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Universities as Foundations
- The New Model of Lower Saxony -

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“Emerging Models of Independence”

Dear audience,

it is a great honor for me, to present a special Lower Saxony model of Independence, thanks to the kind invitation by Professor Novak based on the recommendations of my dear friend Stig Ekman from Chalmers, and thanks to the financial support of the HRK.

Let me first make some remarks about the common characteristics of the German HE-System, so that it is possible. to understand the special example of Lower Saxony.

I.

Common Characteristics of the German Higher Education System

Folie Common Characteristics I

First one must know is, that Germany is a federal state with 16 states, each of them responsible for HE. The System is homogeneous only by tradition and a frame law, which is not very strong.

Secondly the University System of Germany from the 19th century up to now is characterised by the dual status of a self governed academic corporate body on one side and a dependent state institution on the other side .

Folie Common Ch. II

The corporate body was based on the membership of professors, academic, technical and administrative staff and the students. The state institution supported the academic corporate body with all resources needed to perform teaching and research. Up to the seventies of this century the both entities were separated by law, first the frame law of 1974 declared the unity of corporate body and state-institution under the leadership of a rectorate or a presidency.

During the extension of the German universities, beginning in the sixties and seventies of the last century a frame-law was set up by the federal parliament, which forced the member states, being responsible for higher education, to centralise the university administration under the leadership of a rector or a president, who now became as well the head of the academic corporate body as the director of the state-institution. Both institutions were united under the new conception of a university. But still the dualism of a self governed corporate body and a state-dependent institution remained in principle.

That means:

Folie Common Ch. III.

.The whole academic and administrative staffs were employed by the state. The ministry supervised the whole administration of universities. The state-administration set up an amount of rules to administrate the budget and the staff. The last decision to appoint professors is taken by the ministry, universities were only authorised to propose three candidates, and the minister could decide which one was to be appointed.

Universities had no own budget but administrated a part of the state-budget

A state-supervised university system with an input-oriented management.

II.

Changes in the nineties

Folie Changes I+II.

In the Nineties a discussion began to adopt the principles of the New Public Management as a new steering model for universities. These principles are characterised by global budgets including competitive elements, contract management, that means a management not by rules but by aims but out-put orientation, deregulation and flat hierarchies., , out-put orientation and evaluation. The general aim is to strengthen the autonomy of universities. The inset of all resources should be improved by more flexibility to increase effectivity and efficiency. The next consequence step is : Financial autonomy should be accompanied by legal independence. 1998 the frame law opened the door for changes of the legal status of universities by the states.

III.

Lower Saxony Reform Act 2002

In 2002 the Lower Saxony parliament passed a reformact including most of the elements of the New Steering Model, especially global budgeting and contract management. And Lower Saxony was the first state (up to now in Germany)to take the opportunity for a change of the legal status.

Folien Lower Saxony Reform Act

The frame-law allows a change of the legal status for the academic corporate body as well as for the status of the up to now state-institution. It is considered that the legal status of the academic corporate body, based upon the membership of professors, academic staff, students and others, should not be changed. Lower Saxony did not aim in this direction but wanted to change only the status of the university as a dependent state-institution. The corporate structure of the university is so important because of the constitutionally protected right of freedom for teaching and research as well as the right of codetermination in all-academic affairs. It is however not necessary that the state is responsible for the provision and organisation of necessary resources. An independent authority like, for example, a public foundation can better do this.

And this is the way Lower Saxony progressed in the middle of 2002:

IV.

Universities as Foundations

The Lower Saxony University Reform Act of 24th June 2002 presents the opportunity for universities to opt for a transformation of its dimension as state-institution into a foundation under public law as a legally self-administrated public body. That means

denationalisation but not privatisation. Five universities voted for this option and were transformed into foundations at the beginning of 2003

Folie Five of Twenty

- Universität Göttingen
- Universität Hildesheim
- Universität Lüneburg
- Tierärztliche Hochschule hannover
- Fachhochschule Osnabrück.

The dual status of the university as an academic corporate body and at the same time as an administrative body, responsible for the maintenance and advancement of the university as a corporate body, will be unchanged. A supervisory board for the foundation will replace the state supervision: Board members, appointed by the ministry on proposal of the academic senate, will take over the part of the ministry. This transformation however is not the first step towards a privatisation of universities but a paradigmatic step to denationalise universities. That means: Also transformed universities are still under state responsibility. The University Reform Act makes this very clear in its first paragraph. By contract-management the state harmonizes the development of the state und that of the universities. The state is confined to two main core functions:

- Co-ordination of the university system within the scope of the responsibility for the planning of university development of the state
- and
- Responsibility for funding

I would like to emphasize the following points:

Folien Universities as Foundations I. un II.

Foundation and corporate body are not working separately but together for instance in the sense of a **tandem**. Furthermore the University Reform Act carefully respects that the guaranteed self-administration rights for the corporate body are not affected. The foundation only derives its competencies from the state, but the federal state cannot influence the corporate body, since resource administration is not a matter for the state any more. It is emphasised that the foundation takes over tasks and duties the state administrated before. The Reform Act even goes as far as to assign the legal supervision over the corporate body to the foundation.

Universities that are organised as foundations are **not managed as a part of the state budget**, but set up their own budget. Still this budget mainly consists of state funds, especially to cover current cost, third party funds for research and teaching and own resources. Foundations can also have earnings from own assets or

donations. The budget is modelled on commercial and accounting standards for corporations. The application of the rules for public budgets is limited to three exceptions. These exceptions concern warranties and loan commitments, the staff appointment scheme for civil servants and the obligation for advertised bidding.

The economic administration of corporate body and foundation build an entity, which means that there are no separate budgets and no separate assets. Concerning assets a distinction is made between administrative assets used for the current management of the university and the foundation capital as general basis.

Because universities are no longer part of the federal state budget they are not bound to instructions by the ministry concerning the economic management.

The university does not receive allowances but calculable **financial support** regulated by legal rules. The financial support is calculated with determined development and achievement targets laid down in a target agreement (contract). The updating process of this target agreement takes the attainment for the targets as a basis for the future level of financial support.

The **target agreement** is subject to public law and drawn up between state and university. Because of the parliamentary budget legislation this target agreement is drawn subject to an appropriate budget. When the budget passed the parliament the target agreement is an enforceable legal claim as other arrangements for financial support. This provides strong reliability for the university.

The legal form of a foundation as holder of a university mainly is chosen because this form indicates a far more convincing step towards a civil society than any other legal form. There is hope, that a foundation may raise more private capital than a public institution.

An increase of private capital can be seen in the last 50 years of peace and prosperity. Today 2.5 – 3,4 thousand billions Euro are waiting to be left to heirs or alternatively to institutions of public utility. Every year 10% of this incredible sum is left.

Not only testators but also other people again are conscious, that private wealth gives reasons to feel obliged to the public.

Aiming point of fund-raising activities in universities first are the alumni, which can be seen especially at American universities. By the way: The presumption that raising millions of Dollars takes hundreds of years is wrong. That may be right in a traditional university like Harvard, but looking at the list of about 250 universities, I found during a visit in the USA last year that the starting point of strong fund-raising efforts was in the seventies of the past century. 150 universities succeeded to raise a minimum of one Million Dollars. The conditions, especially the tax-conditions, and the cultural background in Europe are not the same like in the US, but nevertheless it is very encouraging, that European universities succeed in fund-raising even under bad conditions. As an example I want to mention the Chalmers University in Gothenburg/Sweden. Even in Sweden, where donations have not any influence on

the taxation of the donator one can find a readiness to spend funds under the condition, that not the state but a foundation is holder of the university.

The Lower Saxony model of universities as foundations **is set up under the condition** that the state is responsible for the basic funding in the same way like for state-organised universities. Fundraising of the foundation or other additional income is determined to improve the budget of the university. So it is crucial that the state funding cannot be deduced referring to supplementary income of the foundation, including the interest-rates of the foundation -capital. Law guarantees this.

To be sure that universities hold by foundations will get the same basic funding from the federal state like state-organised universities, it is necessary to set up a common formula-funding or in any case a funding based on common criteria or indicators. Up to day I unfortunately am missing such a formula, which after my opinion is crucial for the model, but I know, how difficult it is, to develop such a formula and to push it through under the given political circumstances. But other states are practising it.

One of the most important principles of the New Public Management is the joint responsibility for tasks and resources. Therefore the Reform Act authorises the Lower Saxonian government to transfer **the real-estate property to universities** as basic capital of their foundations. The foundations will become owners of those estates and buildings, which are needed for their performance. Regularly those estates will be transferred, which are used by the universities up to the day of the foundation-establishment. But the Ministry of Finance will achieve a strong check-up, whether the used buildings really are needed, if not, the estate will remain property of the state. Together with the establishment of the foundation the responsibility of the state-administration over the estate will end. Probably there will be regulations about the passing over from one administration to the other, so that double costs can be avoided. As a rule the foundation will solve its new tasks by outsourcing one after another. To manage this the new foundation needs time.

Universities especially as foundation need a high reliability of planning. That means, they want to be sure, that they can trust in the state funding for at least a middle-distance of 4 - 6 years. But this is a problem not easily to be solved by the state. One of the difficulties, the state is confronted with, is the divided responsibility between member states and federal government concerning the financing of the university-buildings. But this is a special German problem, which is not to be discussed on an international level.

To avoid non-calculable risks of maintaining own buildings the followings steps should be undertaken during the process of establishing a foundation:

- Definition and precise denomination of the estate to be transferred
- Commitment of the state to complete the resources, if the university is in a phase of development, extension or consolidation
- Valuation of the demands concerning the redevelopment of buildings in the near or middle-distance future
- Valuation of the resources needed for the maintenance of the buildings.

Nevertheless the state-government will not be able to give more than political commitments. The concrete steps have to be negotiated when the regular contracts between state and university/foundation are arranged.

Lower Saxony could not effort to give any money as basic capital of the foundation. So the transferred real estate is forming the only financial stock of the foundation. The basis is to be consolidated by endowments of external donators, if the state itself even in the future cannot effort to spend money for this purpose. The foundation itself can decide whether a part of the normal state funding should be used to build up a basic capital. To be sure that the foundation really does not need the state-funding to cover the running costs the earned funds have to be put aside for three years before being used to increase the basic capital of the foundation.

The basis of the foundation, especially the transferred real estate, is to be obtained without being used as a security for a bank credit. The Ministry of Finance can allow exceptions. A shifting of the real estate is possible without permission of the federal state, when being done in the framework of a well-done management. That means, a sale of a building is allowed, when the proceedings at the same time are used to buy or establish another building.

As pointed out before universities will have **the right to employ civil servants**. This means that they are no longer subject to public human resources plans. Universities can operate their own HR plans independent of the state. This applies to all employees of the university. All employees are no longer employed by the federal state but by the foundation.

There is however a boundary set by the Reform Act:

All tariff-agreements that are applicable to public employees also have to be applied to all employees of the foundation university. The foundation is obliged to

1. acknowledge all contractual rights and to join a state leded employers association which is a member of the federal association of all German member states
2. secure the rights to additional pensions and surviving relatives pensions. The foundation has to create and maintain the legal prerequisites required by the federal pension authority.

For allowed arrangements outside the agreed scale rate the rules of the public tariff partnership apply. These rules are applied by the foundation in its own responsibility, without paternalism of the state.

Let me come to the following

V.

Summery

[.Folien Summery 1-5](#)

1. First of all the state expects universities as foundations to use their autonomy to manage their resources more effectively and economically. The role of the state is limited to establishing target agreements and controlling the efforts. Furthermore autonomy is a value in itself, self-responsibility leads to more motivation and innovative power.
2. Secondly the legal status as a foundation under public law is chosen because more private and social funding is expected. The state especially expects the corporate identity to be improved by the alumni but also by the local and regional business. Beside this in Germany the legal status as a foundation offers better conditions to save taxes than any other legal status.
3. The reform-act does not force universities to be transformed into foundations but offers an option .The senates of universities have to apply for this option. The decision of the senate has to be taken by two third of its members to enhance the acceptance of the foundation – model.
4. Though the state is no longer holder of universities as corporations the state is liable to protect them directly. The state cares for their independency and freedom by setting up the rules by law concerning the rights and the duty of the members and the corporate community. Universities as foundation understand themselves as a unit of corporation and foundation.
5. The ability to engage their staff including the appointment of professors without any state-influence will give universities as foundations more flexibility by managing their personal resources .To increase the acceptance of the foundation the reform –act considers the context of public wage-scales should be untouched. The governments hopes, that the model of universities as foundations will find many imitators .A strong community of legally independent universities would make an own, independent tariff-union possible, which could create special science-scales due to the structure and tasks of universities first time in German history of wage-scales.
6. Universities as foundations will appoint their professors and management by themselves without any state – influence.

Apart from the fact that the federal state is not in a position to provide sufficient foundation capital, the whole model is consequently formed through and through. By the way, just a few years ago it was beyond imagination that the state would transfer assets worth billions of Euros to legally independent foundations. Also the imagination that the state supervision is replaced by other steering instruments, namely target agreements and controlling of the effects, already has caused some withdrawal symptoms on the public level. But the process is started and not reversible