

## Notes on the Corporatization of Public Universities

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The corporatization of public universities is one of the changes that have become worldwide in the search for means of retaining the essential *publicness* of universities that are owned and were once operated by the state like any other state agency, but to instill in them a greater measure of managerial efficiency, responsiveness, and scholarly quality. Corporatization is a lessening of governmental control and a move in the direction of greater university autonomy. However, governmental control over public institutions is a complex matter, and may be best viewed through looking at the very separate matters or issues over which control or influence might be exercised—or conversely might be given over to, or at least shared with—some sort of publically-accountable but nonetheless *partially private* governing board. Eight such matters important to the operation of a public university, the authority over which is potentially able to be devolved, or delegated, from the state to the university or its governing board are listed below, (although others might be added or expressed somewhat differently).

When a state is considering a move in the direction of greater higher educational autonomy—that is, moving the public universities from state agencies to public corporations—such a policy needs to specify with some precision which of the several crucial dimensions of institutional decision-making the state is preparing to shift in the direction of greater institutional autonomy. In other words, the degree of institutional autonomy can vary by the degree to which the state, as opposed to the institution, controls, or cedes control over, for example:

1. The ability to determine and to alter the institution's fundamental mission and academic degree programs: that is whether it is to be a classic research university, a specialized university (e.g., medical or engineering/technology), a degree granting college featuring bachelor's (and perhaps masters but not doctoral) degrees, or a short-cycle college giving certificates or sub-bachelors degrees.
2. The ability to own and dispose of assets, including property, buildings, and endowments, separate from the state.
3. The ability to incur debt (i.e. issue bonds or other obligations) without permission of the government (and of course, without the state incurring any financial responsibility to repay such debt).
4. The ability to sue and to be sued – again, without the state assuming financial responsibility for the torts or judgements against the university (e.g., in the event of a university hospital sued for malpractice).
5. The ability to allocate and reallocate, as well as to *carry over* (i.e. from one fiscal year to the next) tax funds appropriated by the government for university general operations. (This would not preclude the state allocating funds for specific purposes for which the university would be held financially accountable, as in any other grant or contract.)

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6. The ability to enter into contracts (e.g. for the purchase or sale of land or facilities or equipment) without government prior approval).
7. The ability to hire and fire faculty and staff and enter into employment contracts separate from state civil service laws and regulations (i.e., the institution as its own employer).
8. The ability of the institutional governing board to appoint a chief executive officer (president, vice chancellor, or rector) without approval from the government.

In short, an otherwise public university can, at one extreme, be *like any other state agency or department*—subject to the authority of the ministry and the government on all of these dimensions—or it can be a *fully public corporation*, or, depending on the matter over which state authority is to be complete or very limited, *virtually all shades in between*.

In the United States (in which all public colleges and universities are under the authority of states rather than of the national or federal government), the greatest autonomy is enjoyed by those universities that are constitutionally autonomous: that is, established within the state constitution and thus changeable not by any act of state government, but only by an amendment to the state constitution. Most of the great Midwestern and Western universities—Michigan, California, Wisconsin—have such constitutional autonomy, which differs from a degree of institutional autonomy that might be given within the legislation that established a public college or university (that is, without constitutional basis) and which can be altered by a simple act of the same government. By contrast, the public colleges and universities that enjoy the least autonomy are those that have been established by an act of the government, like other governmental entities and agencies, and that have been given no special degrees of autonomy in that legislation that would differentiate them from other agencies.

The State University of New York, for example (of which I was the chancellor, or chief executive officer, from 1988 through 1994, and which contains all of the public colleges and universities in the state of New York that are outside of New York City, or some 59 colleges and universities with enrollments totally more than 400,000) is not constitutionally established, but rather established by legislation—and therefore changeable by legislation. The establishing legislation established the system is as a *special limited public corporation*, subject to most of the laws and limit of any other state agency (e.g., unable to hold assets outside the state, subject to the same public finance laws that governed the expenditures of all other state agencies, and with all faculty and staff considered employees of the state, the employment contracts of which are negotiated and enforced by the state office of employee relations, rather than negotiated by the governing board). At the same time, the faculty employment contracts, while negotiated and enforced by the state, are distinct from other public professionals in recognition of the uniqueness of the academic profession. And since 1987, many other changes have been made in law granting the State University much greater degrees of autonomy, including, for example, the ability to reallocate the state operating appropriations among the separate institutions, and among the major budgetary purposes, as well as to carry over unspent funds from one fiscal year to the next—and most recently, limited authority to establish institution-specific tuition fees. The State University still, however, is not its own employer, does not have the ability to negotiate employment contracts, to own or dispose of property, or to be responsible for its own torts and other legal obligations.

At the same time, the state university of New York, like many other US public (state-owned) colleges and universities that are not fully legally autonomous, has other legislatively-

established, university-affiliated, non-profit public corporations or foundations that allow the public colleges and universities, for example, to: (a) receive private gifts and hold endowments; (b) receive US federal grants and employ staff outside of state civil service laws and most other state finance regulations; (c) operate auxiliary enterprises for the provision of dining operations and student residences; and (d) construct and rehabilitate facilities.

### **Governing Boards**

A key to the move toward greater university autonomy in all of the OECD countries is the establishment of either system-wide, or institutional, governing boards that have the very critical and delicate task of representing the needs of the public colleges and universities to the government—especially for operating and capital revenues, but also for additional moves in the direction of ever greater autonomy—but also of representing the needs of the larger public to the universities: for example, maintaining efficiency within enterprises (i.e. universities) that do not inherently understand, much less prize, productive efficiency, or to embrace quality teaching of first-degree students over the natural inclinations of professors to valuing research and scholarly prestige. In short, the granting of greater autonomy to institutions does not simply mean greater autonomy just to members of the faculty, who already have extraordinary degrees of individual freedom, nor just to university presidents and rectors, whose instincts may not always be precisely in accord with public needs, but rather to *institutions and their governing boards*, which must balance the legitimate values of the scholarly academy with the equally legitimate, but often conflicting, needs of businesses, the people, and the state.

A very important follow-up issue, then, is whether the government is preparing to cede authority to the governing board or governing boards of individual universities—in which there will remain enormously important between-institution issues that must remain in the hands of the government or ministry—or whether the government is preparing to cede some authority to a *system-wide* governing board. A system-wide, multi-campus governing board—which is how most US public universities are governed—then places the all-important between-institution issues such as the allocation of missions, programs, and degree levels as well as the vital allocation of enrollments and operating funds in the hands of a governing board, and makes the governing board more like an apolitical ministry, thus probably ceding even greater autonomy to the university presidents and the faculty deans of the separate universities.

### **Advisory Boards**

As an alternative to ceding legal authority to an institutional or system governing board and making such a governing board able, for example, to execute legally enforceable contracts, to hold assets, and to sue and be sued—in short, a true legal person, or public corporation—a government of higher education ministry can create advisory boards, either by appointment of by service *ex officio* (e.g. members of the government or parliament itself, or heads of universities, or heads of faculty or staff unions), to recommend policy, for example, on accreditation, or on the establishment of or change in tuition fees, or on changes in institutional mission. The most famous of these may be (or may have been) the United Kingdom's University Grants Committee, which effectively allocated the state's university revenue among the British universities and was allowed to have this extraordinary influence because its decisions were perceived by the government to be generally fair and wise—and depoliticized what would otherwise have been a politically contentious issue for the governments in power. Many states in the United States have established such entities, often called higher educational planning boards or councils, to advise on e.g., proposed alterations in individual institutional missions, or on the allocation of revenue among the several public institutions.

Such an advisory body differs from a public corporation governing board in that it has no legal authority over its recommendations—however officially the government may have given the advisory board its remit. It can, however, have very significant influence on governmental policy if the government perceives that it is to the government’s advantage to follow such recommendations, either because the government perceives that these recommendations are more likely to be for the good of the institution and the state, or because the decisions to allocate and reallocate precious state revenues or precious higher educational missions is likely to be politically contentious.

**Questions for Research on the International Comparative privatization or corporatization of public Colleges and Universities**

1. What are some examples within the past five or so years of states attempting to shift or cede authority either to institutions or to institutional or system governing boards, or to non-corporate advisory bodies?
2. To what degree can these entities be called *public corporations*: that is, legal persons, able to execute contracts, hold assets, and to sue and be sued in courts of law, separate from ceded over to these public corporations, and which has been retained for final authority in the government or ministry?
3. What are some recent examples of high-level advisory boards—short of true public corporations—by which the government has attempted to devolve not necessarily legal authority, but substantial influence over its public colleges and/or universities?

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