

# Chapter 7

## On Realizing the World-Class University: Litigation and the State



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**Abstract** This chapter examines *Dickinson v. Mälardalen University* as an empirical manifestation of state action for creating and maintaining world-class universities (WCUs). It advances the argument that while litigation has long been assumed to play a far more limited role in higher education (HE) than it does in other areas of public policy, this element of governing fuels a different form of state building, in which courts and judges—sometimes from even the mere existence or threat of their intervention—can play a crucial role in WCU development. At the same time, we need to ask a variety of questions about the outcomes of lawsuits and their effects on HE. Does litigation have the effect of realizing the WCU, or does it not matter at all whether policy goals are pressed in courts or through legislation and professional choices? If it does matter, how and why? This chapter argues that a turn to the courts and a reliance on more formal, less malleable rules is not merely an alternative route to the same goal; litigation matters because law is different, because judicial decision-making shapes and constrains HE politics and policy in important ways.

In 2018, the high-profile case of an American student, Connie Dickinson, made the headlines in Europe and beyond when she won her 5-year battle against a Swedish university over “insufficient quality” teaching that had “violated her contract” concerning the quality of the education service, securing a refund of tuition fees in the Swedish Supreme Court. Concurrently with *Dickinson v. Mälardalen University*, in the United Kingdom, a graduate student filed suit and claimed £1,000,000 in damages from the University of Oxford, arguing that the “inadequate teaching” he had received cost him entry to a top US law school and, hence, had a “marked deleterious effect” on his subsequent career (Mortimer 2018, February 8). Although the High Court dismissed his claim, the lawsuit, like Dickinson’s, can be seen as part of a trend legal analysts such as Charles Epp (2009) and Sean Farhang (2010) have

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identified in other realms: a growing tendency among individuals to turn to the courts to resolve grievances as part of a broader sense of rights consciousness manifested over the course of recent decades.

The application of contract law to the student–university relationship has become a hot topic for discussion, attracting attention not only from the media, but also among scholars. There is growing evidence that students suing their alma maters contributes substantially to turning campuses into testing grounds for a host of constitutional challenges (Rochefford 2001, 2008; Olivas 2013) and that this trend is related, at least in part, to discourses of consumerisation (Kamvounias and Varnham 2006; Varnham 2001; Harris 1993; Palfreyman and Warner 1998) and the commodification of HE (Kaye 2000; Kaye et al. 2006). Amanda Fulford (2019) observes that central to both of these aspects of a university education is the demand for value for money and, more recently, for holding higher education institutions (HEIs) accountable through the use of judicial mechanisms such as formally binding contracts. This has brought about a situation where students not only are suing universities for gross mismanagement, negligence or failing in instruction; rather, “students are now able to legally challenge universities that do not provide what they have indicated they will provide at the standard they have promised in terms of breach of contract” (Onsman 2008, p. 83).

One might readily acknowledge the importance of private statutory enforcement litigation in policy enforcement while resisting the characterization of it as a form of state action for creating and maintaining world-class universities (WCUs). After all, why should we consider private litigation a component of state capacity? The decision to litigate is made by civilians pursuing their own interests. The answer, Farhang (2010) suggests, is that “if the object of interest is the state’s capacity to implement its policy choices by controlling the behavior of other entities, then one must attend not only to the direct actions of state officers, but also to more indirect pathways of regulatory control” (p. 7). He refers to these pathways as policy instruments: that is, “the repertoire of *means* available to policy makers to achieve their objectives” (Farhang 2010, p. 7).

Extending Farhang’s line of reasoning, this chapter contributes to emerging debates in HE research by advancing the argument that the judiciary is a venue not only for adjudication, but also for state efforts to create and maintain WCUs. Central to this argument is the idea that the private enforcement of law is an extension of government power through mechanisms previously overlooked in “traditional” accounts of constitutional government, which describe a fairly straightforward sequence of law and policy enforcement. Using *Dickinson v. Mälardalen University* as a case, I demonstrate that the development of private litigation as a means for creating and maintaining WCUs can be seen in light of what analysts of globalization have pointed out in other sectors, namely, as part of increasingly important structures of global governance in which the role of the state and the nature and locus of authority is being transformed and rearticulated. The important point here, however, is that, in litigation, the government is adopting not only law, but also a legal logic and ethos concerning “service delivery.” While it has long been assumed that litigation plays a far more limited role in HE than it does in other areas of social

policy, this element of governing, which has not yet received sufficient attention in HE research, thus introduces new actors and logics into the HE system. *Dickinson v. Mälardalen University* illustrates the ways in which governing by judicial decision-making works, the importance of framing, and, once framed, the power of that frame to influence and shape the future direction for HE.

I proceed by first providing a brief account of the policy context: Sweden's introduction of tuition fees for students from outside the European Economic Area (EEA) and Switzerland. This reform is key to understanding both the link between the case and the discourse on WCUs and the ways in which the case reached the judiciary. In the subsequent section, I briefly review the judges' reasoning on the primary issues before the courts and, in so doing, identify the patterns and pathways by which Swedish HE became firmly positioned within the remit of modern contract law. As will be shown, these patterns and paths are not limited to litigants and judges; they also powerfully influence and shape future HE policy choices. Lastly, I turn to this chapter's fundamental questions: Does litigation have the effect of realizing WCUs, or does it not matter at all whether policy goals are pressed in courts or through legislation and professional choices? If it does matter, how and why?

## Tuition Fees in Sweden: A Path to World-Class Universities?

In 2011, continuing the previous decade's work on the internationalization of HE, the Swedish government introduced tuition fees for students from outside the EEA and Switzerland who apply to Swedish HEIs apart from the framework of exchange programs. These students pay an application fee of SEK 900 and, if admitted to their chosen universities, a tuition fee corresponding to full-cost coverage.<sup>1</sup> A central element of this reform was an attempt to shift the HE sector from a bureaucratic to a market culture by incorporating business values and practices designed to boost efficiency, decrease public spending, and increase the responsiveness of HEIs. This clearly follows from a white paper report published 5 years prior, which investigated the prospect of introducing tuition fees and argued that "the fee system must be seen as the linchpin of a strategy" for, among other things, HEIs to work their way into "a market characterized by fierce international competition" (Government Official Report 2006:7, p. 65). Introducing tuition fees was believed to open up opportunities for HEIs to become players on the global HE market by forcing them to increase the quality of their education and develop courses and programs attractive to new categories of students.

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<sup>1</sup> If an education program covers more than 30 higher education credits, the university may decide that the tuition fee be paid in installments. For details on application and tuition fees at universities and university colleges, see the Higher Education Act (SFS 1992:1434), chapter 4, section 4, and the Ordinance on Application Fees and Tuition Fees at Higher Education Institutions (SFS 2010:543), sections 2 and 5–8.

The Swedish government published its tuition reform bill *Compete with Quality—Tuition Fees for Foreign Students* (Government Bill 2009/10:65) in February 2010. Following the line of the investigator, the government argued that Sweden is “a country that wants to assert itself in the ever-stronger global competition” (p. 18). As part of this endeavor, “Swedish universities and university colleges should to a greater extent compete with foreign universities with high quality, rather than with free education” (p. 13). The introduction of tuition fees was believed to foster “quality-enhancing competition” among HEIs (p. 17) because abolishing that existing advantage in providing free education to students from outside the EEA and Switzerland will “force [the HEIs] to compete fully with high quality” and give them an opportunity for “profiling” on the global HE market (p. 18). In the subsequent plenary meeting,<sup>2</sup> several members of parliament expressed support for the bill, emphasizing the importance of the reform for creating and maintaining world-class HE. Sweden “needs a world-class education [system] characterized by high quality” (Parliamentary Minutes 2009/10:107, p. 64), and the political parties “aim to create a Swedish higher education of world-class” (p. 71); thus, through this reform, Swedish higher education, despite already being “of world-class quality,” “will become even better and sharper” (p. 78).

For the purpose of this chapter, it is important to note that the government did in fact recognize that the payment of fees might give students rights similar to those observed in civil law agreements. Rather than investigate this potential side effect further, however, the government ordered that any consequences following from students gaining such rights “are to be settled by the judiciary for the time being” (Government Bill 2009/10:65, p. 20).

In sum, while the introduction of tuition fees and the handling of possible civil rights-related conflicts by the judiciary promised both enhanced quality of Swedish HE and important steps towards creating and maintaining WCUs, it left unclear what these aspirations would mean in practice. This meaning emerged in the conflict dynamic of *Dickinson v. Mälardalen University* and entailed, as we shall see, placing HE firmly within the remit of modern contract law.

## Case Facts

The American student was admitted to Mälardalen University to study a program in analytical finance in the fall of 2011, the same year Swedish universities introduced tuition fees for international students.<sup>3</sup> The program comprises 180 ETCS (3 years of full-time study) and leads to a bachelor degree in mathematics/applied

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<sup>2</sup>Plenary meetings are held in the Chamber. During these meetings, the members of the Swedish Parliament debate matters and make collective decisions. Full transcripts (in Swedish) of held plenary meetings are publicly available on the Swedish government’s website.

<sup>3</sup>Because the student was not a citizen of an EEA member state or Switzerland, she was obliged to pay tuition fees to enroll in the program.

mathematics. The student quit the 3-year program midway through due to dissatisfaction with the teaching, and asked the university to refund the tuition fees she had paid. Her claim was rejected on the grounds that the university did not have any legal provision to refund the tuition fees.

The student then approached the Center for Justice [*Centrum för Rättvisa*], a Swedish organization working for people's rights with respect to public and private organizations, to take up her case. Three lawyers at Center for Justice wrote an op-ed article in a major Swedish daily newspaper, arguing that public service authorities such as HEIs have the same responsibility for the delivery of quality services as businesses in any other sector: "If you go to a swimming pool and pay the entrance fee and the pool is not filled with water, then you are entitled to have your entrance fee refunded, even if there is no law explicitly stating this" (Crafoord et al. 2015, April 20).

The student filed suit in Västmanland's District Court, claiming that she and the university had entered into a mutually binding agreement under civil law.<sup>4</sup> According to the student, the university committed a breach of contract by allowing shortcomings in the quality of its education and, thus, must refund the fees she had paid. The university disputed that it had engaged in any civil law agreement with the student. According to the university, the parties' legal relationship was governed by public law regulations only (Mälardalen University 2015, pp. 1–2). Furthermore, the university disputed that the student was entitled to a rebate, as the university had rectified the alleged deficiencies.

The primary issues before the District Court—and subsequently, the Court of Appeal and the Supreme Court—were threefold: first, whether the student and the university had entered into a mutually binding agreement (and, if so, what this agreement entailed); second, whether the university had committed a breach of contract; and third, what the consequences of such breach of contract might be. While all three courts ruled in favor of the student, their reasons for doing so deserve closer attention. The case illustrates the workings of judicial decision-making, the importance of framing, and the power of frames to influence and constrain future choices.

### ***Did the Student and the University Enter into a Mutually Binding Agreement?***

The first question the courts had to answer was whether the relationship between the student and the university belonged purely to public law or whether the student and the university had entered into an agreement that entailed mutual obligations, thus extending governance to private law. Faced with a lack of relevant regulations in the legal system, the courts followed several steps of argumentation, looking for more

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<sup>4</sup>The Center for Justice (2015) proceeded with the case on behalf of the student.

general points of reference that would allow the parties' legal situation to be determined.

HE in Sweden clearly has elements of public law regarding the relationship between a student and a HEI: decisions on admission, graduation, temporary suspension and expulsion, and other disciplinary measures are regulated by law and are considered part of the exercise of public authority. Further, the Swedish Higher Education Authority (SHEA)<sup>5</sup> provides examination standards to publicly funded universities and university colleges and has the authority to withdraw these in the event of serious shortcomings in the courses and/or study programs. However, the courts argued, the provision of education itself must be distinguished from these public law elements. It must be distinguished on the grounds that "education and teaching generally means that someone provides a function that requires some knowledge. Thus education is a service" (District Court 2016, p. 7; see also Court of Appeal 2017, p. 7). In this specific case, therefore, "the education is to be regarded as a service provided by Mälardalen University" (District Court 2016, p. 8; see also Court of Appeal 2017, p. 3). Furthermore, as the student had to pay a fee to receive the education, her legal relationship with the university was considered a mutually binding agreement. Thus, upon being accepted to the program and having paid tuition fees, the student could expect to be able to complete a bachelor's degree program in mathematics of the quality outlined in HE laws and regulations (District Court 2016, p. 9; Court of Appeal 2017, p. 3–5; Supreme Court 2018, p. 8).

This first step established the existence of a mutually binding agreement. Given this, the courts reasoned that, because HEIs are obliged by the Higher Education Act (SFS 1992:1434, ch.4, s. 4) to ensure high-quality courses and study programs, the student must prove that there were fundamental deficiencies in the quality of the education to substantiate her claim that the university had breached the contract.

### ***Did the University Breach the Contract?***

The main reason for the courts' verdict in favor of the student was a previous quality evaluation by the SHEA, which had reported inadequacy in the main subject of mathematics at Mälardalen University.<sup>6</sup> The SHEA reported that four out of five degree objectives were not met and graded the university as having a "inadequate

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<sup>5</sup>The SHEA (*Universitetskanslersämbetet* in Swedish) is the main government agency responsible for legal oversight, statistical monitoring, and quality assurance (QA) of HE. It is also responsible for degree authorisation of HEIs and has the authority to withdraw HEIs' degree-awarding powers. The SHEA receives its funding-target agreements (or public service agreements) from the government and is accountable to the Ministry of Education and Research.

<sup>6</sup>This quality evaluation was part of the SHEA's nation-wide quality assurance of courses at Swedish universities and colleges that led to bachelor's degrees in mathematics, mathematical statistics, and related main subject areas. The quality evaluation was based on three measures: (i) a sample of students' bachelor's degree projects, (ii) self-assessments from the HEIs, and (iii) accounts from students and former students.

quality” in courses and programs leading to a bachelor’s degree in mathematics (SHEA 2013, p. 17). In response to the SHEA’s evaluation, the university took several measures in 2013 and 2014. For instance, new faculty were hired and new courses were introduced. In a follow-up, the SHEA found that the training now met the requirement for high quality (SHEA 2015).

Interestingly, the Supreme Court, like the two preceding it, viewed the improvement measures as confirming that deficiencies had existed: “The evaluation and the subsequent measures taken by the university to improve the quality of education show that the education program has not had the quality that [the student] had reason to expect” (Supreme Court 2018, p. 10). Or, as the Court of Appeal (2017, p. 6) stated, “[the student] cannot be required to produce additional documentation to prove that the university has violated the quality requirement in the agreement.”

At this juncture, a comment is in order. While it is beyond dispute that the SHEA deemed the quality of the university’s program leading to a bachelor’s degree in mathematics insufficient for meeting the requirements of the Higher Education Act, it could be questioned whether and how this result should be relevant to the courts’ judgement. Aside from the fact that the purpose of the SHEA’s quality evaluations is, of course, not to prove breaches of contract and that criticism from a supervisory authority cannot reasonably constitute a basis for civil law sanctions, the significance of the SHEA’s evaluation results must be analyzed more closely.<sup>7</sup>

### ***What Are the Consequences of the University’s Breach of the Contract?***

As previously mentioned, existing laws and regulations do not contain any specific rules on agreements between HEIs and students. Hence, to establish legal grounds for the third issue, i.e., the consequences of the university’s breach of contract, the courts were dependent on the principles of general contract law and analogies with laws and precedents in other areas.<sup>8</sup>

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<sup>7</sup> Such analysis is beyond the scope of this chapter. It should be noted, however, that this QA system was abolished in 2015. One of the main reasons was that it had caused the SHEA to be excluded from the European Association for Quality Assurance in Higher Education (ENQA) in 2012 (i.e., prior to *Dickinson v. Mälardalen University*) because of its single singular focus on “results,” i.e., student theses. SHEA’s new QA-system was formally implemented in 2016. For an extensive analysis of this reform work as well as the SHEA officials and Swedish vice-chancellors’ perceptions of the process, see Segerholm et al. (2019).

<sup>8</sup> A legal precedent is “a decided case that furnishes a basis for determining later cases involving similar facts or issues” (Garner and Black 2009, p. 1295). Although precedents do not *determine* the outcome of a particular case, they set down guidelines by way of which a judge approaches a decision.



Specifically, the courts used two precedent cases as points of reference. The first precedent case, ruled in 1998 (NJA 1998 p. 656),<sup>9</sup> concerned a dispute regarding a parent's right to receive a refund of fees paid for municipal childcare due to health-hazardous premises. In the second case (NJA 2008 p. 642), ruled a decade later, the matter of dispute was whether parents were obliged to pay public childcare fees to the municipality for time during which day-care center staff were on strike. The Supreme Court had ruled that the municipalities and the parents had entered into a mutually binding agreement and that the payment obligation for access to childcare, unlike the determination of the size of the fee, was to be considered contract law. Because it is a fundamental principle of contract law that anyone who does not receive an agreed upon service is not obliged to pay for it, the court freed the parents from the obligation to pay for the childcare.

Against the backdrop of the aforementioned precedent cases, the student was considered to have the right to a refund. Section 38 of the Sale of Goods Act (SFS 1990:931) stipulates that if a buyer requires a rebate, the reduction shall be calculated such that the relationship between the reduced price and the contractual price corresponds to the relationship between the value of the goods in faulty condition at the time of delivery and the value of the goods in the contractual condition. The courts found this method of determining refund applicable for determining refunds in the event of proven deficiencies in goods or services in HE. Thus, the courts established that, while courses and programs are an intangible service, this rule should be applied analogously to the question of the consequences of the university's breach of contract (District Court 2016, p. 13; Court of Appeal 2017, p. 7; Supreme Court 2018, pp. 10–11). From this followed that the size of the refund was to be determined by comparing the value of the education agreed upon by the parties to the value of the education the student received.

Now, few would dispute that it is virtually impossible to determine the value of education, at least outside the court room. However, judicial decision-making follows certain rules and is driven by certain incentives, limited by domain-specific constraints, and addressed to specific audiences in a specific language. The District Court decided for a full refund of the tuition fee paid, which was later reduced by the Court of Appeal to 50%. The Supreme Court, finally, raised it to two-thirds. While the courts' exercise of determining the economic value of higher education is of great interest in and of itself, I am primarily concerned here with another question: Does litigation have the effect of realizing the WCU, or does it not matter at all whether policy goals are pressed in courts or through legislation and professional choices? If it does matter, how and why? Following Gordon Silverstein (2009), I argue that a turn to the courts and a reliance on more formal, less malleable rules is not merely an alternative route to the same goal; litigation matters because law is different, because law shapes and constrains politics and policy in important ways.

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<sup>9</sup>NJA is the abbreviation for *Nytt Juridiskt Arkiv*, where precedents (i.e. Supreme Court cases) are published. 1998 is the year, and p. 656 is the journal page. I cite this source in the format used in Sweden.



## The Juridification of Higher Education

As I have argued elsewhere, law and politics cannot be easily disentangled (Novak 2019). This makes terminology tricky. Because law and politics are intimately related, scholars have struggled to find a term that distinguishes what might be called the “traditional” role of law, courts, and judicial reasoning in policy and politics (an exercise in ethical reasoning that is placed categorically “above” politics, i.e. by establishing the preconditions for the conduct of politics) from legalistic approaches to institutional, political, and policy problems that substitute for, displace, and even undermine the ordinary political process. *Juridification* is a term that is commonly used by scholars in various disciplines to describe, among other things, the degree to which areas of social life are increasingly controlled by a profusion of rules, laws, and statutes (Teubner 1987; Habermas 1996; Blichner and Molander 2008; Comandé and de Groof 2018). Juridification is not to be understood as solely the processes of once-unregulated and unrestrained arenas of life being bound, tied, structured, and ordered by law; importantly, the term also recognizes the degree to which rights have been *part* of a process and have come to dominate, structure, frame, and constrain debates and their products (Croce 2018; Gustafsson 2018; Novak 2018; Sinding Aasen et al. 2014; Trägårdh and Delli Carpini 2004).

While juridification processes are embedded in ideas of serving national governments and assume particular kinds of relations among agents and between agents and societal institutions, it is difficult to anticipate their consequences, as different patterns and processes of juridification generate different outcomes. These patterns and processes, Silverstein (2009) argues,

... are the product of the interaction of political and judicial actors, institutions, and practices in a way that “progressively shapes” their strategic behavior. Juridification is the product of a long series of interactive and interdependent choices, rather than the sum of a series of individual contests in which there is a winner and a loser and then everyone starts all over. It is an iterated process, one in which the results of earlier rounds of play shape and constrain current choices, as do expectations about future behavior that also are calculated into each choice in the present. (p. 16)

The above quote underlines the importance of recognizing the interactions of courts, legislators, law, and politics not as series of individual interactions, but as the end products of long interaction chains. This is clearly illustrated by *Dickinson v. Mälardalen University*. The two precedent cases referenced in the case support the claim that civil law principles may well be applied to legal relationships that essentially belong to public law. However, it should be noted that the first case from 1998 did not deal with the question of how to review the obligations of a service provider. Further, in the 2008 case, the provider had completely failed to deliver the service (i.e. the provision of day care). That no payment should be made seems reasonable. A significant difference between the precedent cases and *Dickinson v. Mälardalen University* is that the latter was neither about health-hazardous premises nor failure of service delivery, but, rather, the low quality of the service delivered. Thus, the agreement concerning educational service between the university and a fee-paying

student would, reasonably, be considered different. Not only does the relationship between a student and an HEI a policy area not invoke the same type of rights discourse as childcare, but there are clearly other differences between the referenced cases and *Dickinson v. Mälardalen University*. Yet, despite their fundamental differences, the courts followed the same line of reasoning as in the other two cases.

As Silverstein has succinctly noted, court rulings are part of an iterated sequence: a court ruling triggers new legislation, which triggers further litigation, which triggers more legislation. Thus, the branches are interlaced and interdependent, each reacting to and trying to anticipate the other. Because of how judicial decision-making works, decisions in one substantive area (e.g. childcare) can influence, shape, and constrain decisions in other substantive areas (e.g. HE), making it even harder to unwind these tangles.

Lobbyists, legislators, and concerned citizens alike pay close attention to the Supreme Court. When crafting legislation, legislators look backward to identify trodden paths that will influence judges' acceptance and reinforcement of legislative decisions. However, they also look forward, prospectively trying to anticipate where the government is willing or inclined to take the court and the country. Legislative and executive decisions, such as those made in *Dickinson v. Mälardalen University*—themselves influenced by the choices judges have already made—constrain the next rounds of court decisions, and these, in turn, shape and direct any legislative and executive choices that follow.

## Concluding Remarks

The expansion of private litigation in the area of HE has been both a product and an enabler of broader neoliberal processes of globalization, and the authority of the private citizen must be seen in the light of these processes. To a considerable extent, this is a consequence of the broader process of commodification that has increasingly treated HE as a service to be sold on an open market and provided by the most efficient and effective education providers, as well as the increasing acceptance of quality-assurance (QA) agencies' status as market actors providing quality assurance services for market offerings. As part of this process, the provision of education has been reconfigured as a market in which the public is composed of consumers: a realm of individuals actively engaged in making choices about their education within a marketplace in which public HEIs are only one (albeit important and, in many ways, still privileged) provider.

Belief in the models of the commercial enterprise as the most efficient form of service delivery, of the public as consumers, and of an education market comprised of education providers competing for students beyond national borders has become an important element in the political conceptualization of both WCUs and the delivery of quality education (Sadlak and Liu 2007; van Vught 2008; Deem et al. 2008; Marginson 2011; Enders 2014; Ramirez and Tiplic 2014; Liu et al. 2016; Wu et al. 2018). According to several HE scholars, such conceptualizations have pushed

universities into a “reputation race” (van Vught 2008, p. 168) and a “Faustian bargain” (West 2009) in which the long-term cost outweighs the short-term gains (Naidoo 2018, April 20; Marginson 2016). This process cannot be grasped by seeing it simply as the erosion of state authority, nor as the opposite: the straightforward strengthening of the state through the integration of private/civil capacities. What is emerging is a much more complex governance structure, indicating new trajectories that reach far beyond the niches from which it arose. Clearly, political actors can use private litigation as a policy instrument to compel organizational change, as Farhang and other scholars of private enforcement have described. However, in this process, the law becomes an even more consequential part of the state.

By using litigation as a policy instrument, litigants and courts are empowered as vehicles for buttressing state power. This leads to a different form of state-building in which courts and judges—sometimes through the mere existence or threat of their intervention—can play crucial roles in HE development. Coupled with a growing support structure that has rapidly expanded access to the courts, the legal strategy for creating “world-class” HE in Sweden has in many ways revised the understanding of HE by reinterpreting many provisions of existing statutes in directions never expected or, arguably, desired by the national legislative body that produced them.

It remains a task to examine the impact of litigation in the HE workplace and the role of professionals in turning dissatisfied students from seeking legal redress for their complaints and toward more pro-manager solutions. Amanda Fulford (2019) has elaborated critically on the now general acceptance of the relationship between students and HEIs as contractual, and argued that the turn toward formal contract law in the UK, as in Australia, has brought about a fundamental shift in the nature of the relationship between tertiary institutions and their students. This redefinition of the student–university relationship can be seen as stripping away some of the broader goals of HE (most notably the Humboltian ideal) in its pursuit of individual-centered rights justice.

The *Dickinson v. Märlardalen University* case is closed, but there clearly remain important questions. The spread of legalistic rules and procedures in HE is controversial in its form and effects, as is the placing of HE firmly within the remit of modern contract law. It is not possible here to explore the potential consequences of these dynamics, but it seems safe to say that litigation is not merely a substitute form of state power; the change in forum has effects on the participants in and outcomes of dispute resolution and policy-making. While the spread of legalistic rules and procedures in HE is not widely questioned, the effectiveness of this spread in creating and protecting not only civil rights, but also WCUs, remains unclear.

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