

Transformations of the Educating Leviathan: The Restructuring of German Higher Education in the Noughties

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Introduction

The German system of higher education has witnessed considerable change in the first decade of the 21st century. Enabled by the 1998 amendment of the German Framework Act for Higher Education (*Hochschulrahmengesetz*), higher education institutions have introduced Bachelor and Master degree programmes which are gradually – but not yet entirely – replacing the traditional academic programmes leading to the degrees *Diplom*, *Magister*, and *Staatsexamen* (state examinations in fields like medicine, teaching, or law). In the wake of the introduction of new curricular structures, accreditation agencies were founded for the purpose of ‘quality assurance’ of the new Bachelor and Master programmes. Moreover, after the abolition of the so-called ‘tuition-fee ban’ by the German Federal Constitutional Court in 2005, some German states introduced tuition fees at their public higher education institutions – which, after some time, were disestablished in some states. These are remarkable changes, given that Germany in the mid- and late 1990s was perceived by many observers from the inside and outside as a country of *Reformstau* (reform deadlock).¹ At that time, political scientists, economists, and other social scientists may have classified Germany as a rather unlikely case for the structural reforms of higher education that happened in the following years.

The purpose of this paper is to analyse the aforementioned major developments in German higher education from a political science perspective. From this perspective, it is important to point out that in all three cases of transformation sketched above ‘the state’ and the actors representing it played a crucial role. As we will see below, the introduction of Bachelor/Master programmes would not have been possible without the legal changes initiated by politicians at the federal level (*Bund*) and the federal state level (*Länder*). The same holds for the establishment of a system of accreditation agencies and the decision to (not) introduce tuition fees (or the decision to abolish such fees). However, the interesting question in each of

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¹ In 1997, “Reformstau” was selected as the “Word of the Year” by the Society for German Language (Gesellschaft für deutsche Sprache) which selects words and phrases denoting important topics of public debate in a year. The phrase “Ruck durch Deutschland”, which was used in a speech by the former German Federal President Roman Herzog to stress that Germany needs reforms, ranked second in 1997.

these cases is *why* the respective state actors decided to act in the way they did. If one takes into account that most of the German higher education institutions are public institutions (data on the public-private mix are presented below), the changes decided by one part of the 'educating state' (i.e. by politicians and their bureaucrats) may have an influence on higher education institutions (including administrators, professors, etc.) and their leeway to determine the design and quality (see the cases of Bachelor/Master and accreditation) as well as the price of their academic course programmes (tuition fees). And, finally, the 'educating state' may transform itself through political decisions; for example, the governmental initiative to create non-governmental accreditation agencies has changed the role of the state as a regulator of quality.

In what follows, like in Sørensen (2004), Leibfried and Zürn (2005), Castles (2007), and other recent political science studies, two central questions are addressed to the policy field under investigation: how and why has the 'educating state' in Germany changed in the 'Noughties'? While describing and explaining recent developments, the evaluation of these changes (Is the Bachelor/Master structure better than the status quo ante? Has the new accreditation system led to over-regulation? Are tuition fees socially unfair? etc.) is not the subject of this paper. Likewise, the article offers no normative recommendations in the sense of advising German policy makers.

Theoretical Framework and Outline

As an analytical framework guiding the search for potential factors explaining policy change, some 'usual suspects' used in research on public policy (e.g. Castles 1998; Zohlnhöfer 2009) are considered: namely, the interests and ideologies of domestic political decision makers (here: government politicians and public bureaucrats at the national and state level); individuals and interest groups in a society affected by and/or involved in political decisions (i.e. students and academic staff); the potential effect of socio-economic problem pressure (quality problems in higher education, public budget crises, etc.); and the potential influence of external factors (e.g. international agreements, guidelines by international organisations). In other words, the drivers and opponents of policy change may be located at the supranational or global (e.g. European Union), national (e.g. German federal government), and local level (e.g. administrators, professors and students in a university). Marginson and Rhoades (2002) have denoted such multi-level analysis of education policy as a "glo-na-cal" analysis.

The paper proceeds as follows. The next section examines what has happened on the 'supply-side' of the higher education 'marketplace' in terms of introducing new 'products': Why have governmental actors massively pushed the introduction of new academic course programmes (labelled Bachelor/Master) as eventual replacements for the old programmes (*Diplom*, *Magister*, *Staatsexamen*)? Following on from this, policy changes concerning the quality of 'products' traded in the German higher education sector will be examined: Why have governmental actors delegated the task of quality

assurance to private accreditation agencies? The next part of the paper investigates the remarkable changes regarding the 'pricing' of academic programmes: Why have governmental actors in some German states introduced tuition fees, while other state governments have abstained from this pricing policy? In each of the three case studies, the analysis is not only based on existing studies (using expert interviews and document analysis) from the large social science literature on reforms in German higher education, but also presents some new arguments and empirical material. The final section will draw conclusions from the findings.

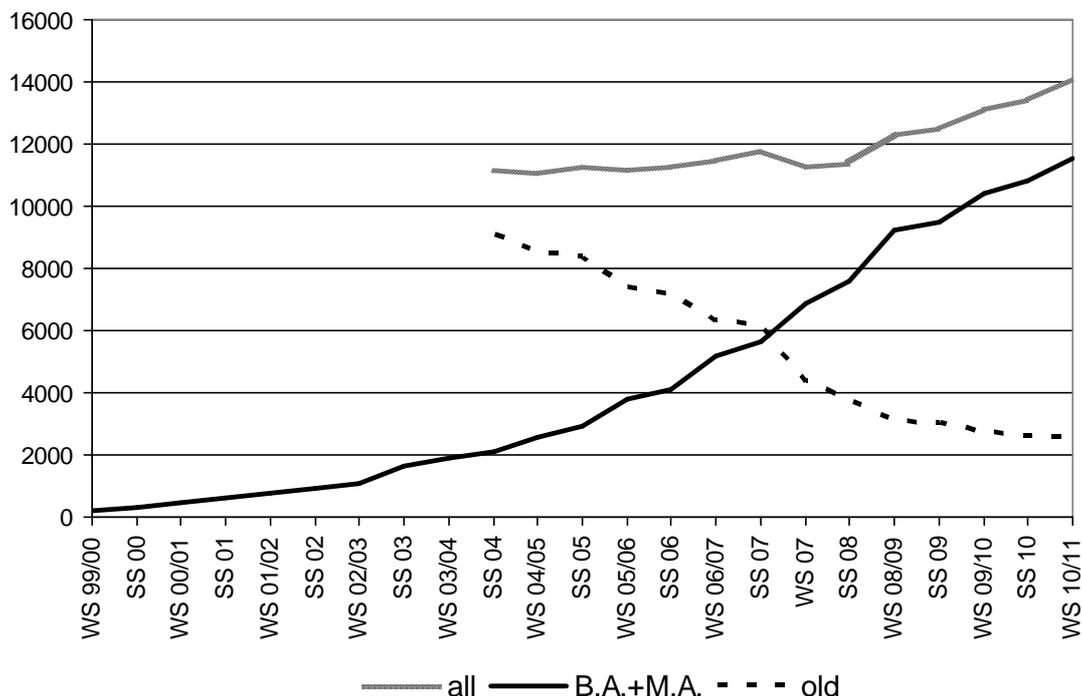
What connects the phenomena analysed is that they have considerably changed the conditions under which students as 'demanders' and higher education institutions as 'suppliers' of educational services meet in the higher education 'marketplace'. Such economic terminology is frequently used within public policy makers' reform rhetoric in Germany and beyond ("markets", "quality assurance", "competition", "innovation", etc.). Many observers discuss whether it is legitimate to conceptualise the relationships between students and academic programme providers as a market and whether such a market is 'good' or 'bad' for students, society, or whomever (for an overview, see Teixeira et al. 2004). While not digging deeper into this discussion, this paper sometimes employs economic terms like market, product, or price as mere descriptions of what one observes when looking at the real-world through an economic lens: public and private institutions offering (potential) students a certain amount of academic programmes of a certain quality and at a certain price (e.g. zero tuition).

It should also be noted at the outset that it is not intended, nor is it possible to analyse all reforms that have happened in the German system of higher education since the late 1990s in this paper. Apart from the transformations concerning the area of teaching (i.e. the design, quality assurance and pricing of academic programmes) focussed on in this article, some policy reforms took place that affected the conditions on the academic labour market in the Noughties. For example, the 2002 amendment of the German Framework Act for Higher Education introduced the so-called "junior professorship" as an alternative to the post-doctoral *Habilitation* thesis as the traditional pathway to become a tenured professor in Germany (see Welsh 2009, for a detailed analysis). Many publicly funded graduate schools (*Graduiertenkollegs*) have been founded as an alternative for doctoral students to the traditional way of writing a doctoral dissertation as a professor's assistant at his/her chair (Kehm 2007). The remuneration of professors has been reformed by introducing performance-related salary components (Kräkel 2006). Furthermore, some reforms have affected the administration of public higher education institutions. In some federal states, the management structures of universities were restructured according to mechanisms from the toolbox of New Public Management: boards of trustees (*Hochschulräte*) and full-time deans have been installed (Krücken et al. 2009); resource allocation has been based on performance-based budgeting and double-entry accounting (Orr et al. 2007). In the area of research, since 2005 there has been a publicly funded competition among universities for research grants called the "Excellence Initiative", launched jointly by the central government and the state governments (Kehm and Pasternack 2008).

Restructuring Programme Supply: Bachelors & Masters as New Products

The range of ‘products’ provided by German higher education institutions has undergone a fundamental change since the late 1990s. Since the 1998 amendment of the German Framework Act for Higher Education, higher education institutions have been allowed to introduce Bachelor and Masters degree programmes. Looking at the quantitative development, the introduction of the new programmes turned out to be a “success story” – as it was/is often called by German politicians (HRK 2008). In the winter term 2010/11, German higher education institutions offered 6,047 Bachelor and 5,502 Masters programmes. Measured against the total number of programmes provided on the German ‘marketplace’, the new Bachelor and Masters programmes accounted for 82 percent of total ‘supply’ (HRK 2010: 7–8). Also note that 77 percent of all first-year students starting in the winter term 2009/10 enrolled into a Bachelor or Masters programme, and 52.8 percent of all students in Germany at this time were enrolled in such programmes (HRK 2010: 21–22). So, it is safe to say that the new programmes have almost completely ‘crowded out’ the traditional course programmes.

Figure 1: The Number of Academic Programmes in Germany, 1999–2011



Notes: Own illustration based on data from HRK (2010: 7–8). Official pre-2004 figures for the ‘old’ programmes are not available. WS = winter term; SS = summer term.

This ‘crowding-out’ effect is illustrated by Figure 1, which displays the development of course programmes provided by German higher education institutions over time; that is, from winter term 1999/2000 to winter term 2010/11. While the supply of new Bachelor and Masters programmes has

been sharply and continuously increasing since their introduction in the late 1990s, the traditional, 'old' programmes show a dramatic decline. That the traditional programmes were gradually substituted by new ones is illustrated by the fact that the total supply of course programmes (old plus new ones) remained nearly constant until 2008; since then an increase can be observed.

It should also be noted that the largest part of the 'suppliers' in the German higher education marketplace are public institutions. According to the German Federal Statistical Office, in the winter term 2009/10 412 public and 139 private higher education institutions existed in Germany. The number of private institutions has rapidly increased in the last decade, from 80 (22.7% of all higher education institutions) in the winter term 2000/01 to 139 (33.7%) in the winter term 2009/10 (data provided by the German Federal Statistical Office). This development is mainly driven by the doubling of private universities of applied sciences (*Fachhochschulen*; from 50 to 99 institutions), while the number of private universities only slightly increased (from 11 to 19).² The rise of private providers may be explained, among other things, by a lower degree of governmental market-entry regulation and an increased demand by students for vocational degree programmes like those offered by private universities of applied sciences which advertise with excellent contacts to potential employers, the opportunity to study part-time, and so on (Stifterverband 2010b). Despite the increasing number of private institutions, however, the proportion of students enrolled in such institutions remains relatively low. In the winter term 2009/10, 4.5 percent of the about two million students in the German system of higher education were enrolled at private institutions, compared to 1.4 percent in the winter term 2000/01 (see Statistisches Bundesamt 2010).

Problem Pressure

Against this background, there arises the question of which factors can explain the introduction of new academic programmes that have gradually crowded-out the traditional programmes in German higher education since the late 1990s. In the vast social science literature dealing with this phenomenon, one important trigger of change is seen in the problem pressure that was exerted on and/or perceived by decision makers within the German system of higher education (Ostermann 2002; Enders 2002; Welsh 2004; Pritchard 2006; Welsh 2009). Pritchard (2006: 91) illustrates the problem-pressure explanation by referring to a document published by the German Federal Minister of Education in 1999: "A government document, 'Courage to Change', by Federal Minister Edelgard Bulmahn, admitted the undeniable signs of crisis: chronic underfunding, deteriorating conditions of study with excessively long completion periods and high dropout rates, inadequate investment in buildings and equipment, an insufficiently practical orientation in education, and a lack of attractiveness in the international arena." In another reconstruction of the reform discourse, Welsh (2004: 366) identifies similar problems perceived by policy makers, noting that "[t]oo many students drop

² The (small) number of church-based universities and colleges of arts has remained nearly constant (figures not reported here).

out without completing their studies: in 1999, 30 percent at universities and 22 percent at universities of applied sciences. A recent Science Council study examined 132 degree programmes; in 121, not even a third of the students graduated within the prescribed time period". Moreover she mentions "the relatively low number of students who enrol in the tertiary sector" as another important "indicator used to support the urgency for reform" (Welsh 2004: 366). Also note that many media reports and popular books with titles like "Trouble Spot University" (Wilhelmi 1993), "Rotten at the Core?" (Glötz 1996) or "Can the University be Saved?" (Daxner 1996) criticised various (perceived) 'deficits' in German higher education. And the term "Bildungsmisere" (education calamity) ranked third in the aforementioned contest "Word of the Year 1997". All this may have created a favourable climate for reforms.³

The introduction of Bachelor and Masters programmes can be interpreted as a policy response to the perceived crisis symptoms sketched above. The new curriculum structure differentiating between (i) an undergraduate or Bachelor level and (ii) a graduate or Masters level used, for example, in the USA and the UK, was intended to allow German graduates an earlier entry into the labour market. While the new Bachelor programmes permit market entry after six academic semesters (i.e. three years), the traditional German degree programmes *Diplom* and *Magister* required 8 to 10 semesters of study (four to five years) before a first vocational degree could be obtained. This was seen by many policy makers as a major reason why German graduates were relatively old compared to graduates in the USA, UK, and other countries. Some figures reported in Welsh (2004: 366) illustrate such policy makers' concerns: "In 1998, the average graduation age was 28 years, and the degree completion period averaged 6.7 years at universities and 5.3 at universities of applied sciences." Moreover, introducing Bachelor and Masters programmes was intended to increase the international mobility of domestic students and make the German system of higher education more attractive for students from abroad. So, one major policy objective of introducing new academic course programmes was to increase the 'international competitiveness' of the German system of higher education, especially with regard to the Anglo-American system (HRK 2008).⁴

Bologna Process as Soft Governance

In the large social science literature dealing with the introduction of the Bachelor/Masters structure in Germany, the 'Bologna Process', involving meetings of policy makers and experts at the supranational and national level is regarded as *the* major driver of change.⁵ Germany was one of the 29

³ See Ostermann (2002), for a more detailed reconstruction of this crisis debate.

⁴ For more details on this "Standort Deutschland" argument, see Göztepe-Çelebi et al. (2002: 12), Welsh (2004: 362–365), Pritchard (2006: 93–94), Krücken (2007: 196, 200), and Niemann (2010: 87).

⁵ See, among many others, Göztepe-Çelebi et al. (2002: 16), Enders (2002), Toens (2009), and Niemann (2010). The latter argues that "[n]early all German reforms in higher education [since the late 1990s] can be directly or indirectly explained in terms of the influence of the Bologna Process and the EU" (Niemann 2010: 95).

countries which signed the “The Bologna Declaration: Joint Declaration of the European Ministers of Education” on 19 June 1999. More precisely, the declaration was signed by representatives of the then 15 member states of the European Union and 14 Central and Eastern European states. For Germany, a representative of the Federal Ministry of Education and the education minister of the state Schleswig-Holstein (representing the 16 German state governments) signed the declaration. The signatory countries agreed to reform their national higher education systems in a way that, eventually and similarly to the “Single European Market”, would create a “European Area of Higher Education” by 2010 (“within the first decade of the third millennium”, as the Declaration says). The harmonisation of curriculum structures towards a European-wide two-tier Bachelor-Masters structure (“adoption of a system essentially based on two main cycles, undergraduate and graduate”) was seen as a major element towards the creation of such a common higher education ‘market’. It should be mentioned that the “Sorbonne Joint Declaration: Joint Declaration on Harmonisation of the Architecture of the European Higher Education System” signed in Paris on 25 May 1998, by the education ministers of France, Germany, Italy and the UK, already included the policy objective of creating a “European Area of Higher Education” with, among other things, a “system ... with two main cycles, undergraduate and graduate”. Welsh (2004: 362), in this context, notes that “European initiatives ... have accelerated ideas and programmes that have been present for some time”.

What is interesting is that the Bologna Declaration was not a legally binding contract amongst the states who signed it. There also existed no sanctions for the non-implementation of the Bologna objectives. The same holds for the subsequent declarations published within the ongoing Bologna Process. According to the European Commission (2009: 3), this process, “steered by European Ministers of Education, is a collective effort of public authorities, universities, teachers and students, together with stakeholder associations, employers, quality assurance agencies, international organisations and institutions”. Given the non-binding nature of the commitments made at the European level, many observers classify the Bologna Process as a ‘soft’ policy instrument (see e.g. Göztepe-Çelebi et al. 2002: 16; Toens 2009; Niemann 2010). For instance, Niemann (2010) interprets the Bologna Declaration and the following Bologna Process as a mechanism of “soft governance” including governance instruments like “opinion formation”, “coordinative activities”, “(nonbinding) norm setting”, and “consulting services”. This implies, however, that apart from the external (more precisely, intergovernmental) impetus of the 1999 Bologna Declaration and the following Bologna Process (being a soft governance mechanism), there must be domestic actors willing to implement the objectives and policies included in the Bologna agenda.

Governance by Coercion

What is overlooked by the social science explanations for the Bachelor/Masters phenomenon presented above – problem pressure and Bologna process – is that, finally, strong governmental pressure (i.e.

governance by coercion) has made the introduction of new course programmes into the “success story” reported in policy makers’ reports (e.g. HRK 2008) and displayed in Figure 1.⁶ More specifically, the national government in power from 1998 to 2005 (a coalition between the social-democratic SPD and the Green Party), despite resistance from some actors mentioned below, kept this product innovation on the policy agenda – always declaring that the year 2010 mentioned in the 1999 Bologna Declaration is the deadline at which the transformation from the old to the new curriculum structure should be completed. This ‘stubbornness’ is not surprising because since the late 1960s one major aim of each national government (whether left or right) has been to increase the number of citizens holding a degree from a higher education institution.⁷ Consequently, the introduction of a three-year Bachelor degree was evaluated by the SPD-Green national government as an ideal instrument to reach this policy goal. It should also be noted that one year before the 1999 Bologna Declaration, the 1998 amendment of the German Framework Act for Higher Education, passed under a CDU/CSU and FDP coalition government, had already allowed the states to introduce Bachelor/Masters programmes.

The state governments also pursued the 2010 target. They prohibited higher education institutions within their borders from introducing *new* Diplom and Magister programmes. Some states even enacted laws and regulations including a certain date before 2010 after which the enrolment of first-year students into the old Diplom and Magister programmes was prohibited.⁸ In the winter term 2010/11, 640 Diplom and Magister programmes were offered in Germany, accounting for 4.5 percent of total programme supply (HRK 2010: 12). To illustrate the role of “coercive pressure”, Krücken (2007: 192–193) reports the example of the state of North Rhine-Westphalia: “According to our interview partners ‘the pressure came from the political side’ and ‘the whole process was really a top down process’. Or, to put it differently: ‘The impulse comes from the Ministry’.” Taking into account this ‘governance by coercion’ it is not surprising that the old programmes became (almost) extinct.

The Bachelor/Masters Reform: Concurrence of Many Cooks

In sum, perceived problem pressure and the Bologna Process without doubt were important triggers of reform which contributed to bringing and

⁶ See also Krücken (2007) who uses the concept of “coercive pressure” by DiMaggio and Powell (1983) to conceptualise the Bachelor/Masters reform phenomenon and, based on expert interviews and document analyses, “focus[es] on the role of what university actors perceive as coercive pressures being exercised by the state” (Krücken 2007: 191).

⁷ Schmidt (2010a: 95; my translation) notes: “To the projects of education policy which were to a large extent jointly supported by the major parties of the Federal Republic, but were carried out with varying intensity and different effects from federal state to federal state, belongs the expansion of the education system which was mainly initiated in the 1960s.”

⁸ As analysed in detail in Welsh (2004: 367–369) and Toens (2009), the ministries of education at the state level, regularly meeting within the Standing Conference of State Ministers of Education and Cultural Affairs (Kultusministerkonferenz), were part of a strong “advocacy coalition” of different actors (HRK/German Rectors’ Conference, German Science Council, the think tank Centrum für Hochschulentwicklung, and others), who had a strong interest in making the introduction of the Bachelor/Masters structure a policy success.

maintaining the topic of curricular reform on the political agenda. Or, as Niemann (2010: 99) put it: “Bologna operated as a catalyst for developments in the German higher education system. Although the concept of introducing consecutive study programs already existed, its implementation in the late 1990s was slow and rather tentative. The European initiatives boosted the development significantly.” According to Enders (2002: 22), “the international argument and the widespread fear of being left behind in the international competition in higher education have an important icebreaker function for reform initiatives”. In the end, however, the domestic policy makers and their “power” (in the Weberian sense; see below) made the introduction of Bachelor and Masters degrees into the quantitative success story displayed in Figure 1. Krücken (2007: 199) even argues that “the state as coercive actor seems to be the single most important factor”. Yet, it is clear that the ‘technical’ implementation process at the state and university level was accompanied by the Bologna Process (meetings, reports, etc.).

While Figure 1 demonstrates that the advocates of the new Bachelor and Masters curriculum structure were obviously successful, looking back on the process that led to this ‘market outcome’, it must be mentioned that there were opponents of this ‘product innovation’ – like in many situations where economic innovations appear. At the university level, many professors, teaching assistants and – last but not least – students were initially against the introduction of the new degree programmes.⁹ Among other things, they expected that the reform would lead to an increase in their individual workload since the new curriculum structure requires a number of examinations *during* the course of studies, and not one (large) examination after it like in the traditional *Diplom* and *Magister* programmes. Moreover there was uncertainty regarding the labour-market acceptance of the new Bachelor degrees. Yet, with politicians and bureaucrats demonstrating their power to be “in a position to carry out [their] will despite resistance” (Weber 1925/1978: 53; see above) and increasing numbers of new programmes (see Figure 1), the opponents gradually took the curriculum reform for granted and tried to come to terms with the new regime.¹⁰ Today, there is still a heated debate at the university level about the ‘right’ design of Bachelor and Masters programmes. There are only some disciplines which still prefer (or are allowed) to offer their traditional degree programmes; for example, the engineering sciences which want to maintain the degree *Diplom-Ingenieur* which is seen as a quality label for graduate engineers ‘Made in Germany’ (Schmoll and Kaube 2011).

A similar process of ‘adaptation’ can be observed on the side of the employers on the German labour market: they gradually accepted this new type of (younger) graduate, and adapted their job profiles to the new Bachelor and Masters programmes. In retrospect, the initial scepticism towards and rejection of the new academic programmes by many ‘market participants’ (i.e.

⁹ Krücken (2007: 190) notes: “Only a few years ago, universities, professors and their associations were mostly openly critical of the Bachelor and Master scheme.”

¹⁰ An expert interviewed by a research team around Krücken (2007: 192) said: “We first hesitated, but at a certain point – around late 2003 – we recognized that we needed to actively get involved.” Another explanation for the decreasing resistance could be that university departments and professors, as some critics note, simply have “re-labelled” their existing curriculum (Welsh 2004: 365).

many students and professors), can be interpreted as a natural response to an innovation. Following the well-known proverb “You can’t change the habits of a lifetime” (or, in German: “*Was der Bauer nicht kennt, das frisst er nicht*”), even the railway, the computer, and other innovations that are taken for granted today, initially had to fight against great odds. Observers from the USA and UK who for decades have successfully employed the division between undergraduate and graduate degrees, might have shaken their heads in view of the struggle for and against the introduction of this two-tier structure in Germany.

Restructuring Product-Quality Control: The Rise of Accreditation Agencies

In a seminal book, Clark (1983: chap. 5) distinguishes between three basic modes of governance in higher education systems: governance by “state authority”, by the “market”, and by the “academic oligarchy” (Clark’s term for academic self-regulation by professors). Using Clark’s “Triangle of Coordination” to characterise the German system of quality assurance, it is safe to say that until the late 1990s governmental regulation (governance by “state authority”) and professional self-regulation (*akademische Selbstverwaltung* by the “academic oligarchy”) were the dominant governance modes. Recently, however, a third player – accreditation agencies – appeared on the scene. In the wake of the introduction of Bachelor and Masters degree programmes in Germany in the late 1990s, there was a fundamental change in the practice of controlling the quality of academic programmes provided by higher education institutions, namely the delegation of quality assurance competencies from ministerial bodies at the state level to accreditation agencies. Since these agencies are private, non-governmental organisations (non-profit associations or foundations) operating on an accreditation ‘market’, they can be considered as governance by the “market” which constitutes the third element of Clark’s “triangle”.

Currently, there exist eight accrediting agencies (September 2011). Without going into the details of their respective accreditation procedures (see Kehm 2010), these accreditors fulfil the task of checking whether a new Bachelor or Masters programme meets certain predefined minimum quality standards with regard to curriculum design, qualification of faculty, admission policies, facilities, student support services and other quality characteristics. The successfully accredited programme receives a seal of approval – and from time to time has to undergo a re-accreditation process. The depicted procedure of quality control by an independent authority resembles similar procedures in the area of food control or vehicle inspection and is usually denoted as “third-party certification” in the economics literature (Dranove and Jin 2010).

However, in the case of the traditional *Diplom*, *Magister*, and *Staatsexamen* degrees which since 1998 are in decline due to the introduction of the new Bachelor and Masters programmes, the task of quality assurance was and is

done 'in-house'; that is, by public officials inside the government.¹¹ State government officials, amongst other things, check whether a *Diplom* or *Magister* programme is in line with the so-called "framework examination regulations" (*Rahmenprüfungsordnungen*). The latter are set by the *Kultusministerkonferenz* (KMK; association of state education ministers for the purpose of coordinating state policies) and the *Hochschulrektorenkonferenz* (HRK; association of German university administrators for the purpose of coordinating university policies), defining for each single programme in the various scientific disciplines a set of minimum requirements an academic programme in the respective discipline has to meet. The quality control for state examination programmes is also carried out by public officials at the state or central government level (depending on the discipline).

The depicted shift from the practice of in-house control towards delegated control marks a significant change in the way in which the issue of quality assurance is managed in the German system of higher education. Though an interesting development in itself, however, from a political science perspective the question arises as to which factors can explain the delegation of quality-assurance competencies to non-governmental accreditation agencies observable since the late 1990s. Many authors identify the 1999 Bologna Declaration and the subsequent Bologna Process as the major impetus for restructuring the system of quality assurance in German higher education (see, among many others, Krücken 2007: 193–195; Niemann 2010: 95; Kehm 2010). The topic of quality assurance – but not accreditation – was briefly mentioned in the 1999 Bologna Declaration as a policy objective: "Promotion of European co-operation in quality assurance with a view to developing comparable criteria and methodologies." It should be noted, however, that German state education ministers within their Standing Council (KMK) had already agreed in 1998 to introduce an accreditation system. Moreover, like in the case of the Bachelor/Master reform, perceived problem pressure may have driven governmental actors to reform quality assurance by means of creating accreditation agencies.¹²

The increasing application of business management concepts to higher education institutions under the label "New Public Management" (Braun 1999; Schimank and Lange 2009) could be a further explanation for the rather unexpected delegation of quality assurance tasks. More specifically, since the 1990s in the postal, railway and other economic sectors, the issues of price, cost, quality, etc. regulation have been delegated to independent regulatory agencies (IRAs) in many Western European countries (see e.g. Gilardi 2005). The aforementioned accreditation agencies can be interpreted as such an IRA which is responsible for quality assurance in the higher education sector. Like in economic sectors, the former process of ministerial quality regulation by public officials has been frequently criticised for being rather slow and

¹¹ According to the Accreditation Council's "Database of Accredited Study Programmes" (www.akkreditierungsrat.de; accessed 21 September 2011), only 2 Diplom, 21 Magister, and 2 Staatsexamen programmes were accredited by one of the accreditation agencies.

¹² See e.g. Serrano-Velarde and Stensaker (2010: 220): "Since the end of the 1980s, there has been a growing debate on the quality of Germany's higher education. [...] Crowded classrooms, insufficient infrastructure, apathetic professors and high drop-out rates were the basis on which the reconfiguration of study structures was discussed."

inefficient. For example, the German Monopolies Commission, who is known for usually taking a critical look at economic sectors, in their 2000 special report criticised the former practice of regulating academic programmes via Germany-wide “framework examination regulations” because it restricted universities’ autonomy in designing programmes according to the standards professors, university administrators and students regard as important for a ‘high-quality’ programme (Monopolkommission 2000: 53–58). Instead of ‘homogenising’ the supply of course programmes throughout Germany via governmental framework rules, the Monopolies Commission pleaded for a bottom-up approach that was expected to allow innovative ideas and a variety of different curricula to flourish.

Another factor, mentioned by Pritchard (2006: 103–104), is the global quality-assurance movement which gained momentum in the 1990s (Schwarz and Westerheijden 2004; Westerheijden et al. 2007). In the international discourse among higher education experts, countries with existing accreditation systems (most notably the USA) were proposed as role models or best practices for other countries. Though difficult to measure their exact influence, both the New Public Management movement (i.e. ‘agencification’) and the policy learning/transfer from countries with existing non-governmental accreditation systems contribute to explaining why the ‘wind of change’ has blown into the system of quality assurance in German higher education.

The State as the Ultimate Quality Controller

Finally, a simple but plausible additional explanation of policy change should be mentioned: a considerable degree of governmental control/oversight remains despite delegation. At first glance, it is very surprising that ‘the state’ (i.e. government politicians and their public bureaucrats) should voluntarily withdraw/delegate competencies. And from the viewpoint of economic theories of politics and bureaucracy hardly the opposite – i.e. a further extension of competencies – is to be expected (see e.g. Niskanen 2001). On closer inspection, however, it becomes clear why ‘the state’ had nothing against the emergence of new regulatory actors: the delegation of some quality-regulation competencies to private accreditation agencies by no means implied an entire retreat of the state in the area of quality assurance – but, as demonstrated below, the state remained on the scene as the ultimate quality controller.¹³

For example, in eight of the 16 states there still is a governmental ‘market-entry control’ styled so that a course programme at a *public* higher education institution needs a license to operate granted by the responsible state

¹³ See also Krücken (2007: 200) who makes a similar point: “The advent of accreditation agencies [...] hardly reduce the power of the state and the professorate.” Though many professors lament(ed) on the time-consuming nature of the accreditation process (this time is no longer available for research, teaching, hobbies, etc.), “the professorate as a whole remains a central player in the process, as accreditation agencies base their decisions heavily on the judgment of the academic community” (Krücken 2007: 199). Professors make the peer-review (evaluating the quality of a course programme on the basis of site-visits, program providers’ reports, etc.) on which the accreditation agencies base their final decision to (not) grant a seal of approval.

ministry. In these states only those course programmes at public institutions that have been certified by an accreditation agency are given an operating license (Akkreditierungsrat 2011). In six states, there is no ministerial licensing but a programme accreditation is necessary for market entry; and the state government is involved in the decision to introduce/abolish course programmes via its competencies in the area of educational planning. In North Rhine-Westphalia, programme accreditation is legally prescribed but public institutions are free to introduce/abolish course programmes. And in Saxony, programme accreditation is not required and public institutions are free to introduce/abolish. Furthermore, it has to be mentioned that the accrediting agencies themselves must be certified by the German Accreditation Council (*Akkreditierungsrat*) which was founded in 1999 by the state governments (KMK) and higher education institutions (HRK) in order to accredit the accreditors. This additional body of quality assurance in higher education is a quasi-governmental meta-institution. Six of the 20 Council members are public officials sent by state governments. It is organised as a publicly funded foundation under public law. The Council supervises the activities of the accreditation agencies, and the latter must provide an annual activity report to the Council.

Furthermore, it must be noted that 'the state' has an influence on the accreditation system in the sense that it defines the rules under which the accreditation agencies operate: The education ministers of the 16 federal states at their KMK meetings have passed "structural guidelines" for the accreditation system from the outset, including more or less detailed guidelines regarding programme duration, admission criteria, degrees, etc. These guidelines, together with some rules enacted by the Accreditation Council, are binding for the accreditation agencies. And the Accreditation Council supervises whether the accreditation agencies comply with these rules.¹⁴ As in the case of IRAs in economic sectors, there is an ongoing discussion in Germany about (i) how intrusive the 'structural' rules are for the accreditation agencies and (ii) how politically independent the *de jure* non-governmental accreditation agencies really are.¹⁵

Besides the market entry control for public course programmes via programme accreditation, there is a governmental market entry control for *private* providers of higher educational services. In the case of private higher education institutions, there is an ex ante quality control in the form that a private institution only gets a governmental license to operate when the respective private institution (as a whole) has been accredited by the German Science Council (*Wissenschaftsrat*). This organisation, which among other things conducts the just mentioned institutional accreditation processes, is a quasi-governmental organisation founded in 1957 and funded by the central government and the German states. The Council's decision-making bodies

¹⁴ For more details, see Serrano-Velarde (2008) and the regulations published on the Accreditation Council's website (www.akkreditierungsrat.de).

¹⁵ A staff member of an accreditation agency, interviewed by Serrano-Velarde (2008: 18) said: "Whenever the ministers meet in Bonn, we watch out for changes on the accreditation agenda. [...] Tomorrow they meet in order to discuss the orthography reform. Well, you never know if they might not seize the opportunity and discuss accreditation related issues, thus generating another policy-paper demanding implementation."

mainly consist of professors from public universities and research institutions as well as representatives sent by the central government and the state governments.

It should have become clear that the delegation of some quality-regulation functions to accreditation agencies has not changed the function of the state as the ultimate quality controller in German higher education: (quasi-)governmental actors are the gatekeepers deciding whether or not an academic programme or a higher education institution as a whole is permitted to enter the market. In this context, Krücken (2007: 199) notes that the “agencies are rather to be seen as an additional regulatory layer, not a substitute for state control in an ever more complex and multilayered regulatory structure”.

One justification for the fact that the issue of quality assurance is not entirely left in the hands of non-governmental accreditation agencies is that most higher education institutions in Germany are state institutions which are publicly operated and publicly financed. Therefore, governmental authorities have an obligation to public accountability. In turn, for higher education institutions this means that they are required to be accountable to their main financiers, namely, the German taxpayers. In the interest of the citizen-taxpayers, different (quasi-)governmental actors using different instruments (i.e. market entry control, oversight of private accreditation system) intended to safeguard that the higher education institutions receiving public money exhibit a certain minimum quality level in the areas of teaching and research. This briefly outlined public accountability argument “...gets back to the old proposition that whoever pays the piper calls the tune” (McPherson et al. 1993: 4). Although economists may raise the fundamental question whether and to what extent governmental participation in the funding of students and higher education institutions is necessary, it has to be conceded that the public accountability argument remains valid so long as a system of governmental funding of students and higher education institutions exists.

Transformations of Pricing Policies: In & Out of Tuition Fees

Another important development in German higher education policy in the Noughties concerns the introduction of tuition fees in public universities in some of the German states. On 26 January 2005, the Federal Constitutional Court declared the Germany-wide prohibition of tuition fees at public universities as unconstitutional. Since then, the decision to introduce tuition fees was left to each German state. In the aftermath of this constitutional change, some German state governments took the opportunity to introduce tuition fees at ‘their’ public universities (see Table 1). The level of tuition fees was capped by these states to a maximum amount of €500 per student and per semester. In other words, the leeway for ‘price competition’ among public universities was restricted and far away from the degree of price competition in, for instance, the US system of higher education (see e.g. Archibald and Feldman 2010).

Table 1 shows that the 16 German states can be clustered into three groups with respect to the pricing policy conducted after the 2005 decision of the Federal Constitutional Court. First of all, there is a cluster of nine states whose state governments abstained from using the possibility of introducing tuition fees at public higher education institutions (denoted as “no-fee states”). The remaining seven states can be subdivided into states that introduced tuition fees after the 2005 constitutional change (Bavaria: summer term 2007; Lower Saxony: winter term 2006/07), and a cluster of states that introduced fees but abolished them again after some time (denoted as “in-&-out-fee states”).

Table 1: Tuition Fees in German States after 2005

NO-FEE STATES	Partisan Composition of State Government	Public Debt 2010 (€ per capita)
Berlin	SPD/Left	17536
Brandenburg*	SPD/CDU (since 11/2009 SPD/Left)	7218
Bremen	SPD/CDU (since 06/2007 SPD/Green)	26987
Mecklenburg-West. Pomerania*	SPD/Left (since 07/2006 SPD/CDU)	5952
Rhineland-Palatinate	SPD/FDP (since 05/2006 SPD , since 05/2011 SPD/Green)	7637
Saxony*	CDU/SPD (since 10/2009 CDU/FDP)	1565
Saxony-Anhalt*	CDU/FDP (since 04/2006 CDU/SPD)	8743
Schleswig-Holstein	CDU/SPD (since 10/2009 CDU/FDP)	9536
Thuringia*	CDU (since 10/2009 CDU/SPD)	7273
IN-&-OUT-FEE STATES		
Baden-Württemberg	Pay since SS 2007 (CDU/FDP) Free since SS 2012 (announced by Green/SPD , in office since 05/2011)	5415
Hamburg	Pay since SS 2007 (CDU) Free since WS 2012/13 (announced by SPD , in office since 03/2011)	13995
Hesse	Pay since WS 2007/08 (CDU , since 02/2009 CDU/FDP) Free since WS 2008/09 (disestablished by majority decision of SPD/Green/Left)	6118
North Rhine- Westphalia	Pay since WS 2006/07 by freshmen, since SS 2007 by all students (CDU/FDP) Free since WS 2011/12 (announced by SPD/Green , in office since 07/2010)	9691
Saarland	Pay since WS 2007/08 (CDU) Free since SS 2010 (disestablished by CDU/FDP/Green , in office since 10/2009; Green education minister)	11374
FEE STATES		
Bavaria	Pay since SS 2007 (CSU , since 10/2008 CSU/FDP)	2340
Lower Saxony	Pay since WS 2006/07 by freshmen, since SS 2007 by all students (CDU/FDP)	6807

Notes: Own illustration based on the information in Stifterverband (2010a) and Studentenwerk (2011a). WS = winter term; SS = summer term. Government partisanship labels are explained in the text. Public debt data provided by German Federal Ministry of Finance. * = East German state.

Against this background, how can the considerable differences across German states regarding their ‘pricing’ of academic programmes be explained? Or, put differently: Why have some state governments introduced tuition fees while others have abstained from this pricing policy? And why did some states introduce fees but abolish them again after some time? Tracing the political and public debate after the Constitutional Court’s 2005 decision, the major determinant of states’ tuition-fee policies seems to be the ideological priorities of the political parties in power.¹⁶ The Social Democratic Party (SPD), the Green Party (*Bündnis 90/Die Grünen*), and the Left Party (*Die Linke*) made it clear that they are against the introduction of tuition fees; in their view, (i) ‘free education’ is a core principle to maintain social justice and (ii) tuition fees are a barrier to entry for children from low-income families. Also note that the SPD-Green government majority in the national parliament passed the 2002 amendment of the Framework Act for Higher Education, according to which an undergraduate degree at a public higher education institution had to be without tuition fees (cf. *Stifterverband 2010a: 18*). Six states governed by the CDU, CSU or a CDU/FDP coalition government argued against this amendment before the German Federal Constitutional Court – as they interpreted the prohibition of tuition fees by national law as an intrusion into their state-level legislative competencies – and were successful in January 2005.

From there, it is not surprising to see in the middle column of Table 1 that almost all “no-fee states” were either led by SPD-governments (i.e. the Social Democrats provide the prime minister; indicated by mentioning SPD first) or by governments that include left-wing parties (i.e. SPD, Greens, Left) as coalition partners. In other words, no SPD-led state government has introduced tuition fees. On the other hand, the “fee states” Bavaria and Lower Saxony were governed by rightist governments in the period under investigation: Bavaria by the Christian Social Union (CSU) and later by a coalition of CSU and the Free Democratic Party (FDP; the Liberals in the economic sense); Lower Saxony by a coalition government of Christian Democratic Union (CDU) and FDP. These parties along with other advocates of tuition fees perceive this kind of ‘price steering’, among other things, as an important instrument to create “incentives for more effective and efficient teaching and learning” (*Schmidt 2010b: 793*; my translation). An interesting observation is that no government of an East German state (marked by an *), whatever political party was in power, has introduced tuition fees. This presumably is motivated by the intention not to further decrease the already low attractiveness of higher education institutions in East Germany for students (*Welsh 2009: 14*).

That government partisanship is the main driver behind the development of tuition-fee policies at the state level in Germany can be particularly illustrated by an analysis of the “in-&-out-fee states”. While rightist governments in these five states were in favour of tuition fees and introduced them, leftist governments (being against this policy) abolished them again (or announced the abolition) once they got into office. Hesse is a special case. A coalition of the SPD, Greens, and the Left formed a majority in the state parliament to

¹⁶ See also *Welsh (2009)*, *Schmidt (2010b)*, and *Hägele (2011)*.

abolish tuition fees and overrule the rightist minority government that had existed in Hesse for some time. And although Hesse has been governed by a CDU-FDP majority government since February 2009, these parties abstained from re-introducing the unpopular (see below) instrument of tuition fees. Another 'outlier' is the Saarland where a CDU-led coalition government (CDU, FDP, Greens) disestablished tuition fees in 2010; however, this happened under an education minister from the Green Party.

One may wonder how the lack of or reversal of tuition fees is sustained or sustainable in the current economic climate. As the right column in Table 1 shows, all states are more or less heavily indebted and, from the viewpoint of a fiscal conservative, should welcome each additional Euro of tuition-fee revenue for universities in order to be able to reduce state funding of public institutions. On the one hand, one may argue that the tuition levels in Germany were/are very low by Anglo-American standards so that in-or-out of tuition fees might not be a matter of worry for a state finance minister. Moreover, it is well known that German fiscal federalism with its "fiscal equalisation scheme" creates 'perverse' incentive effects in the sense that states with a bad fiscal performance have no incentive to maintain fiscal discipline – they get transfer payments from the richer states and the central government. Since this transfer scheme lowers fiscal stress on debt-ridden states like, for example, Berlin and Bremen, this might explain why the SPD-led governments of these states had/have no incentive to introduce tuition fees and can afford to follow their ideological priorities.

Resistance Against Pricing

Finally, it should be mentioned that the issue of tuition fees was an important topic within the election campaigns of leftist parties at the state level. Though difficult to quantify, it is safe to say that left-wing parties' campaign pledge to abolish (or not to introduce) tuition fees once in office has to some degree contributed to their electoral success.¹⁷ The rightist governments found that – unsurprisingly – students, special interest groups like the trade union "Gewerkschaft Erziehung und Wissenschaft" (GEW; representing the interests of employees in schools, universities, day-care centres, and other educational organisations), and left-wing opposition parties were against tuition fees with slogans like "Against campus tolls!", "Education is not for sale!", or "Rich parents for everyone!". Hence, from the start, the rightist governments introducing tuition fees were under heavy political pressure to abolish them again.¹⁸ Currently, only two of the 16 German state governments (Bavaria, Lower Saxony) are willing to maintain the path of letting students pay tuition fees (Studentenwerk 2011a; The Economist 2011). Yet, it should be mentioned that in nine states (among them also 'left-wing' states) students at public universities each semester have to pay an "administration fee" (around

¹⁷ Hägele (2011: 46; my translation) notes: "With tuition fees elections can be won – and lost. Compared to any other education issue, there were not as many protests. No other reform brought so much visible discontent on to the street. That was recognized by the SPD. And used."

¹⁸ See Welsh (2009: 10–15) for a more detailed reconstruction of the public debate accompanying the introduction and abolishment of tuition fees.

€40–€75; for details, see Studentenwerk 2011b). Moreover in six states (among them also ‘left-wing’ states) public universities demand “long-term student fees” (around €500) from students who have exceeded a certain amount of semesters (e.g. after 14 semesters in Bremen). And students at private universities usually have to pay tuition fees, regardless of whether the private institution is located in a ‘left-wing’ or ‘right-wing’ state.

Conclusion and Outlook: “After the Reform is Before the Reform”

In the first decade of the new millennium, the German system of higher education changed remarkably. This paper has analysed three major policy reforms from a political science perspective: (1) Starting with a legal change in 1998 initiated by the federal government, Bachelor and Masters programmes were introduced which gradually but not yet completely substituted the traditional degrees *Diplom*, *Magister*, and *Staatsexamen*. (2) The task of certifying the quality of the new course programmes was delegated to private accreditation agencies. (3) After the Federal Constitutional Court’s judgment in 2005, some German states have introduced tuition fees, while other state governments abstained from such a pricing policy. What these policy reforms have in common is that the Bachelor/Master structure, accreditation agencies, and the introduction/abolition of tuition fees would not have been possible without political decisions made by actors representing the ‘educating state’. However, as shown above, in each case a number of other forces were at work (Bologna Process, problem pressure, New Public Management ideas, etc.) which have likely influenced domestic policy makers’ decisions.

Clearly, it is always difficult to disentangle exactly to what extent political decisions made (i) reflect the active will of the state to transform itself (the state as a driver of change) and/or (ii) are driven by other forces (the driven state). Many social scientists (based on expert interviews and document analyses) and other observers came to the conclusion that the reforms ‘Bachelor/Masters’ and ‘accreditation’ were mainly driven by the ‘soft’ external pressure exerted by the Bologna Process at the European level. Moreover, there was a cross-party consensus that these structural reforms were necessary: both the conservative-liberal CDU/CSU and FDP federal government (in 1998) as well as its SPD/Green successors (from 1998–2005) were in favour of these structural changes in their decisive start-up phase. By contrast, the transformations of pricing policies (i.e. the remarkable in-and-out of tuition fees) were mainly driven by the ideological differences of the respective parties in power at the state level.

Current observers of the German higher education system may take the current shape of the ‘educating Leviathan’ for granted – for them the results of the reform processes traced in this article may be self-evident. Note, for example, that the current freshmen students were around five years old when the first major reform steps were made. For them, speaking about the ‘good’ (or ‘bad’) old times with *Diplom* and *Magister* degrees, with politicians like Dorothee Wilms, Jürgen W. Möllemann, Rainer Ortleb, Karl-Hans Laermann,

and Jürgen Rüttgers (i.e. the education ministers in the 16-year chancellorship of Helmut Kohl, 1982–1998), and *without* accreditation agencies, tuition fees, credit points, etc., may sound like a fairy tale (“Once upon a time, ...”). In retrospect, however, the remarkable changes examined above were by no means self-evident. It is astonishing that in a country which – after 16 years of the conservative Kohl administration – was classified by many observers as a country of reform gridlock in the mid- and late 1990s, such fundamental reforms which significantly changed the shape of the ‘educating Leviathan’ and the system of higher education were possible at all. Ironically, the 1998 amendment of the German Framework Act for Higher Education, which made the introduction of the Bachelor/Masters structure and the creation of an accreditation system possible, was passed under the last Kohl government (a CDU/CSU and FDP coalition government with the CDU education minister Rüttgers) – one month before the election to the German national parliament in August 1998.

In a long-term perspective, however, change is nothing extraordinary in the German system of higher education. Since World War II, there were many more or less fundamental reforms in this system (for overviews, see Heidenheimer 1997; Turner 2001). For example, what is sometimes neglected today is that until the winter term 1970/71 students had to pay tuition fees (the so-called *Hörergelder*) of 120–150 Deutsche Mark (i.e. €60–€75) per semester (cf. Stifterverband 2010a: 18). In the wake of the 1968-and-beyond student protests, these tuition fees were abolished. In the late 1960s a new type of higher education institution, the *Fachhochschulen*, offering more job-oriented programmes than universities, was introduced. So, what seems to be sometimes neglected by scholars dealing with the ‘Bologna revolution’ is that the German system of higher education was and is always in transition – or, as an article by Müller-Böling (2006) is aptly titled: “After the Reform is Before the Reform”. For instance, since making the first great reform steps towards Bachelor/Masters and accreditation in the late 1990s, public policy makers in Germany are continuously presenting and implementing smaller reforms to correct previous reform steps – intended to improve the functioning of the two-cycle structure and the accreditation system.¹⁹ While such piecemeal engineering may be a matter of course after such great transformations, students and professors may sometimes have the impression of being ‘guinea pigs’ in a reform experiment. Though forecasting is always difficult and problematic, it is rather unlikely that the current status quo of this system will also be the status quo at the end of the second decade of this millennium. Given the current conditions in media societies (in Germany and beyond), education ministers and other political entrepreneurs in their “competitive struggle for the people’s vote” (Schumpeter 1942/1950: 269) and search for ‘policy successes’ have an incentive to present more or less innovative and far-reaching policy reforms that attract public attention.

¹⁹ See e.g. the resolutions, reports, and policy recommendations published on the websites of the Standing Conference of the States’ Education Ministers (www.kmk.org), the German Rectors’ Conference (www.hrk.de), the German Science Council (www.wissenschaftsrat.de), and the Accreditation Council (www.akkreditierungsrat.de).

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