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University in the Light of the Act on Higher Education and Science of 3 July 2018.

Selected Issues

Abstract

The Act on Higher Education and Science of 2018 considerably restricts the internal autonomy of universities. Management is vested in rectors and university boards while neglecting the role of faculties, which, if established in the first place, have been reduced to entities of no significance. The rector, as the exclusive managerial body of an institution, and the university board, representing mainly external stakeholders, as a body supervising its economy, have been vested with such an extensive authority that this may result in hindering the development of multiple academic disciplines, especially those in the area of the humanities, but also in the field of social studies in many cases.

Keywords: university models, university autonomy, university governing bodies, university structure, university board, university statutes, faculty

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Introduction

My response to the invitation to write an opinion on the new act on higher education and science was positive as I believed that it was worth taking part in a debate on that matter, even though the legislative procedure is now at its final stage.² This means that there is virtually no possibility to influence the position of our public authorities; however, the voice could be taken into consideration in the future. When I read carefully through the Ministry of Science and Higher Education, I had further serious doubts. Why write about it when all academic organisations representing the authorities of higher education institutions, including vocational institutions, had come forward with positive opinions, and even words of praise? None of the official entities whose establishment is required and guaranteed by provisions of law, and I mean also the governing bodies of higher institutions as organised in various conferences and other structures of similar character, had identified any problems, which have to occur, if only even statistically. There are letters of praise only, so is it really that no one sees any risks whatsoever? Is the law to create an academic paradise? One cannot help but ask the following question: have not any critical voices been submitted to the Ministry? Should not the polemics have been revealed to the public? Was not there any? A similar objection could be raised against me as well; I did not participate in the Science Congress, I did not write to the Ministry; so why am I asking so many questions today and have such major doubts? I have signed one of the protests lending my support thereby for the actively expressed postulates for fundamental changes in the bill.

Given the brevity of this article, it is not possible to address all important issues. However, not only due to an insufficient amount of time but also on account of the expertise required in many cases, for which I simply lack a sufficient background. I do not aspire to have exhausted the argumentation, nor do I maintain that only such arguments as I have presented exist. Neither do I claim that only 'my conception' exists. Nevertheless, from a perspective of the professional experience of a research and teaching academic staff member and the capacities of deputy dean

² This text was written at the turn of June and July, i.e. in the course of legislative proceedings, therefore I used the text of the draft of the Law on Higher Education and Science, the text passed on to the Senate.

and vice-rector I have held, I believe I am sufficiently competent to enter into a debate on many university-related matters.

On a University's Governing Bodies and its Structure

A university is a research and education institution, interacting in both functions with the surrounding environment; the mutual interaction is a necessary element of permanent formation of the university, of its development and research capabilities, and capabilities for educating people in specific professions. A university is also an institution shaping the general culture and civic attitudes.

To me, it is a truism, also as the 'ideological' foundation of a modern university. I am an advocate of such a university. It is a necessary entity in every society, making its existence and development possible. In my opinion, university of this kind should operate also in contemporary Poland since it is necessary for the preservation and development of culture, including national and regional cultures. University treated as an institution that shapes culture and offers education in many intangible areas is not in contradiction with the idea of an institution conducting research and providing education in the scope of disciplines that are decisive for the development of the state's economy, including its innovativeness. It should be noted, however, that economic development requires a proper cultural surrounding, and it would not be efficacious to diminish the role of universities in that respect.

A question arises on how the bill in question regulates the functions of university and whether it can ensure that universities perform the functions as indicated above. The authors of the bill do not make it easy to find an answer, the explanatory memorandum for the bill does not contain any guidelines to direct a reader so that he could find out about the university model preferred by the drafters of the bill. The memorandum only includes a description of the regulations adopted. The manner of regulating university operations set out in the bill does not unambiguously determine its model either, which is good insofar as it creates an opportunity for it being formed as the bill is applied in practice. I hope that in the direction as indicated above, although the likelihood is very slight.³

I realise, nevertheless, that to many contemporary scientists, the idea of university as set out above, based on the principles of the so called Humboldt's university, need not mean a solution that is adequate to the needs and expectations of today.

³ It should be noted, however, that the draft filed with the Senate was directed at combining universities with the economic environment to a greater degree than the final regulation. Nevertheless, this change does not mean that the conception of the reform has considerably changed.

However, should leaving such qualities as autonomy, departmental structure, and participation of the academic society in governing the institution deemed anachronistic, unrelated whatsoever to the needs of the modern world? Or should they seem so if perceived from the perspective of a statutory duty to undertake actions towards innovativeness of economy (Article 1 of the bill)? Put short and with certain oversimplification, can a modern university perform functions that are not immediately translatable into economic effects? And further, can it perform functions requiring the state's financial support, with the effects of its activity consisting in shaping the broadly understood non-material culture? It is also important to ask who should decide on the direction of the activity pursued by universities. Which university bodies and to what extent should external stakeholders have an impact on the research and education activities of a given university?

In essence, the question is about the idea of university that would be adequate to the goals set for science in Poland, i.e. beginning from Humboldt's idea through entrepreneurial university to the so-called socially responsible university. The grounds for the first model are the freedom of scientific pursuit carried out by outstanding scholars and other academic liberties as well as the unity of scientific research and education.⁴ The second model emphasises the independence of the university, the flexibility of its structure from which faculties have been eliminated and research and education centres introduced instead.⁵ However, this form of organisation must be based on a consensus in the academic community. The nominated collective bodies, whose need of existence is not questioned, hold only advisory functions. Moreover, the sources of financing are diversified and include private funds in addition to state funding. An entrepreneurial university is a university based on knowledge which it can utilise for the benefit of external stakeholders, i.e. briefly speaking, by meeting market needs. Such a university is thus an economically profitable institution as it is capable of independently satisfying its financial needs and the scope of state support is thus limited.

Finally, the most important feature of a socially responsible university is, from the perspective of the present topic, the ability of an institution and its surroundings to understand the needs of one another and to collaborate accordingly.⁶ University is no longer an institution carrying out research for the benefit of the external environment, but also one utilising the opportunities to undertake activities in any sciences whatsoever, i.e. not only those capable of practical application. The ethos of pure

⁴ K. Leja, *Zarządzanie uczelniami. Koncepcje i współczesne wyzwania*, 2nd updated edition, Warszawa 2013, p. 72.

⁵ Ibidem.

⁶ Ibidem, pp. 202–203.

and applied science is of equal significance. In such a university, collective bodies, i.e. the academic community, gain greater influence on the direction of management, and the position of rector becomes restricted. The activities pursued by a university depend to a large extent not only on the external stakeholders but also on the academic community.

Without going into further details, I can assume that it is the vision of modern university that corresponds with my idea of its role as a research and education centre. One that acts, at the same time, on the grounds of the autonomy principle that is necessary for research and education activities to be carried out properly. An entrepreneurial university does not fulfil this role – neither as a research centre, nor as an education one. The main reason behind it is being tied by external interests, which can often lead to being dependent in the choice of research fields on the aims of external stakeholders. This threat is particularly real in the event of a low level of public funding of the university. In such circumstances, applied sciences will dominate. Other disciplines, on the other hand, will be limited in their capacity for development, which in turn may result in their atrophy.

Summing up, the question arises as to which model of university the bill sets out to implement and what can the consequences be. This requires an analysis of its particular provisions. The memorandum attached to the bill fails to indicate the aims that the legislator intends to achieve, nor does it bring us closer to any specific findings. Similarly, several provisions in the earlier part of the bill only do so in general terms and rather for propaganda purposes. Thus, there is no way to settle this question unambiguously. The memorandum, however, offers a clear and detailed negative assessment of the state of Polish science and education.

The questions about the type and character of the functions ascribed to university in the bill and resulting implications stem from the fact that many different matters decisive to the functioning of universities have now been regulated in a manner that is different to that hitherto adopted. This pertains above all to universities' governing bodies and their organisational structures. For they are of paramount importance to the direction of the reform and, subsequently, to the management of universities.

The bill eliminates the current structure of the basic units of a university, i.e. faculties, without establishing new ones instead, although a university's statutes may provide for a basic unit, which could be a faculty. As for university bodies, the bill provides for three mandatory bodies. These are: a rector, a senate, and an entirely new body – a university board. The regulations adopted mean that the bill almost entirely departs from the traditional university structure.

The establishment of a new body, i.e. a university board, which is to be a representative of the stakeholders that are external to the university, is fundamental to

the concept of the Polish university. The bill provides for a special competence for the rector, whose position is asserted by a general presumption of their competence. The position of the senate, in contrast, has been substantially limited.

A university board is a body composed of between 6 and 8 members and the president of the student council. What is important is that persons from outside a university's community will make up a minimum of 50% of the board members (excluding the president of the student council). This way, the bill establishes a body of a very peculiar composition. This will have a considerable impact on the decisions taken by it since presumably the specificity of a given university will be unknown to at least half of members of the body. Moreover, provided that the composition of a given board meets only the minimum statutory requirement, one cannot help but ask at least two questions. Firstly, about the implications of the decisions made by a board whose composition is dominated by those from outside the institution's community. And secondly, what will be the role of the president of the student council and what implications may it have for the activity and development of the university.⁷ The existence of such a body a serious threat to the functioning of a university understood as an institution that carries out functions defined much more broadly than merely searching for new, economically profitable research and education programmes. Therefore, it is free to perform basic research and has a real ability to exert a wide cultural impact. It is real all the more given that university board has been vested with very serious competences. It plays a decisive role in the rector nomination procedure since it puts forward candidates who are only evaluated by the senate providing its opinion, and the choice is made by a panel of electors, and, put briefly, controls its economy. It should be stressed that such regulation of the competence of the board, being essentially a body foreign to the institution, is a form of implementation in Poland of the model of entrepreneurial university, i.e. one acting for the benefit of external stakeholders. This direction of the university reform will be of fundamental importance for the Polish humanities and social studies. If the criterion of sense of its existence and level assessment becomes primarily efforts aiming at satisfaction of economic goals, the above groups of university disciplines become less important, or even hindering Poland's development. This technocratic approach to university will have negative implications also for the development of science and technology as no scientific discipline can exist and develop in a cultural vacuum. If the regulation I have discussed above is coupled

⁷ It should be noted that the draft submitted for consideration by the Sejm mentioned a different board composition as the act required a minimum of half of board members to come from outside of a given institution. This would entail a possibility of adopting motions by the board with the majority from outside the institution and actually a full dependence of the university from those external to it. This would restrict its autonomy considerably, or even entirely in certain specific cases.

with a technocratic approach to the assessment of the academic record of scholars and academic literature, Polish universities will undergo a serious crisis within the next few years, and their restoration will require decades of hard work.⁸ I think that a good point of reference for appreciation of the significance of the problem is the efficiency of education in primary and secondary schools. It is also worth considering the question of measurability of the criteria of academic work in the humanities and social studies versus applied sciences.

The functions vested in the university board it similar to a certain degree to a supervisory board of a trade company. A university is not a company and it need not be explained that it should not be managed as one. And this is true regardless of what kind of universities exist today in Poland or of what kind of university will be established in the future. In my opinion, a university should always be viewed as a scientific institution rather than one acting as a quasi-enterprise, although one with social utility always being at the core of its activity. The social utility of a university (let me stress once again: a university, not an institution of a different type) has little to do with business and efficiency as measured by performance in that area. Nevertheless, there are criteria falling outside of this category, which serve to determine the social utility and concern above all the humanities and culture *sensu largo*, and social studies as well.

This is not to mean, however, that a university institution is not obliged to act rationally, including rational administration of its funds. Also, there are no obstacles to the cooperation with business enterprises, and such collaboration would even be desirable in areas which make this collaboration naturally possible. I do believe, nevertheless, that the establishment of university boards and entrusting them with such serious competence as those set out in the bill is not the right solution.

Strengthening rector has been often firmly postulated in recent years, and this may be the right direction to follow. Yet, there are doubts over what shape such strengthening should take. According to the bill, a rector in particular represents the institution and governs it, proposes a draft of the statutes and a draft of the institution's strategy – which are then adopted by the senate, appoints those holding managerial positions in their institution and dismisses them. These several competences demonstrate how large the scope and the significance of the rector's authority is. Undoubtedly, the rector together with the board, which, as should be stressed here, is the only entity entitled to enter a candidate for the rector's office in the election, hold a virtually unlimited power.

⁸ I will not elaborate on this issue here as it is too broad a subject considering the length of this paper. Nevertheless, it should be clearly stated that it is of fundamental importance to academic work.

Thus, the bill has adopted a centralist model of university administration, but no strong arguments to justify that have been provided. Looking for them in the bill will be in vain. On the other hand, various theoretical studies can be referred to concerning the development of the idea of university. Looking deeper for the sources of the Polish legislator's reasoning, it may be assumed that it alludes to the flexible structure idea. A flexible structure would then be one of indispensable elements of a higher-education institution of this new type, i.e. an entrepreneurial university based on knowledge, which utilises the knowledge-based organisation paradigm.⁹

An analysis of the bill confirms that certain elements characteristic of that concept have been applied. Among these elements are single-person management performed by the rector and a flexible internal structure, not specified by statute and, at least theoretically, left to the senate's discretion. However, it does not appear realistic for the structure of a university, which in the Polish conditions must be categorised as a large institution, to be limited to the one covered in the bill.

Thus, the structure will be regulated in a university's statutes, which is a document of great formal importance. Statutes are an act of internal law, subordinated entirely to the master act. As a consequence, the position of an institution's bodies appointed under their statutes is low, especially when compared to that of statutory bodies. This may be of significant practical importance in the relations with the rector and the university board. It should also be remembered that rectors enjoy the privilege of presumption of competence.

In accordance with the authorisation granted by the bill to be regulated by the statutes, the rector will likely appoint deputies, which will not serve to weaken his position as such deputies will act upon the rector's authorisation at all times. In this respect, the university management system will be very similar to the current one.

A rector can appoint, as was proposed in the initial period works on the bill, for instance, proxies replacing today's deans, or simply deans. I believe rectors will have to do that as there is no other practical way to manage the institution. So, there will be rector's proxies, and perhaps it would be good to consider appointing deputies to such proxies since, similarly to the current dean and deputy dean, after the act comes into force, the scope of duties of the rector's formal successor will not change and he will not be in a position to fulfil those duties alone. And perhaps will not be willing to, all the more given such a low status.

In summary, a university is not an enterprise driven by economic calculation, and besides rectors rarely have any background in business administration. A rector is a specialist in his own discipline, and as such, is not prepared to assess the

⁹ K. Leja, *op. cit.*, p. 158.

specificity of research work in other areas, particularly where they belong to entirely different research traditions, such as sciences and the humanities together with social studies. Therefore, decentralisation of competence in favour of deans managing distinct organisational units and vested with a certain scope of authority, allowed – under the previous act – to maintain and rationally utilise the available scientific potential. Faculty boards were also of considerable importance in this respect.

Under the proposed bill, the rectors' position gains in importance, which means that their responsibility increases accordingly. Not only that under the applicable law, but also that expressed in the opinions of their institutions' staff and students. What I mean above all is the assessment of staff members, whose visions of the role of their university and research activities are a result not only of what we call interests, but also of the differences among the disciplines they pursue. These difficulties and, as a result, the scope of actual responsibility will be coupled with additional problems relating to the actual financing and activity of each institution's board, which will force the direction of both academic research and choice of education programmes in line with the interests of the market which it will represent.

Lastly, an analysis of university governing bodies and university organisational structure should take the position of the senate into account. This body, being a representation of various groups of the academic community, adopts, *inter alia*, the statutes and the institution's strategy; it also appoints and dismisses members of the institution's board, and issues opinions on the candidates for the rector's position. It should be recalled that rector's candidatures are put forward by university boards, and draft statutes and strategies are submitted by rectors whereas university boards give their opinion on these drafts. Furthermore, the senate is authorised to evaluate its institution's performance and draw up recommendations for the board and the rector with respect to the tasks performed by them respectively. Senate's competence can be of greater importance insofar as it concerns the statutes and the strategy, *i.e.* in cases where it has some authority at least formally.

It may be assumed that with such balance of competence as set out in the bill, university boards, rectors, and senate will have to cooperate. Otherwise, there is a risk of conflict. The rector gains a dominant position only after the statutes and strategy have been adopted.

The bill does not provide for the establishment of faculties, but does not rule them out either. Thus, it liquidates the classical organisational units and the bodies they have featured so far, *i.e.* deans and advisory faculty boards. It is precisely the faculty and its bodies that determined the specificity of the university structure, enabling the preservation and rational collaboration among the various communities, and making it possible to utilise their scientific potential. The new regulation entails a complete centralisation, as even though it provides for a possibility of

creating various governing bodies, the statutory scope of authority of the bodies expressly established by it determines the scope of competences of the bodies created under university statutes. A secondary position of the faculty has also been unequivocally recognised by delegating the current authority of faculty boards to confer academic degrees to the senate. The senate being overloaded is not so much of a problem; rather, it is the meaning of this solution. The fictitious character of senate's decisions in this respect is terrifying. It is even difficult to imagine a discussion over a doctoral defence procedure or evaluation of a habilitation procedure in the likely event that there are no experts in a given area among the members of the senate! Can such a regulation contribute to improving the quality of academic dissertations, which is so much referred to in the explanatory memorandum? The defence of a dissertation will be conducted before a committee consisting of specialists, but the decision on awarding a degree will be taken by the senate, from which such specialists will be absent.

In what light does it place faculty committees and all academic staff at large? Faculty board meetings at which the conferment of an academic degree has been voted upon have often been preceded by a discussion over the academic value of a given dissertation, over the reviewing principles, and over the course of the defence, etc. The regulation adopted in the bill will result in an increase in the negative aspects of Polish science.

When analysing the bill in terms of the regulations concerning universities' structure and the competence of their units and bodies, I was trying to understand the reasons why the Ministry decided to abolish the solutions existing hitherto. I have dismissed the idea that the aim was to facilitate forming research teams as I cannot see sufficient grounds for such reasoning given the existence of faculties and chairs. My personal experience as well as observations made mostly over the last ten years tell me that regardless of one's age and professional position, one can seek financing of research and create research groups successfully. In neither case is it necessary for chairs' heads to engage or take any formal action. I could not find any explanation to my question in the explanatory memorandum. What I have come across, on the other hand, is that the bodies being named in the bill and their number being limited will result in their positions being strengthened. What is characteristic, though, is that these are university central governing bodies. The bill does not provide for any other body, although it allows for it being established by way of an institution's statutes.

It has been commonly claimed for many months now that some group of specialists is drafting model university statutes. It is unknown whose initiative it is. Is it the Ministry that intends to support the, immature in their self-governance, Polish universities? Or is it an initiative undertaken by a group of universities? If

it were actually the Ministry's initiative, then it would follow, in my opinion, the Polish practice of drafting model statutes and bylaws. For they have accompanied subsequent generations of Poles. Reaching back to the period of my studies, and also following years, I remember the model bylaws for municipalities created following the administrative reform in 1975. One could understand that as it was perfectly in line with the essence of the political system of the time, but today's approach to self-governance should be entirely different. However, the self-government institutions, notably local governments, were supported with model bylaws even after 1989. Perhaps a certain degree of uniformity is desirable in this case. If, however, the model statutes are being drafted by representatives of some universities, such an act would be a perfect example of covert team work. No specific information on such works has leaked to the academic circles so far. It's all similar if it were the Ministry's initiative, though. All in all, regardless of who is engaged in the drafting of such statutes and on what terms they are acting, the atmosphere surrounding this matter is highly objectionable. And quite unnecessarily so.

On the Unity of Research and Education Activities

The principle featured in the title of this part of the article is of paramount importance to the preservation of the university tradition. In my opinion, it is decisive for the specific nature of university, which being a research centre is at the same time an educational institution. An academic career is one's own research and education. But the bill is based on a different assumption. This new conception of university is to be 'crowned' by didactic professorship.¹⁰ One can also mention the 'Didactic Initiative for Perfection' and may end up asking: what does a university mean today? Students are to be educated by didactic professors who do not publish papers, do not attend conferences?! So perhaps, why not return to the idea of law schools instead of law faculties? 'Professor-scientists' will be left a considerable amount of time for research work, students will be educated by didactic professors, who will perhaps be recruited from among those who, for various reasons, have not reached the specific thresholds of their academic careers, and so by simplifying and lowering the cost of university education we will surely create a new quality. All the more so if we utilise the 'Didactic Initiative for Quality'. This should eventually allow us to create university anew. This will be an ideal university, one which will be certainly featured among the first one hundred in the Shanghai Ranking.

¹⁰ In the course of the legislative procedure, the regulation was removed. However, the idea should be brought to attention in order to make it possible for one to realise what solutions may be proposed.

Concluding my doubts, I will allow myself to ask a somewhat perverse question: who will pay for the luxury of double staff? Teaching will be cheaper, but the whole?

There is one more important issue. It's the question about the reasons for the abolishment of the postulate for students' contact with their professors, which until recently was an important condition for the quality of teaching. This condition, often difficult to meet, acted nevertheless as a measure of the actual value of an institution. At least looking at it from a university's perspective, which should function not only as a research centre. It should also offer top-level education, and it is precisely this academic status that determines the specific character of university studies. It also determines the difference between a university and other higher education institutions. It is hard to understand the rationale for introducing such solutions.

Does this idea not result from too many teachers at higher education institutions and too few students at the same time? Will academic staff work only at a faculty of law/law school or also outside of it, in multiple places, for which they will surely have a considerable amount of time in the new conditions? And maybe the actual goal is to 'get rid of' time-consuming lecturing to students, particularly burdensome over the last years on account of the excess of administrative duties. Admittedly, this excess of administrative duties interferes with systematic, peaceful academic work in particular, but many of those 'ideas' could be abandoned after all!

In conclusion, would it not serve our students well if we gave them more independence? Less of leading by the hand, perhaps? Less administrative planning, from entering an institution's door to the stage of doctoral school. Polish science needs independent people. This, however, requires a separate analysis, one that is, in my opinion very much needed if we want to really reform Polish science.

A Few Words of Summary

The new bill considerably limits the internal autonomy in higher education institutions by placing administration in the rector's and board's hands while omitting faculties. The latter have been reduced to a role of entities without any significant importance, which concerns even awarding academic degrees. The rector, as the exclusive managerial body of an institution, and the university board, representing mainly external stakeholders, as a body supervising its economy, have been vested with such an extensive authority that this may adversely affect the development of multiple academic disciplines, in particular those in the area of the humanities, but also in the field of social studies in many cases. There is a threat that universities will orient their activity on applied sciences, and consequently marginalise the remaining disciplines, whose importance will become at least diminished as a result.

In the extreme case, this may lead to their disappearance, especially at some universities. Thus, universities may lose their function of an animator in many fields that are important to the society and to the Polish state. The statute in question may also result in a collapse of smaller higher education institutions, which may not be capable of complying with its strict requirements. Consequently, this may disturb the balance of education potential and opportunities on the country level. It may also restrict the efficiency of sustainable development policy, which could lead to many negative social outcomes.¹¹

Restriction of autonomy is also a threat to the development of science at large. Science requires a certain degree of freedom, and not only that understood narrowly as the freedom of science. It also requires a certain degree of trust in researchers. The law in question has definitely not been shaped in that spirit.

Universities must not become enterprises, which act primarily at the demand and for the benefit of the surrounding environment. University functions are perceived much more broadly by many representatives of science and the Polish society, and are not restricted to applied sciences. All the more because the society needs not only an innovative economy. It also needs specialists in diverse areas that do not contribute directly to economic performance, yet remain essential to Poland's further development.

I am convinced that it is far from revealing that a regard for economic capabilities of the state has considerable influence on the direction of the university reform. However, the regulations adopted should take into account the different functions of the various academic disciplines, their specificity, and the impact on the development of science itself and of the whole state and its regions alike. I would also like to emphasise that the starting point should be an express and permanent differentiation between the regulations concerning applied sciences and other academic disciplines pursued at universities. It is not even possible to adopt similar assumptions for those entirely different fields.

In conclusion, I would like to emphasise that the reform of Polish science, including academic education, should come accompanied by restoration of the ethos of a scholar and an academic teacher.

¹¹ This aspect has been pointed out in many critical analyses of the reform of education.