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## **Between rule-makers and rule-takers: Policy change as the interaction of design, compliance and feedback**

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### **Abstract**

How do policies change? The article argues that dominant public policy theories overemphasise the stage of adoption of new policies and disregard the discrepancies that often take place between formal and substantive change. But can we really speak of change if formal changes do not trigger change in actors' behaviour? And how can policy-makers achieve substantive change? Building on the comparative political economy literature, the article conceptualises policy change as the interaction between rule-makers and rule-takers. It is argued that (i) rule-makers can use policy design strategically to minimise reliance on non-compliant rule-takers and (ii) the scope for rule-makers to side-line non-compliant rule-takers is greater if non-compliant behaviour produces negative policy feedback. Systematic process analysis of reform of German higher education over two decades lends support to the proposed approach.

### **Keywords**

Higher education; institutional change; policy change; policy design; policy feedback.

## Introduction

Making sense of policy change has been a core concern for public policy and comparative political economy (CPE) scholars (Sabatier 1988; Kingdon 1984; Baumgartner and Jones 1993; Hall 1993; Streeck and Thelen 2005). In particular, theories of policy change developed in the 1990s – notably Multiple Stream Approach (MSA), Advocacy Coalition Framework (ACF) and Punctuated Equilibrium Theory (PET) – have been so influential that the question of whether “there is life” after MSA, ACF and PET was floated in the following decades (John 2003).

The article engages with this debate by leveraging the curious case of German higher education from the late 1990s through the mid-2010s. Assume the conditions specified under MSA, ACF and PET are all reasonably met: policy entrepreneurs working toward a particular reform direction see multiple streams “couple”; a broad and powerful coalition of actors supports such a reform direction; and an exogenous shock aides discrediting the old policy arrangement catalysing attention toward its alternative. Regardless of whether one looks at this scenario from an MSA, ACF or PET perspective, they will find the ideal conditions for policy change to be in place. And indeed, a change in policy is adopted. But despite formal change, the policy did not achieve its substantive objectives. Fast forward by approximately a decade: despite weaker momentum for reform and after the early window of opportunity had closed, the adoption of a further – and comparatively modest – change in policy led to the achievement of those objectives that the earlier reform had failed to meet. That is, policy-makers achieved what they wanted but *not* at the time and through the policy that major theories would lead us to expect.

To make sense of this tortuous path of policy change, I build on the CPE literature on gradual institutional change (Streeck and Thelen 2005). CPE scholars alert us to the fact that there may be discrepancies between rule-makers and rule-takers, and ensuing differences

between formal and substantive policy change. The former refers to the formal adoption of a new policy, for instance through the introduction of a new law; the latter refers to the extent to which the formal introduction of a given policy triggers change in the actual behaviour of those actors that are affected by the newly adopted policy (cf. Culpepper 2005). The article strongly supports the CPE conceptualization of policy change as a dialectic relationship between rule-maker and rule-takers, and the ensuing distinction between formal and substantive change, but it also makes a distinctive contribution. In particular the article argues that the CPE literature features a “rule-takers bias”, i.e. it tends to conceptualize rule-takers as having a structural advantage over rule-makers. This article qualifies this view as it sheds light on the circumstances under which rule-makers might in fact retain the upper hand over rule-takers in the process of policy change. More specifically, the article advances two inter-related arguments: firstly, rule-makers can use policy design strategically to avoid or minimize reliance on non-compliant rule-takers; and secondly, the scope for rule-makers to side-line non-compliant rule-takers through policy design is greater if non-compliant behaviour on the side of rule-takers produces negative policy feedbacks. The (critical) case study of two decades of reform of German higher education provides strong empirical support for the proposed approach.

### **Theorizing policy change: between rule-makers and rule-takers**

The public policy literature provided a number of influential models that sought to explain how policy change came about (see Cerna 2013, for a review). The three so-called synthetic models of MSA, ACF and PET proved particularly influential as they provided holistic explanations of policy change (John 2003). Despite their differences (Cerna 2013), the three models share some basic features: they posit that exogenous shocks tend to play a crucial role in discrediting existing policies and they open up opportunities that policy-makers can exploit to introduce

new policies. In the MSA framework (Kingdon 1984), “windows of opportunities” are exploited by policy entrepreneurs that are able to capitalize on those moments in which particular policy options match with a particular problem and resonate with the general public opinion. When this condition is met, the MSA model predicts that policy change will take place.

The ACF draws our attention to coalitions kept together by a similar set of “core beliefs”, i.e. causal mechanisms linking policy problems with policy solutions, with so-called “policy brokers” serving a similar role as those of policy entrepreneurs under MSA (Sabatier 1988). Policy-making under ACF is a process of competing coalitions within particular policy fields challenging each other (Sabatier 1998). Policy change takes place through an interaction between shocks exogenous to the systems (e.g. changes in wider socioeconomic parameters) and the policy ideas of a particular coalition that – as a result of such shocks – may be strengthened or weakened.

The interaction between exogenous shocks and actors’ ideas is prominent also in PET models (Baumgartner and Jones 1993). This theory posits that policies develop through long periods of incremental change punctuated by short periods of abrupt change. Exogenous shocks are typically responsible for periods of abrupt change during which existing policies are discredited, but they are not equally responsible for new policies. The latter are rather introduced as a consequences of an expanded “market-place of ideas” that finds itself suddenly more open to alternative solutions once existing ones are no longer considered viable. Hence, PET also draws attention to agents who are able to exploit these shocks to put forward new policies.

This brief summary provides one crucial insight on the conceptualization of policy change in the public policy literature, namely its exclusive focus on the adoption of new policies. The silence of these theories on how and whether formal policy change mandated by

rule-makers is expected to lead to substantive change is, however, somewhat curious if we consider that one of the main authors animating the debate on policy change had actually developed first a framework to understand policy *implementation* (cf. Sabatier and Mazmanian 1980) before devising the ACF. And yet, the ACF – like the other synthetic approaches – has in fact contributed to equating policy change to the stage of policy formation and its subsequent adoption, privileging therefore the formal introduction of a new policy over other stages of the policy cycle (Winter 2012). Having at our disposal a theoretical arsenal to understand *formal* policy change is of great value. But can we really talk about policy change without engaging with the question of whether formal changes trigger changes in actors' behaviour?

This question is at the core of the CPE literature (Streeck and Thelen 2005; Culpepper 2005), which conceives of policy change as part of a broader research programme on institutional change and suggests that policies and institutions often operate in the same way. In particular, policies should be conceptualized – much like institutions – as “rules for actors other than for the policymakers themselves” (Streeck and Thelen 2005, 12). Hence, new policies are more than the mere adoption of laws. They are also – and primarily – rules that are expected to trigger a new pattern of behaviour among those actors that are affected by that particular policy. For this reason, they are underpinned by constant negotiation and renegotiation among actors (Hall and Thelen 2009). What at first sight might sound like a definitional issue has far-reaching implications because important features of policy change only emerge “if we can distinguish analytically between the rules and their implementation or ‘enactment’— and, by extension, if we can identify the gaps between the two that are due to or open up opportunities for strategic action on the part of actors” (Streeck and Thelen 2005, 13).

The CPE literature concedes that in some limiting cases rule-makers and rule-takers can be in fact the same actor (Streeck and Thelen 2005, 13), and it is conceivable that in those cases the process leading up to the formal adoption of new policies will equal substantive

change. But for the majority of cases, the CPE literature notes the “significant amount of ‘play’ in the rules actors are expected to follow” (Streeck and Thelen 2005, 11). Change, in other words, may not be driven by the formal policies set out by rule-makers but rather by rule-takers’ enactment of a given policy. As rules are never fully specified, rule-takers often have room to reinterpret them as they enact them. And on the side of rule-makers, there are limits to the extent to which “socially authorized agencies of social control” can prevent or rectify behaviour that is not compliant with formal rules (Streeck and Thelen 2005, 15). Thus the CPE literature provides compelling tools to explain the mechanisms by which rule-takers might defy rule-makers. It does not, however, provide an equally rich toolkit to understand the mechanisms through which rule-makers might in fact prevail over rule-takers.

#### **A “rule-taker bias”? Expanding the CPE theoretical toolkit**

The aim of this section is to advance a theoretical argument as to how rule-makers can counteract rule enactment drifting away from formal rules. The concept of *policy design* developed in the early policy science literature is particularly instructive in this respect (Ingraham 1987; May 1991; Bobrow and Dryzek 1987). Policy design scholars argue that the crucial task for rule-makers is that of “matching content of a given policy to the political context in which the policy is formulated and implemented” (May 1991, 188-89). Matching content to context means selecting one particular (set of) policy instruments among several possible ones. This is consistent with Hall’s notion of “second-order” change, in which changes at the level of policy instruments can take place without subverting the overall goals pursued through a given policy (Hall 1993). The possibility to change instruments while keeping constant the overall orientation of a given policy has important implications: it suggests that a certain overarching policy goal can be achieved through more than one policy instruments, but not each policy instrument is equally politically viable. Policy design – in other words – is not a

technocratic exercise but an eminently political one (May 1991; Peters 2018). “Rule-makers-as-designers” essentially engage in a process of defining policy goals and connecting them to the tools and instruments that are more likely to achieve those goals (Howlett et al. 2015), including designing policies in such a way that non-compliant rule-takers are side-lined and therefore deviant implementation is minimized.

The proposed perspective of “rule-makers-as-designers” can certainly be challenged on the grounds that cognitive biases and imperfect information will severely constrain the ability of policy-makers to design policies that minimize the enactment gap (recall Streeck and Thelen 2005, 14-6). This may be true in static terms. Yet, policy-making is best conceptualized as an iterative process that unfolds overtime (cf. Hecllo 1974) and that allows rule-makers to acquire information on rule-takers’ behaviour and preferences (see e.g. Dunlop and Radaelli 2013). Indeed, policy design scholars argue that “most policy design is redesign” (Peters 2018, 8) and that even poorly designed policies at  $t^0$  provide information for rule-makers that allow more effective redesign at  $t^1$  (Howlett 2012). In other words, a ‘reactive’ and ‘ingenious’ learning process (Freeman 2006, 377) takes place between design and redesign: rule-makers *react* to the implementation problems faced under the original policy design and they look for *ingenious* solutions as they redesign policies. If we take this view, it is then plausible that rule-makers are able to retain the upper-hand on rule-takers through a process of redesign aimed at minimizing the involvement of non-compliant rule-takers in the enactment of policies.

At this point, the CPE and policy design approaches provide somewhat conflicting expectations. CPE scholars have shown that rule-takers can defy rule-makers’ formal changes by exploiting enactment gaps (Streeck and Thelen 2005), but the policy design literature would lead us to believe that rule-makers can rectify rule-takers’ behaviour by redesigning policies accordingly. Under what conditions should we expect the latter scenario to materialize? To



answer this question, I build on two recent advancements in the literature on policy feedbacks (Jacobs and Weaver 2015; Busemeyer et al. 2019).

Firstly, feedback has been traditionally equated with *positive* feedback (Pierson 1993), but recent literature also highlighted *negative* feedbacks as powerful engines of policy change (Jacobs and Weaver 2015). The question that we should ask ourselves is: what kind of feedback does *non-compliant* behaviour produce? This is a crucial question because actors need “a societal context of supportive third parties” that legitimize their behaviour and feedbacks play a key role in the legitimization process (Streeck and Thelen 2005, 13). If rule-takers’ non-compliant behaviour gathers broad societal support (i.e. it produces *positive* feedback), it is likely that such behaviour becomes institutionalized, as rule-makers will find it politically difficult to rectify non-compliant – but societally well-embedded – behaviour. In this setting, rule-takers are therefore likely to ultimately prevail. If, on the other hand, non-compliant behaviour does *not* gather support (i.e. it generates *negative* feedback), it is plausible that rule-makers find themselves in a societal environment that is conducive to addressing non-compliance. In this scenario, rule-makers will find a fertile political soil to redesign policies in such a way that the enactment gap is minimized by marginalising non-compliant rule-takers and empowering compliant ones.

Secondly, policy feedback has been traditionally associated with long-term historical processes that shape present decisions. This is no doubt a powerful form of feedback, which reduces the menu of options available to policy-makers and makes policy change incremental (Pierson 1993). But feedbacks also have a dynamic and short-term dimension, in which actors react immediately to policy changes (Busemeyer et al. 2019). In this scenario, policy-makers are less constrained by past decisions, because the short-term nature of this type of feedback allows them to engage in that process of “design and redesign” described by policy design scholars (recall Peters 2018) before policies become deeply entrenched. In other words, this

new strand of literature allows to include feedback in the theorisation of policy change, without constraining actors to the extent that they are almost deprived of their agency.

This theoretical discussion allows to further specify the relationship between rule-makers and rule-takers put forward by the CPE literature by plugging into CPE models of policy change the notion of negative (and dynamic) feedback and that of policy (re-)design. The theoretical discussion is summed up in figure 1, that captures the pathways of change theorised by existing CPE literature (indicated by the solid arrows) and the pathway theorised in this article (the dashed arrows).

<<figure 1 about here>>

### **Research design**

German higher education from the mid-1990s through the mid-2010s provides an ideal setting to probe the proposed theoretical framework against alternative public policy and CPE theories because it can be meaningfully conceptualised as a *critical* case study (Eckstein 1975). As the next section will review in detail, the conditions for well-established public policy theories – such as MSA, ACF and PET – to drive policy change are all present in this case, namely an exogenous shock (i.e. the Bologna process), a powerful coalition of actors stretching across the higher education and business sectors as well as the government, and policy entrepreneurs who actively shaped the public discourse around higher education and prepared the political terrain for far-reaching reforms (see e.g. Witte 2006; Toens 2009). Yet, substantive change is not achieved, because of non-compliant behaviour by rule-takers. This outcome calls into question the explanatory power of public policy theories that overlook the role of rule-takers and therefore cannot explain lack of substantive change driven by rule-takers' non-compliant behaviour.

Implementation gaps due to non-compliant behaviour is, in turn, a classic scenario leading to the institutionalisation of non-compliant behaviour in the CPE literature. Yet, the case study shows that non-compliant behaviour does not become institutionalized in this instance. Rather, rule-makers are able through a process of policy redesign to side-line non-compliant rule-takers and achieve overtime the substantive change that the initial formal policy change failed to trigger. This outcome poses a puzzle for the CPE literature that does not provide an explicit theorisation of the conditions under which non-compliant behaviour fails to become institutionalised. This is all the more puzzling in the specific context of the case at hand: non-compliant rule-takers are (research) universities, i.e. politically powerful actors that rule-makers have traditionally found difficult to rein in (Clark 1983). In short, there are important aspects of the process of policy change that neither public policy nor CPE theories can fully explain, despite I selected an empirical setting which should be theoretically conducive for these approaches to hold true. If, in turn, the proposed alternative framework holds under least favourable theoretical circumstances, it is likely that its validity will travel beyond this particular case.

To research the case study, I followed the notion of systematic process analysis (Hall 2003). I collected evidence from a wide array of sources, including semi-structured elite interviews, newspaper articles, policy statements, policy reports and descriptive statistics (see appendices 1 and 2 for details of the data collection process). In line with the notion of systematic process analysis, the next section confronts the empirical evidence with the expectations of the different theories discussed in the second and third sections, thereby engaging in a “three-cornered” comparison between alternative theories and empirical evidence, which allows identifying strengths and weaknesses of the different theories and ultimately adjudicating between them (Hall 2003).

## **German higher education policy from the Bologna Process to the Higher Education Pact**

German higher education entered the 1990s as a system characterized by two distinct institutional types: “traditional” universities and universities of applied sciences (*Fachhochschulen*) (Teichler 1996).<sup>1</sup> The former presented a stronger research-oriented profile and they traditionally conformed to the Humboldtian ideal of academic self-governance and pursuit of teaching and research insulated from the demands of other societal actors (Clark 1983). Universities of applied sciences were established in the 1960s as teaching-oriented institutions who played a particular role in the provision of skills to local labour markets (Teichler 1996). It is important to note here that in the second half of the 1990s, over 75% of students was enrolled in “traditional” universities (Huisman and Kaiser 2001). Different degree-awarding power further demarcated formal differences: universities awarded degrees (*Diplom*) at the equivalent level of a master degree, while *Fachhochschulen* conferred degrees (*Diplom FH*) at a lower level, located between bachelor and master (Witte 2006, 155).

Against this background, pressures for change built up through the 1990s in two main respects: (i) the system was deemed too costly, hence it should have been reformed in a direction that allowed savings for the public purse; and (ii) the type of education it provided was considered too inward looking and irresponsive to the demands of business, hence its orientation toward practice and labour market relevance had to be increased. The former concern was particularly pressing for policy-makers: cost-cutting measures appeared as a constant theme and driving force for reform since the 1990s (Welsh 2010). The latter was a concern shared by both policy-makers and business associations (Witte 2006; Wissenschaftsrat 2000). The next two sub-sections trace the reform processes that unfolded since the late 1990s to address these two reform pressures.

### ***The ‘Bologna solution’ (1998-2007): more formal than substantive?***

The Bologna process represented a strong punctuation in German higher education (Welsh 2010). While a full review of the Bologna process is beyond the scope of this article, one component proved particularly effective to serve the reform imperatives outlined at the beginning of this section, namely the transition to a common tiered-structure of 3-year undergraduate degrees followed by 1- or 2- year post-graduate degrees to be adopted across European countries that subscribed to the process (Witte 2006). A domestic coalition of actors comprising most prominently of the BMBF, business associations [such as the Confederation of German Employers (BDA) and the Federation of German Industries (BDI)], and various interest groups in higher education policy [such as the German’s Rector Conference (HRK)]<sup>ii</sup> exploited the window of opportunity offered by the Bologna process and successfully led to the adoption of a law in 1998 that changed the structure of degrees across the higher education system (Witte 2006; Toens 2009). The degree (Diplom) offered by research universities and the degree offered by Fachhochschulen (Diplom FH) had to be gradually replaced by the new bachelor and master degrees, which would equally apply to both traditional universities and universities of applied sciences (Witte 2006). Contextually, the governance of degree programme accreditation was also modified to provide greater voice to business representatives in the design of curricula (Toens 2009).

How were these formal policy changes expected to address the reform pressures? Cost-savings were clearly to be achieved through the establishment of a shorter degree (Welsh 2010), which in the plans of policy-makers should have been the main point of entry into the labour market. As such, the 1998 legal change clearly stated that the new bachelor degree had to be “qualifying for a profession” (Witte 2006, 186). The expectation that policy-makers placed on the shift to a tiered structure was that if the vast majority of students were to leave university after a bachelor degree, the system would become more cost-effective (Welsh 2010; BMBF

1999; Reihlen and Wenzlaff 2014), as articulated by a university's representative who argued that the main purpose of the transition to a tiered structure was "to reduce the overcrowding in the universities and thereby to save money in the federal higher education budget [...] it's all about saving money and getting students out of the classroom and [...] into the workforce" (Trow 2007, 272).

The expectations of the business sector were even more explicit as they saw the transition to the new degrees as an opportunity to expand their influence on higher education policy. It is no coincidence that in the run up to the start of Bologna, "employer demands for reforms of curricula of degree structures had become more pronounced" (Witte 2006, 164) culminating in an extensive memorandum released by the peak employer association BDA in 2003. In particular, the BDA argued that: "The bachelor should be established in Germany as the first standard degree in German universities conferring eligibility for employment. [...] An essential precondition for a bachelor degree giving a realistic chance of entry into the labour market is a university education in the relevant bachelor course geared to consistent transmission of basic and core skills that confer employability" (BDA 2003, 1). Furthermore, employers made clear that "a change in the study structure is not enough [...] content of bachelor and master courses also needs to be redesigned" (BDA 2003, 1-2).

To what extent did the formal changes introduced by rule-makers and other actors that joined the rule-makers' coalition (e.g. business) trigger substantive changes? It is now time to turn to rule-takers. As outlined at the beginning of this section, the reforms impacted on two types of rule-takers, research universities and universities of applied sciences. The extent to which these actors resulted willing to comply with the new rules differed significantly. The transition to the new model of shorter and practically-oriented degrees was embraced by universities of applied sciences. Indeed, the "vocational drift" that took place in the late 1990s as part of the Bologna process, with its "emphasis on graduates' employability and labour

market relevance [...] strengthened the position of professionally oriented institutions” (Reichert 2010, 14-5). Universities of applied sciences stood to gain from this transition: they increased their prestige given the formal equivalence of bachelor and master degrees regardless of the institution that awards them (Witte et al. 2008); and the cost of adjustment to the new degrees was lower for universities of applied sciences, which have offered since their establishment shorter and practice-oriented degrees (Lohmar and Eckhardt 2015, 149). As such, universities of applied sciences were already offering a type of education closely conforming to what rule-makers demanded (Ertl 2015, 3).

The stance of universities, on the other hand, was in clear tension with rule-makers’ demands as articulated by several interviewees who noted how universities “considered the master the level at which you leave the university” (interview 20) and how research universities and universities of applied sciences perform two different functions and that therefore they cannot offer the same type of education (DHV 2015; TU9 2014, interview 16). These reasons led research universities to implement rather limited change in their degree programmes, beyond the formal change in structure (interview 16).

Research universities’ non-compliance was noticed across the coalition (BMBF, HRK, and BDA/BDI) who most fervently advocated the reforms. Approximately one decade after the first introduction of the new degree structure, the BMBF complained that the “paradigm shift” making the bachelor degree the standard qualification had not been accepted by staff in research universities due to concerns that “academic studies might not be sufficiently science-based anymore” (BMBF 2007b, 1-2). A senior representative of the HRK equally illustrated how the transition to the new degrees worked well in Fachhochschulen but not in research universities, further arguing that bachelor graduates from the former are far more employable than bachelor graduates from the latter (interview 1). Employers shared the same views as BMBF and HRK. They praised universities of applied sciences who thought about “what they could win” from

the transition to the new degree structure and complained about research universities who “discuss way too long what they could lose” (Gillmann 2006). They pointed at Fachhochschulen as a successful model for embedding employability into undergraduate degrees (interview 3), while complaining about universities’ reluctance to sufficiently revisit their educational offer (interview 4). There, the transition to the new degree structure was seen as a case of “old wine [...] into new bottles” (BDA et al. 2009).

These different reactions also meant that policy-makers’ expectations around undergraduate degrees becoming the standard entry point to the labour market were defeated. Data from the first decade of the implementation of the new degrees showed that around three quarters of bachelor graduates in traditional universities went on to enrol in a master degree. The figure drops significantly for universities of applied sciences, as 50% of their graduates enter the labour market upon completion of a bachelor degree, in line with policy-makers’ expectations (Konegen-Grenier et al. 2014, 14).<sup>iii</sup> However, to the extent that the vast majority of students are enrolled in research universities, the potential for cost saving in the transition from the old to the new degree structure has been severely constrained.

What does the pattern of policy change that took place in the first decade of ‘Bologna’ tell us with respect to the theoretical discussion? Firstly, it tells us that indeed the synthetic approaches do a good job at explaining policy adoption. Aided by the strong punctuation of Bologna, a “modernizing” coalition of actors successfully pushed through a reform that was consistent with the policy objectives of (i) cost containment and (ii) strengthening the practical orientation of higher education. But it also tells us that focusing policy adoption conceals crucial parts of the story. Successful change necessitates a change in preferences of the key actors upon which successful policy implementation depend (cf. Culpepper 2005): research universities in this case. However, the empirical evidence suggests that rule-takers did not fully comply with the formal rules, thereby curtailing the extent to which substantive change



followed formal change in the first decade after the 1998 reform. The empirical evidence further shows that the behaviour of research universities produced negative feedback as important societal actors, such as government and business, came to publicly delegitimise universities' lack of compliance with the aims of the newly introduced policy.

### ***The Higher Education Pact (2007 - 2016): substantive change by design***

In this context of “truncated” reform the German higher education system came under renewed pressure in 2007, when it became clear for the government that the number of entrants into higher education was growing beyond previous projections (Gardner 2008, 2011). To meet this unexpected demand for higher education, the government launched a new policy initiative in 2007: the Higher Education Pact (hereinafter the Pact). While this policy looks at first sight as a “simple” increase of the public budget in the face of unprecedented – and not fully predicted – expansion of students seeking a higher education degree, a closer look at the design of the measure reveals the transformative impact of the Pact.

From a formal point of view, the Pact was constituted by a series of “administrative agreements” signed in 2007, 2009 and 2014 between the Federal government and the Länder. The agreements outline the framework conditions for the use of the funds mobilized by the Pact. Despite the traditionally dominant role of research universities in the politics of higher education in Germany which (Toens 2009; Wissenschaftsrat 2000, interview 1), the Pact privileged Fachhochschulen. Indeed, the 2007 agreement specifies in article 1, §1(4) that the Länder would use the funds to increase the number of new entrants in Fachhochschulen (BMBF 2007a) and this commitment is reiterated in the 2009 and 2014 agreements. In other words, the Pact did not just provide additional financial resources, but it also set out to reshape the university sector by channelling resources toward one particular institutional type, namely universities of applied sciences. Policy implementation took place in line with the Pact's

objectives. Indeed, according to a leading German higher education policy think-tank, the Centrum für Hochschulentwicklung (CHE), “[u]niversities of applied sciences are among the winners in the expansion of the number of places available” (CHE 2015). Enrolment data supports this assessment: figure 1 shows a sharp increase of new entrants in Fachhochschulen relative to traditional universities following the introduction of the Pact. Importantly, the Pact is designed in such a way that each additional university place has a corresponding financial allocation attached to it (Wissenschaftsrat 2018), hence a surge in numbers corresponds to a greater inflow of resources.

<<figure 2 about here>>

Why was the Pact designed in such a way to privilege universities of applied sciences over traditional universities? The previous sub-section documented how the reforms implemented under the auspices of Bologna fell short of its objectives, given that traditional universities did not comply with policy-makers’ expectations: they did not design the bachelor degree as the standard entry point to the labour market (interviews 15, 16, 20), and rather actively encouraged students to complete the full cycle of bachelor and master degree (interview 1), thereby defeating the cost-saving effect that was supposed to come as a by-product of shorter degree programs. Moreover, they did not significantly emphasize the practical orientation of their educational offer either, out of concerns that the profile of traditional universities and that of Fachhochschulen would blur (interviews 15, 16, 20), leading to a loss of status of the former vis-à-vis the latter (Gillmann 2006).

Universities of applied sciences, conversely, had complied with both policy objectives: bachelor graduates successfully entered the labour markets in significant numbers (Konegen-Grenier et al. 2014, 14; Schneider and Stenke 2015, 40), meeting the cost-saving objective of

shorter degrees. Moreover, their degrees offer strong practical orientation, which has been recognized and publicly praised by business, who have consistently voiced their growing satisfaction with universities of applied sciences who “show that more praxis in study programs is possible” (VDI 2016, also interviews 3, 4). Interestingly, business did not change their perception of research universities’ ‘lack of compliance’ relative to Fachhochschulen (see e.g. DIHK 2015, VDI, 2016, interviews 3, 4), even as the former started to introduce practice-oriented components across their degree programmes more consistently in recent years (Philipose 2010), testifying to the long-lasting political consequences of research universities’ early non-compliance and the corresponding negative feedback that such non-compliance produced.

These feedback effects were central to policy-makers’ reasoning when designing the Pact, as explicitly illustrated by a representative of the Standing Conference of the Ministers of Education and Cultural Affairs (KMK):<sup>iv</sup> “universities of applied sciences were born partners for the Pact, because the implementation of the Bologna Process turned out well at universities of applied sciences, universities had much more problems and less readiness; they were reluctant to install just additional Bachelor-programs” (interview 7). This assessment is corroborated by rule-takers’ reactions to the launch of the Pact: the *Deutscher Hochschulverband* (DHV), which represents the interests of faculties in research universities, identified precisely the excessive targeting of funding at the Bachelor level as a crucial flaw in the policy design (DHV 2010); the *Hochschullehrerbund* (HLB), the association representing the interests of universities of applied sciences, on the other hand, did not raise any concern toward the design of the Pact and rather reinforced the view already expressed by the KMK interviewee, i.e. that: “once the need is identified [by policy-makers], [...] universities of applied sciences are more easily prepared to respond to societal demands, while traditional universities do not feel that they are there to respond to societal demands” (interview 2).

The introduction of the Pact provides strong support to the analytical frame outlined in the third section. The initial solution to the policy problem described in the previous sub-section ran counter a major problem: its dependence for success on rule-takers who revealed themselves as non-compliant. The Pact was therefore designed to remedy this implementation problem and to achieve substantive change: rule-makers decreased their dependency on non-compliant rule-takers and increased their reliance on compliant rule-takers, i.e. Fachhochschulen. The Pact is politically remarkable as there is strong evidence suggesting that increasing students in Fachhochschulen vis-à-vis research universities had been in the past almost impossible to achieve (Toens 2009; Wissenschaftsrat 2000).

Importantly, this section provided evidence that the underlying *process* was along the lines hypothesized in the third section: on the back of clear (negative) feedback stemming from the earlier reform experience, rule-makers purposefully designed the policy in such a way to minimize the “threats” posed by non-compliant rule-takers on policy implementation.

## **Conclusion**

Through the case of German higher education policy, the article provides significant evidence in favour of conceptualizing policy change as the interaction between rule-makers and rule-takers, along the lines proposed by the CPE literature. Indeed, the case study showed that the reforms of the late 1990s and early 2000s fell short of their objectives because research universities (i.e. rule-takers) by and large did not comply with the formal changes mandated by policy-makers. The first part of the case study, therefore, testifies to the crucial role of rule-takers in shaping – in this particular case: *curtailing* – processes of policy change. Synthetic approaches developed in public policy capture the conditions under which *formal* change takes place, but their emphasis on the stages of agenda setting and policy adoption overlooks the crucial question of whether formal changes are followed by substantive ones. Yet, the second

part of the case study also offered distinctive insights vis-à-vis the CPE literature. Notably, the case of the Pact offered an example of how rule-makers designed a policy that remedied the implementation shortcomings of the previous policy arrangement. Through policy (re)design, rule-makers minimized their reliance on non-compliant rule-takers and they ultimately triggered a process of formal *and* substantive policy change.

But how far does the proposed framework travel beyond this case? A suitable starting point to address this question is by looking at countries in which the Bologna process triggered similar responses on the side of rule-takers. Scholars noted a similar pattern of non-compliance among (research) universities in several other countries, such as Italy or the Netherlands (Capano 2002; Dittrich et al. 2004). Yet, in these countries, similar non-compliance was not met by an equally forceful government intervention, along the lines of what the German government did through the Pact. The framework proposed in this article is able to account for such variation through the explicit theorisation of how different types of feedback structure the relationship between rule-makers and rule-takers – a theorisation that was hitherto missing in the CPE literature. Indeed, in the Dutch case, non-compliance was not cause for concern because – differently from Germany – the distribution of students already in the 1990s was such that the vast majority of them was enrolled in universities of applied sciences. This meant that non-compliance on the side of universities would not jeopardise the overall achievement of the reform efforts: employers would access a large pool of practice-oriented graduates from universities of applied sciences and the government could “benefit” financially from a large share of students enrolled in the less costly segment of the university system (Durazzi 2019). Non-compliance, in this case, was therefore not as problematic as in the German case and it did not produce negative feedback and ensuing policy redesign. In the Italian case, non-compliance did not produce powerful negative feedback either. As it is the case across Southern Europe, a path of knowledge-based growth has not been fully embraced in Italy (Burrioni et al.

2020), making the business community less vocal and less concerned about the lack of practice-oriented graduates compared to Germany. Equally, comparatively low rates of enrolment in higher education made the problem of cost-containment less salient than in the German case. Although very cursory, this illustration of the Dutch and Italian cases underscores the theoretical value of the proposed framework in linking theoretically how types of feedback structure the relationship between rule-makers and rule-takers.

This article bears two broader implications. Firstly, by resorting to the early policy sciences literature on policy design, the article uncovered a simple – and yet powerful – tool through which rule-makers might “win” over rule-takers. Indeed, it should not be ignored that as much as rule-takers can exploit enactment gaps, policy design remains a central tool to trigger policy change – and it is a tool that remains primarily in the hands of rule-makers. Rule makers’ ability to drive substantive policy change should not – in other words – be disregarded all too soon.

And yet, as demonstrated by the CPE literature, rule-makers do not always win. In this respect, the article makes a second contribution by specifying how policy feedback structures the relationship between rule-makers and rule-takers. In particular, both positive *and* negative policy feedback should be integrated in models of policy change. Where rule-takers’ non-compliant behaviour produces positive feedback, it is likely that rule-makers’ attempts to rectify rule-takers’ behaviour will have to confront a hostile political context. In such context, it will be difficult for rule-makers to sanction rule-takers’ non-compliance. If, on the other hand, non-compliant behaviour does not gather societal support and generates negative feedback, there will be greater scope for rule-makers to address non-compliance and ultimately prevail over rule-takers. The article therefore provides a theoretical framework with two important features: firstly, its building blocks are general concepts that are relevant to the study

of *any* public policy area; secondly, it is possible to derive from the framework a set of (falsifiable) propositions that can be put to empirical scrutiny.

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## Notes

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<sup>i</sup> ‘University’ refers to both institutional types; ‘traditional’ and ‘research’ universities are used interchangeably; ‘universities of applied sciences’ and ‘Fachhochschulen’ are used interchangeably.

<sup>ii</sup> Toens (2009) identifies HRK-based policy entrepreneurs that promoted a ‘modernization’ agenda along the lines of that advocated by the BMBF too.

<sup>iii</sup> Next to lower transition rates, bachelor degrees at Fachhochschulen have lower per-student costs than research universities, standing respectively at 5,300EUR and 7,000EUR (Gillmann 2018), making the Fachhochschulen option overall even cheaper and, therefore, more attractive from the perspective of public finance.

<sup>iv</sup> The KMK is the designated institution in which ministries of education of the Länder meet and major decisions on higher education policy are taken. It proved particularly important since the late 1990s (Witte 2006).

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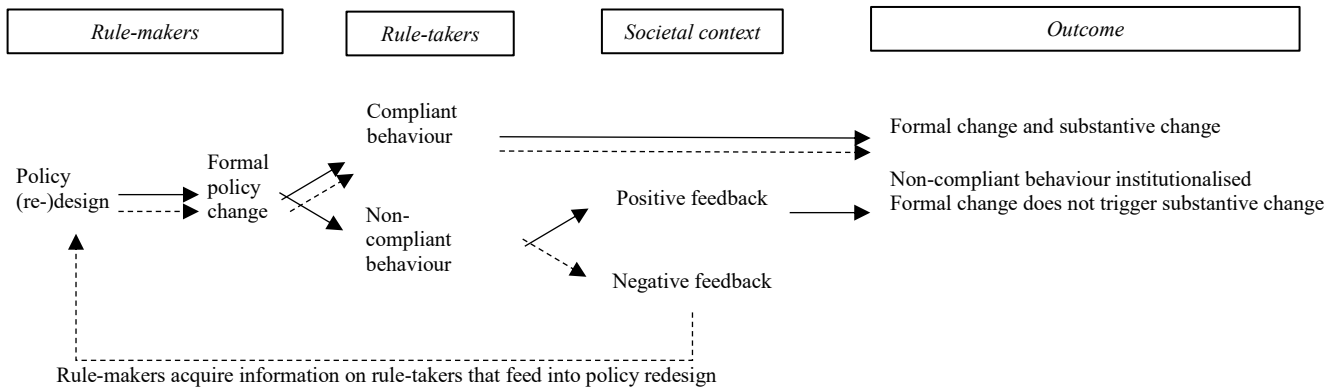
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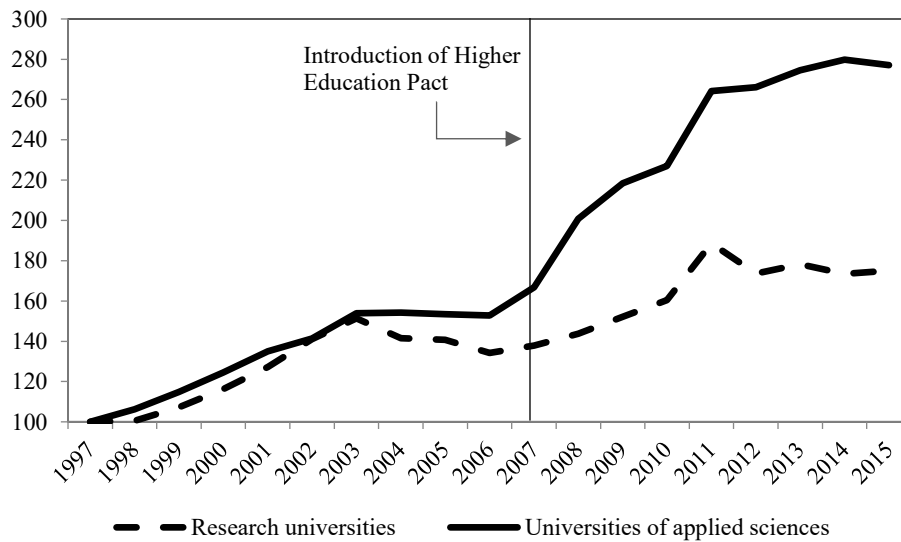
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Figure 1. Introducing an additional pathway in CPE models of policy change



Source: own elaboration

Figure 2. New entrants at universities and universities of applied sciences (1997 = 100)



Source: own calculations based on Destatis (2016)

## **Online appendix 1: Data collection**

To research the case study, I collected evidence from a wide array of sources. These included: 20 semi-structured interviews with relevant stakeholders. In particular, interviewees included policy-makers drawn from the Federal Ministry of Education and Research (BMBF) and the Standing Conference of the Ministers of Education and Cultural Affairs (KMK) (i.e. ‘rule-makers’); senior individuals in research universities and in universities of applied sciences who have (had) responsibilities for their universities’ educational offers since the late 1990s, i.e. individuals who have been directly involved in how higher education reforms have been implemented on the ground since the start of the Bologna process (i.e. ‘rule-takers’); and organized stakeholders – belonging in particular to the business community – who have been significant in shaping the discourse surrounding higher education policy since the late 1990s (Witte 2006). Appendix 2 provides a full anonymous list of interviewees. Interviews have been carried out by the author between April and August 2016. They have been recorded and transcribed in extensive interview memos. Where needed to clarify some of the information or to elicit additional information, follow-ups via email have been carried out.

The interview topic guides asked interviewees to elaborate on three main themes: (i) to identify the main reforms of higher education that took place in Germany since the mid-1990s; (ii) to identify the main actors that were behind such reforms; (iii) to describe to what extent the reforms achieved their objectives. Evidence gathered through interview data has been supplemented and triangulated with additional evidence, including newspaper articles, policy statements, policy reports and descriptive statistics released by organizations belonging to the same stakeholder groups that participated in the semi-structured interviews. By systematically triangulating data, I ensured that the evidence used in the case study is based on at least two separate and independent sources of data. The idea of casting a ‘wide net’ and collecting data through multiple sources is consistent with the systematic process analysis approach used in



the article as it allows to confront rival theories with as much empirical evidence as possible, thereby strengthening our confidence that the evidence can reliably allow us to adjudicate between alternative theories.

I used the data to build a national-level case study despite Germany is a country where education policy is devolved to the Länder. I believe that this is a suitable choice for two main reasons. Firstly, compared to primary and secondary education, the higher education sector is characterized by comparatively larger federal authority, making Germany a suitable *country* case study. Secondly, since the mid-1990s, higher education policy reflected agreements between the Federal Ministry of Education and Research (BMBF) and the Standing Conference of the Ministers of Education and Cultural Affairs (KMK), which represents education ministers of all Länder, ensuring a high degree of coherence at national level in this policy area (Witte 2006, 150).

## **Online appendix 2. List of interviews**

<b>Interview affiliation</b>	<b>Code</b>
University Association (HRK)	1
University Association (HLB)	2
Employer Association (BDA)	3
Employer Association (BDA)	4
Employer Association (VDMA)	5
Government (BMBF)	6
Government (KMK)	7
Think-tank (Stifterverband)	8
University of Applied Sciences	9
University of Applied Sciences	10
University of Applied Sciences	11
University of Applied Sciences	12
University of Applied Sciences	13
University of Applied Sciences	14
University	15
University	16
University	17
University	18
University	19
University	20