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Reform in three Phases: Genesis of the West German Federal Framework Law for Higher Education-1976.

by

Joyce M. Mushaben

Die Staatsgewalt geht vom Volke aus.
Aber wo geht sie hin?

-- Bertold Brecht

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."[1] 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 the substance of higher education have become the domain of state legislatures, the federal bureaucracies and lately of the courts.

This work focuses on the manner in which German superior courts first sought to influence and ultimately came to dominate the university reform process during the period of 1965-1979. I argue that the judiciary has served as the primary vehicle for political conflict resolution (or avoidance); in so doing, the constitutional and administrative courts have become the single most important element in the university task environment with regard to the process of legislative reform. Rulings issued by the Federal Constitutional Court (Bundesverfassungsgericht) have tackled head on the most controversial issues facing German higher education, including questions of admissions criteria, the determination of classroom "capacities"

and acceptable teaching loads, restrictions on the participation of faculty, students and staff in decisions on teaching and research, and government supervision of personnel policy. These rulings by educational non-experts have been translated into legally codified guidelines for the Länder governments under the guise of the 1976 Federal Framework Law for Higher Education (Hochschulrahmengesetz = HRG).

The paper begins with a general history of the university reform process, arguing that changes within the German institutions of higher learning over the last ten years have, for the most part, been externally induced. It divides the reform process into three stages, "expansion," "standardization " and rationalization," and testifies to a number of major shifts in academic reform objectives accompanying each phase. I then examine the impact of three Federal Constitutional Court decisions on the reform measures undertaken by German parliamentarians. Finally, I conclude with a summary of reform accomplishments to date, along with a general assessment of the significance of judicial activism brought to bear on German higher educational politics.

A. 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."[2] The "educational catastrophy," first explored in depth by Georg Picht in 1964, was particularly visible at the tertiary level.[3] Academic institutions continued to be dominated by the kinds of hierarchial 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 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. Secondly, 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 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 had 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.[4] 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.[5] 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. In retrospect, it was the introduction of constitutional rights into the reform discussion at this early date that unleashed the Furies of "Politicization" and "Legalization" which have plagued reform efforts at the tertiary level for the last ten years, a development to which I shall return later on.

B. PIECEMEAL ENGINEERING: REFORM IN THREE STAGES

In principle, the Federal Republic's approach to higher educational reform bears a certain resemblance to what Cyert and March have labeled "problemistic search."[6] Accepting the judgment of the academic community that the system was "healthy at the core," university reformers limited themselves initially to making "marginal adjustments" on the alternatives already in use.[7] By simply broadening access to existing academic structures, they hoped to circumvent

the impending shortages prophesied by Picht.

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.[8]

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 (Mittelbau) 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.[9]

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 intraorganizational 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 state lines to less crowded universities.[10]

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.[11] 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. In 1969 the Länder were forced to accept a constitutional amendment (91b) that extended federal jurisdiction over the higher educational sector in exchange for one (91a) that promised significant federal assistance in the areas of agricultural, coastal and regional development.[12] 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.[13] 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 political atmosphere did not bode well for the higher edcational system. Two sets of concerns, restoring political order and the health of the economy, figured heavily in setting the legislative stage for the university reform bill. Even before the Federal Ministry had submitted its first official proposal in 1971, legislative debates over developments in the tertiary sector left members of parliament with "an after taste of something controversial, something problematic and of questionable value."[14] 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.

C. JUDICIAL STIMULUS, LEGISLATIVE RESPONSE: THE GENESIS OF THE HOCHSCHULRAHMENGESETZ (HRG)

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.

Forced to cede power after the 1969 elections, the Christian

Democratic Union took issue with the SPD's slate of social reforms in general and enlisted the aid of the courts early in 1973 to challenge the policies of Ostpolitik and, later, industrial co-determination, in particular. Lacking an effective parliamentary majority, one might dare to argue, the CDU/CSU came to view the judicial process as its own channel for "extraparliamentary opposition."[15] The utilization of the judicial forum to debate academic reform questions was therefore not unprecedented.

Since the early 1970's, judicial action in the Federal Republic has indeed had a significant effect on the governing structures and admissions policies of academic institutions. And there is evidence of a growing tendency in the direction of "juridicalization" or Verrechtlichung of questions raised in a variety of policy domains. Juridicalization is used here to encompass the combined effects of legal codification and courtroom interpretation of parliamentary statutes. Juridicalization, or what others have more broadly labeled "politicized legalism," is the process whereby "the constitution is repeatedly invoked and its principles elaborated and interpreted in exhaustive detail. Such legalism channels recurrent conflicts among political or ideological factions in many institutions."[16]

Historically, the German system of jurisprudence has been more concerned with interpreting and adhering to the letter of the law, than it has with expounding upon its spirit. The court's role has been an inherently conservative one (resting on Roman Law), that of testing current practices against the dictates of Basic Law provisions

and restrictions. In recent years, however, the courts have come to follow a course of greater social activism. Ironically enough, it is that other stronghold of conservatism, the CDU/CSU, which has compelled the judiciary to abandon its old strict-constructionist approach.

A number of statutes related to civil service requirements, federal budgetary procedures and, of course, university construction subsidies promulgated between 1969 and 1971 laid the foundation for a national Higher Education Act. The first legislative draft 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. In short, the Numerus clausus rested "on the border of constitutionality;" its application was permissible if and only if the educational facility in question could prove that its departmental

capacities were in fact completely exhausted, and until such time as the legislators succeeded in establishing specific, nondiscriminatory admissions criteria or, alternatively, introduced a "lottery" system.[17] 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, affirming 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. Not that there was a great deal of legal logic to the successes met by individual

claimants. At the Administrative Court in Berlin, for example, petitioners whose last names began with A through K were handed 48 rejections in the third chamber, at the same time those with the first initials L to Z came away with 57 acceptances from the fourteenth Chamber (out of 60 or so cases); meanwhile, the twelfth Chamber specialized in granting "temporary injunctions."[18]

The narrow interpretations of capacity ordinances imposed by the administrative judges in the interim not only gave rise to a whole new breed of lawyers specializing in Numerus clausus cases. They also noticeably and

> steadily increased the teaching load of each professor and teaching assistant. Moreover, by specifying which courses must be taught and which are more superfluous such interpretations have even, for the first time in the history of the German university, systematically and effectively subjected to external controls the content of courses /my emphasis/. 19

Once again the Administrative Court in Berlin provides a classic example. The judges declared in 1976 that instead of requiring medical students to attend a minimum of 32 class hours per semester (the norm set by the national Association of Medical Faculty for all West German institutions, not yet affirmed by the city-state's Education minister), the Free University was to reduce its requirement to 24 hours of instruction per semester.[20]

In the final analysis then, the judiciary played a direct and not inconsequential role in the process of rationalization for higher education, involving itself in the determination of what are more or less cost-effective courses of instruction.

Unable to implement directly their own strategy for higher educational reform, conservative elements joined forces to block the "democraticization" 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" (Vorschaltsgesetz) 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, cited infra. 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 (even though tenured full professors in most institutions were outnumbered at least two or three to one by junior faculty and lecturers charged with primary academic functions). Consequently, it was the Constitutional Court which took the first critical step in the 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 decision according to their level of "qualification."[21]

Whereas the Numerus clausus rulings had effect of "throwing

university to the wolves" on case-by-case basis, the impact of the Group University decision was immediate and universal. Berlin legislators, who had announced in January 1973 that there would be no major amendments to their Higher Education Act prior to the summer of 1975, were the first to railroad through the legislature an Adaptation Law significantly altering the proportional composition of university decision-making organs on November 19, 1973.[22]

Another constitutional paradox awaited court resolution in 1975. Article 5/3 GG asserts:

> Art and science, research and teaching shall be free. Freedom of teaching shall not absolve from loyalty to the constitution.

In January, 1972, Chancellor Brandt joined the heads of the Länder governments in formulating guidelines with respect to the public employment of right and left wing radicals (Extremistenbeschluss of February 18, 1972). This ordinance was to subject civil service candidates to "constitutional loyalty" checks, prior to granting tenure. Academics were included in light of their classification as civil servants. Instead of checking personal histories only in cases where "evidence" was already known to exist, the exception quickly became the rule. Between 1973-1975, the state-level "constitutional protection office" in Berlin (Landeskommission) had received 24,000 "inquires" and was able to provide "evidence" in 1,800 cases, 93 of which actually resulted in individuals being barred from public employment. In Bavaria the figures were 55,000 "inquiries," 342 with "evidence," and 23 employment bans, respectively.[23]

On May 22, 1975, the justices in Karlsruhe proclaimed that even those working for the state on a trial or provisional basis must submit to a test of their loyalty (medical and legal interns). The Constitutional Court decreed:

> The political loyalty obligation requires more than just a formally correct, but otherwise disinterested, cool, internally-distant posture toward the state and the Constitution; it demands of the civil servant in particular that he clearly distance himself from groups and endeavors which attack, oppose and defame this state, its constitutionally created organs and the valid constitutional order /my emphasis/. 24

One presumes that court itself will eventually have to judge what constitutes academic discourse on alternative political ideologies, free political expression or a cool, distant posture towards the existing German "state."

In light of these developments, it is clear that the extension of "politicized legalism" into the domain of educational reform policy has created the conditions under which the judicial branch of government emerges as the public's vehicle for political conflict resolution in the FRG. Legislators are exhorted, even admonished, to produce their own solutions, but nonetheless find the range of policy alternatives narrowed with each new set of judicial decisions. This trend, from my perspective, suggests a certain parallel to the decreasing administrative "elbow room" afforded the universities in the management of academic affairs. The institutions of higher learning were ordered to reform themselves, while Länder interference made self-reorganization first difficult, later impossible. The courts in turn called the law-

makers to task for not providing quick and effective solutions to university overcrowding, while delineating areas in which the parliament would no longer be free to conduct an experimental or problemistic search.

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. Their argumentations have become "ever longer and ever more fundamental," ranging from 55 pages in the 1972 Numerus clausus case, to 99 pages on the Group University, to a 109 page exegesis regarding a 1977 Numerus clausus verdict.[25] 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.

D. CONCLUSION: JUDICIAL ACTION AND REFORM ACHIEVEMENTS

The "high priests at Karlsruhe" have undeniably contributed to the institutionalization of what were suppose to be temporary, "emergency" procedures. Paragraph §3 HRG, which refers to the protection of academic freedom, contains elements of the Bundesverfassungsgericht's Radical Ordinance Judgment of 1975. The sections on university admissions, §27-35 HRG, bear a very strong resemblance to the Constitutional Court's Numerus clausus ruling of 1972. §38 HRG directly incorporates

the precepts laid down in the Group University verdict of 1979. On October 23, 1976 the justices declared §32, Section 3/2 HRG (dealing with waiting periods for admissions) null and void. They also suspended temporarily §35 HRG, which divorces applications and chances for admission from one's place of residence. One legal critic has labelled the terminology and the textual outline of the Framework Law an exercise in "Karlsruhe-cization."[26]

Judicial efforts to resolve conflicts between the Bund and the Länder, SPD and CDU factions, politicians and bureaucrats are not 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. As the dissenting justices in the Group University case shrewdly warned in 1973, the judiciary has been captured by the irreversibility of its own decisions.[27] The carved-in-stone character of Constitutional Court rulings means, on the one hand, that judicial actors have become the recognized managers of an inter-dependence which they in part have helped to create. The other side of the coin is that academic institutions in the Federal Republic have been deprived permanently of the right to establish primary educational goals and to determine the best means of achieving those goals, which ostensibly poses the greatest conceivable threat to institutional survival and academic freedom

in the FRG. 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 persons who were involved in all phases of the legislative process — actors ranging from members of competing party factions to officials at the ministerial level, not to mention those most directly affected by the legislative flurry, the academic employees. The only common reaction voiced by these diverse groups was a high degree of dissatisfation. 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 political 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 education -- 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 impressivly from some 373,000 in 1965 to 788,000 in 1974 and to more than 978,000 in 1978/79.[28] 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 under 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 differences in Länder educational priorities as were the emperor's new clothes in protecting the sovereign from unfavorable environmental elements.

The regulations 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 assigning representational seats to non-professorial groups, other hold participation in decision-making bodies to minimal levels.[29] Ultimately, the standardization of academic programs will depend upon the cooperative efforts and compromise agreements worked out by the regional curricular reform commissions, whose members have only begun to tackle the task at hand.

Rationalization, that is, the attempt to ensure job-relevant training and a degree of professional flexibility, while simultaneously streamlining curriculum, 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 accelerated 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.[30] 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. Much more serious questions arise regarding the judiciary's own institutional mandate to place constitutional rights above political imperatives. In responding directly to judicial stimuli, legislators have fallen prey to a new double bind: they have inadvertantly provided encouragement to citizens, who

seek to guarantee the practice of individual rights through the courts, and the Courts' prescriptions then serve as the basis for growing restrictions on the freedom of the whole, beyond the realm of academics.

FOOTNOTES

1. Nathan Glazer, cited by David L. Kirp and Mark G. Yudof, Educational Policy and the Law: Cases and Materials, Berkeley: McCutchan, 1974, p. xxxv.

2. A. J. Heidenheimer, H. Hecio and C. Teich Adams, Comparative Public Policy: Politics of Social Choice in Europe and America, New York: St. Martin's Press, 1975, p. 51.

3. Georg Picht, Die deutsche Bildungskatastrophe, München: Walter (Olten), 1965.

4. Ibid., p. 10.

5. Ralf Dahrendorf, Bildung ist Bürgerrecht. Plädoyer für eine aktive Bildungspolitik, Osnabrück/Hamburg: Wegener, 1968.

6. The first discussion of "problemistic search" appears in the Richard Cyert and James G. March classic, A Behavioral Theory of the Firm, Englewood Cliffs, N.J.: Prentice Hall, 1963, p. 74ff.

7. Steinbruner considers the nature of the "search" process in correspondence with the "analytic" and "cybernetic" models of decision-making. See John D. Steinbruner, The Cybernetic Theory of Decision, Princeton: Princeton University Press, 1974, p. 74-75.

8. Wissenschaftsrat -- Empfehlungen zu Umfang und Struktur des Tertiären Bereichs. Köln: Bundesdruckerei, Juni 1976, p. 9, p. 12. The Free University of Berlin serves as an extreme case. There enrollments rose from 14,591 in 1969/70, to 20,859 in 1972,

to a staggering 30,687 in 1975 and over 43,000 in 1980. Rechenschaftsbericht des Präsidenten der Freien Universität Berlin vom 14. Februar 1978. And, "Endlich 'die Grösste'," FU-INFO, 17/80, Presse-und Informationsstelle der Freien Universität Berlin, 17. November 1980, p. 2.

9. Grund-und Strukturdaten 1977, Bildungsministerium für Wissenschaft und Forschung, Bonn, September 1977, p. 96.

10. For a detailed treatment of expansion, experimentation, standardization and rationalization measures, see Joyce Marie Mushaben, The State v. The University: Juridicalization and the Politics of Higher Education at the Free University of Berlin, 1969-1979. Ph.D. Dissertation, Indiana University, 1981, in particular Chapter Three.

11. 8. Rahmenplan für den Hochschulbau, 1979-1982, Hrsg. Planungsausschuss für den Hochschulbau, BMBW, vom 28, Juni 1978, Bonn-Bad Godesberg, Table 4, p. 15.

12. Mushaben, loc. cit., pp. 128-136.

13. The Hochschulbauförderungsgesetz of September, 1969 and changes in the Bundesbeamtengesetz (Federal Civil Service Code), the Bundesbesoldungsgesetz (Federal Salaries Act), and the Haushaltsgrundsätzegesetz (Fundamentals of the Public Budgetary Law) in 1971 preceded Leussink's presentation of the BMBS draft. cf. Hochschulrahmengesetz (HRG) vom 26. Januar 1976 (BGBL 1, s. 185). Veröffent-

lichte gesetz materialen , May 1977, Bonn: Deutscher Bundestag, Bundesdrucksache 7/1328, pp. 24-26.

14. Guntram von Schenck, Das Hochschulrahmengesetz - Hochschulreform in der Gesellschaftskrise, Bonn-Bad Godesberg: Neue Gesellschaft, 1976, p. 38.

15. Philip Blair, "Law and Politics in Germany," Political Studies, vol. 26, no. 3, September, 1978, pp. 354-357.

16. John H. Van de Graaff, Burton R. Clark, et al. Academic Power -- Patterns of Authority in Seven National Systems of Higher Education, New York: Praeger, 1978, p. 19.

17. Bundesverfassungsgericht, 1 BvL 32/70, 1 BvL 25/71, Urteil vom 18. Juli 1972.

18. Reported in Mushaben, op. cit., pp. 357-358, based on a June 20, 1979 interview with an Administrative Court judge in Berlin.

19. Richard Merritt, "The Courts, the Universities and the Right of Admission in the German Federal Republic," Minerva, vol. XVII, no. 1, Spring 1979, p. 27.

20. A serious problem afflicting the medical science faculty at the Free University, as the current FU President Eberhardt Lämmert reported to me in July, 1979, is a chronic shortage of cadavers for the basic anatomy classes, which the court was in no position to remedy. cf. Freie Universität Berlin - 6. Jahresbericht, 1.10.1975 - 24.11.1976, Presse--und Informationsstelle der FUB, p. 31.

21. Bundesverfassungsgericht, 1 BvR 424/71, 1 BvR 325/72, Urteil vom 29. Mai 1973.

22. Details are recorded by Mushaben, op. cit., p. 285ff.

23. Peter Frisch, Extremistenbeschluss. Zur Frage der Beschäftigung von Extremisten im Öffentlichen Dienst, Leverkusen: Heggen Verlag, 1977, p. 214.

24. Bundesverfassungsgericht, 2 BvL 13/73, vom 22. Mai 1977.

25. Wolfgang Perschel, "Hochschulpolitik und Bundesverfassungsgericht -- Zum Funktionswandel von Initiative und Kontrolle im bildungspolitischen Prozess," in Universität Heute - Wem dient sie? Wer steuert sie? Hrsg. Andreas Flitner, Ulrich Herrmann, München/Zürich: R. Piper & Co., 1977, p. 35ff.

26. Ibid., p. 39.

27. Das Karlsruher Hochschulurteil, FU/TU Dokumentation, Nr. 8/73, Berlin: Verlag+Druck Informdienst, 12. Juni 1973, pp. 26-29.

28. "Zahl der Studenten leicht angestiegen," FU-INFO 5/80, 11. April 1980, Presse-und Informationsstelle der Freien Universität Berlin, p. 5.

29. "Anpassung im Kreuzfeuer der Kritik," UNI Berufswahl-Megazin, Heft 4, Jg. 2, April 1978, pp. 25-30.

30. Cf. "Akademiker: Aller Anfang ist schwer," Die Zeit, Nr. 53/1, 29. Dezember 1978.