and personnel reform, and accepted the principle of institutional self-determination (Mitbestimmung) subject to no specific parity regulation. Shortly thereafter, the CDU/CSU presented its own draft to the Bundestag, which contained a radically different approach to university governance and rejected the imposition of the "integrated" comprehensive model as the norm governing further expansion efforts.
In a landmark decision in 1972, the Court found that the *Numerus clausus* system devised to meliorate the overcrowding of especially popular disciplines violated the precepts of Art. 12/1 GG. The Court, in essence, challenged federal lawmakers to develop objective and universally applicable norms for admission decisions, a prerogative that had been exercised solely by the university in former times. The justices nonetheless expressed their strong preference for academic achievement, waiting time and “hardship” criteria, reaffirming the selection procedures informally agreed upon by the Länder ministers prior to their interstate compact of October, 1972. The Court also exhorted the members of parliament to devise the means for extending university capacities. In so doing, the judiciary established itself as an advocate of university expansion.

The financial crunch which followed in the wake of the 1973-74 recession ultimately curtailed common federal-state efforts to expand the higher educational system any further. Yet ever more individuals who had been denied entry, owing to overcrowding, appealed to the administrative courts on the basis of their Art. 12/1 rights. Court action served to expedite Länder reaction, and 1974 saw another trial effort by the states and the West German Rectors' Conference to design a more reliable system for measuring university capacities (*Kapazitätsverordnungen*), since too many of the would-be students were actually winning *de jure* contests.

Unable to implement directly their own strategy for higher educational reform, conservative elements joined forces to block the "democratization" tactics of the SPD. On May 29, 1973, the Federal Constitutional Court (*Bundesverfassungsgericht*) passed down a decision in favor of 398 professors and associates, who opposed the Higher Educational "Preliminary Law" (*Vorschaltgesetz*) in Lower Saxony. The Court ruled that three-way parity in university decision-making organs violated the constitutional rights of the senior academic staff members as posited in Art. 5/3 GG. Moreover, the Court held that these full professors were to be guaranteed *at least one half* of the
seats in any body regulating teaching and examinations (massgebender Einfluss), and assured a clear majority (ausschlaggebender Einfluss) in matters of academic hiring, firing and research. Consequently, it was the Constitutional Court which took the first critical step in standardization of university governance: by recognizing in principle the need for representation of all groups directly affected by academic decisions in central university organs, at the same time limiting proportionately the amount of influence each of these groups could bring to bear on final decisions according to their level of "qualification."

Bad enough that the legislators were obligated to adhere to a number of proscriptions contained in the Constitutional Court rulings; equally harmful to the concept of university autonomy was the fact that subsequent drafts of the Framework Law followed what were essentially political prescriptions appearing in the justices' opinions accompanying the decisions.

From the perspective of university observers, the draft proposal had an immediately negative impact, in that the political nature of the debates did more to "divide and conquer" proponents of more radical reform alternatives, than it did to promote administrative effectiveness. Worst of all, perhaps, was the fact that the HRG not only promised to alter substantially the structure of university governance, thereby disregarding the principle of institutional self-determination. It threatened at the same time to leave other critical dimensions of university activity, such as curricular reform and regulation of examination contents, open to the discretion of the Länder, those who had been recalcitrant reformers in the first place.

By 1976, the passage of the Framework Law had become a political end in itself, rather than a means to a more effective system of higher learning -- a classic case of goal displacement, especially on the part of the SPD, under much pressure from its own left wing, on the one hand, and CDU/CSU forces, on the other. Members of the academic community in all of the Länder sharply criticized the process as well as the product of five years of educational-legislative
activity. In this author's estimation, the promulgation of the Hochschulrahmengesetz boils down to a struggle between federal and state-level authorities, a jurisdictional dispute exacerbated by opposing party-political configurations at these two levels and arbitrated by a supposedly non-political judiciary. The HRG became law on January 29, 1976, not because it promised any particularly outstanding advantages for the higher educational system, but because politicians -- because they are politicians -- needed to attend to other important business that had been postponed in the struggles over the HRG.

E. CONCLUSION: INTEREST GROUP CONFLICT AND AUTONOMY IN AN AGE OF RECONSTRUCTION

In broad terms, three classes of interests representative of Bund, Länder and Academe were directed toward the achievement of very different objectives. Members of the scientific-scholarly community hoped to procure funds as expeditiously as possible for post-secondary and outside research facilities. At the same time, they sought to avoid the issue of "comprehensive planning" connected with state budgetary politics which they believed violated the open-ended, inexhaustible character of Wissenschaft. The Länder were primarily interested in relieving themselves of mounting fiscal burdens, while maintaining state sovereignty over educational affairs. They were little concerned with long-term prospects for scientific research, but focussed instead on short-term contingency planning. The Bund anticipated long-term gains in areas where its jurisdiction had been constitutionally restricted. Certainly, the national executive worried in the short-run about its weak international image. But comprehensive planning efforts in the educational sector also served as a means to another end, i.e. constitutional finance reform, effectively increasing the federal revenue share in the long-run. Later on, a darkening employment picture and growing concerns about the general health of the social market system would allow for the emergence of a fourth class of interests in complementary, yet to be created reform commissions, namely those of unions and industries.
The academic interests eventually lost out to the "reds" (SPD Länder) and "blacks" (CDU/CSU Länder) in the fight over the Bund's "gold." Administrators at both Bund and Länder levels were obliged to consider, but not to act upon a growing battery of reform recommendations. In trying to play off one authority against the other, the university community was soon deprived of its traditional autonomy at both ends. Further, as policy-makers came to appreciate the complex nature of problems confronting various educational subsystems, they tended to deal extensively with all of them and intensively with none. As complexity made certain constitutional revisions absolutely essential, the focus shifted from the educational catastrophe to the overarching problem of fiscal crisis.

In light of the dramatic changes these developments induced in the policy-making environment, Peter Faulstich concludes:

- It would therefore be incorrect to hold the federalistic structure of the German Federal Republic as the main reason for the failure of educational reform efforts, lest one delude oneself into believing that an institutional reorganization would suffice to right the wrongs and redirect misdevelopments... The fact remains that the existing political interests -- and power constellations -- stand in the way of even this type of reorganization. The jurisdictional dispute between the national and state level governments is an expression in terms of constitutional law of conflicting /political/ interests among educational policy-makers (Faulstich, 1977, p. 149).

Judicial efforts to resolve conflicts between the Bund and the Länder, SPD and CDU factions, politicians and bureaucrats have not been without political costs. The solutions advanced by the judicial branch are temporary at best; every act of interpretation, every textual exegesis produces new elements of law. Each decision tends to breed its own brand of conflict in new areas, not to mention the manner in which it contributes appreciably to the Court's own workload. The carved-in-stone character of Constitutional Court rulings means, on the one hand, that judicial actors have become the recognized managers of an interdependence which they in part have helped to create. The other side of the coin is that academic institutions in the Federal Republic have been increasingly deprived of the right to establish primary educational goals and to
determine the best means of achieving those goals, which poses a most signifi-
cant threat to institutional survival and academic freedom in the FRG. The
German brand of politicized legalism ultimately limits the types of adjustments
universities will be able to make, should new socio-economic contingencies arise.

This conclusion rests in part on a number of interviews conducted with per-
sons who were involved in all phases of the legislative process -- actors rang-
ing from members of competing party factions to officials at the ministerial
level, not to mention those most directly affected by the legislative flurry.
The only common reaction voiced by these diverse groups
was a high degree of dissatisfaction. The HRG, they maintained, was clearly a
case where a bad compromise was conceivably better than no compromise at all.
The lawmakers among them openly admitted that von Universitätsautonomie ist nie
die Rede gewesen -- university autonomy was never a topic of real discussion.
Few of the university groups were directly or regularly consulted over a longer
period of time. Few of the legislators were in a position to identify strongly
with the concept of university autonomy, since their primary concern centered
on short-term political accountability.

The Federal Framework Law for Higher Education in its present form, and
the spectrum of State Adaptation Laws promulgated in its wake, do not appear to
offer a more long lasting resolution of tensions, nor a necessarily durable po-
litical consensus on role of higher education and the importance of university
autonomy in the FRG. Then what has been accomplished during 15 years of (what
critics label) the "reform hectic?"

In one respect, the reform has taken hold: the expansion programs begun
in the late sixties have significantly broadened citizen access to higher edu-
cation -- if you don't mind the wait, that is. Waiting periods of three to
seven years continue to plague applicants looking for a place in the hardcore
Numerus clausus disciplines. The number of students enrolled in the tertiary
sector has risen impressively from some 373,000 in 1965 to 788,000 in 1974 and
to more than 978,000 in 1978/79 (FU-INFO, No. 5/1980). The percentage of a
given cohort now attending academic institutions has also jumped from less than
six percent in 1965 to roughly twenty percent by 1979.

Reformers have furthermore brought about a measure of standardization with
regard to university administration and degree requirements; but the beauty of
this important reform accomplishment appears to be only skin deep. Substantive
as well as political differences persist from one state to another, especially
in relation to the teacher training and recruitment practices which remain un-
der the control of the Länder ministers. The HRG did what it was supposed to
do in a limited sense, viz. it provided state-level policy-makers with a common
legal framework. But a closer look at the eleven Adaptation Laws leads one to
conclude that the Framework Law is about as effective in covering up the dif­
ferences in Länder educational priorities as were the emperor's new clothes in
protecting the sovereign from unfavorable environmental elements. The regula­
tions have become more and more detailed with each legal turn; the distinctions
between qualifications, extrafunctional and otherwise, are more and more acute.
Some of the Länder allow for organs of student government; others, such as
Bavaria, have outlawed them. Some states guarantee the legal maximum in assign­
ing representational seats to non-professorial groups, others hold participa­
tion in decision-making bodies to minimal levels. Ultimately, the standardiza­
tion of academic programs will depend upon the cooperative efforts and compromise
agreements worked out by the regional curricular reform commissions, whose mem­
bers have only begun to tackle the task at hand. The new CDU-government in
Berlin has already held numerous parliamentary hearings on a proposed overhaul
of the not-yet-implemented 1979 Adaptation Law. As late as May, 1982, the state
educational ministers had yet to sign accords guaranteeing mutual recognition
of certain academic degrees.

Rationalization, that is, the attempt to ensure job-relevant training and
a degree of professional flexibility, while simultaneously streamlining curric­
ulum, accelerating the learning process and holding down costs, is an objective that can only be attained through the clever use of mirrors. Politicization of the university reform issue has led to greater external control over the content of higher learning, and assessments by outside agents are increasingly based on economic criteria. Rationalization measures may assist political authorities in dealing with the question of institutional efficiency; but moves in this direction ought not to be equated with educational effectiveness. Successful rationalization would signify that tangible benefits have accrued to individuals participating in the accelerating learning process as a direct consequence of legislative reform activity. Present academic unemployment statistics in the Federal Republic belie the benefits of mass education for mass education's sake. Rationalization, in many respects, has failed to service reform objectives.

It is highly unlikely that officials in the Federal Republic will jump at the chance to engage in a process of "rolling reforms." What German politician would be willing to reopen this legislative Pandora's box on a regularized basis? My suspicion is that the academic institutions themselves would wind up worse for the wear and tear, as each successive package of regulations is more bureaucratically and legally binding than the one that went before. Appeals to the judiciary in matters of higher educational politics have become more or less standard operating procedure in the German Federal Republic, but juridical responses per se do not guarantee that cooperation and coordination will ensue among competing partisan groups. The "university problem" is in fact symptomatic of more fundamental social and political cleavages. At the basis of the "educational catastrophe" was a recognition that advanced industrial Germany has become a very complex, interdependent society whose problems require collective solutions. Whether the Bund or the Länder ought to dominate the educational policy process is no longer the issue. The real question is to what degree politics seeks to or ought to take command in reforming institutions whose very raison d'âtre lies in the generation of scientific expertise and academic know-how, upon which a healthy national economy ultimately depends.
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