

The Incremental Marketization and Centralization of State Control of Public Higher Education: A Hermeneutic Interpretation of Legislative and Administrative Texts

Clifford P. Harbour

Clifford P. Harbour, JD, EdD, Associate Professor, School of Education, Colorado State University, Fort Collins

***Abstract:** In this article, the author reports on an analysis and interpretation of institutional accountability legislation enacted by the Colorado General Assembly from 1985 to 2005. The method of inquiry for the study was grounded in the principles of hermeneutics and narrative policy analysis. Analysis and interpretation of legislative and administrative texts reveal how they rationalize marketized higher education and centralized state control of public colleges and universities. This interpretation also explains how a new integrated funding and accountability framework creates de facto institutional missions validated by marketization and secured by centralization of state control.*

***Keywords:** higher education, marketization, state control, legislation, institutional accountability*

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Introduction

The increasing influence of market forces is transforming higher education. This development, or “marketization” (Williams, 1995) is challenging academic values and campus management (Bok, 2003; Kezar, 2005; Kirp, 2003; Williams, 2004). Marketization is also affecting academic research and the teaching and learning process (Jarvis, 2001; Lincoln, 1998; Powers, 2003; Slaughter & Rhoades, 2004). A critical factor contributing to marketization is government use of market-based mechanisms (MBMs) in institutional accountability programs and legislative appropriation processes (Dill, 2003; Middleton, 2000; Newman, Couturier, & Scurry, 2004; Walsh, 1995). In the United States, these programs and processes have relied on MBMs such as performance reporting, performance funding, and performance budgeting (Burke, 2005; Burke & Minassians, 2003). Now, states are turning to a new generation of MBMs that includes vouchers, fee-for-service contracts, and institutional performance contracts (Newman et al., 2004).

There is a considerable literature on the use of MBMs in state accountability programs and appropriation processes. Researchers have surveyed state officials and campus administrators and reported their perceptions concerning the effectiveness of MBMs (e.g., Banta, Rudolph, Van Dyke, & Fisher, 1996; Burke & Modaressi, 2000). Others have examined the role of MBMs in specific state programs (e.g., Harbour, 2002; Stein & Fajen, 1995) and in the broader evolution of accountability policy (e.g., Zumeta, 1998, 2001). These works provide important perspectives on how MBMs are affecting higher education. What is still missing from this literature, however, is research critically examining the underlying legislative and administrative texts creating and implementing MBMs. Consequently, although we know United States state governments are using MBMs to marketize public higher education, our understanding of how official texts also operate ideologically remains limited.

The purpose of this study was to examine such texts closely to understand how they function in an ideological manner. To accomplish this objective, I conducted a qualitative, interdisciplinary study of legislative and administrative texts establishing and implementing accountability programs mandated by the Colorado General Assembly from 1985 to 2005. My interpretative framework was based on philosophical and legal hermeneutics (Eskridge, 1990, 1994; Feldman, 2000; Gadamer, 1960/1997; Mootz, 1999) and narrative pol-

icy analysis (Fischer, 2003; Kaplan, 1993; Roe, 1994). I found the texts may be read from internal and external perspectives. When read from an internal, or programmatic, perspective, they describe a series of government programs, explain why some failed, and show how a new 2004 funding and accountability initiative responds to earlier programmatic deficiencies. However, when viewed from an external, or hermeneutic, perspective the texts operate ideologically at two levels. First, they rationalize marketized public higher education and centralized state control of institutions. Second, they create new de facto institutional missions validated by marketization and secured by centralization of state control.

My account of this research is presented in the following manner. I begin by describing principles of hermeneutic interpretation and narrative policy analysis. I then discuss and explain the methods developed for data collection, analysis, and interpretation. The next section provides historical context by reviewing the emergence of the “new accountability movement” (Ewell, 1994, p. 27) and relevant aspects of Colorado’s higher education environment. This context serves as the background for a critical interpretation of the texts creating and implementing Colorado’s MBMs.

Hermeneutic interpretation and narrative policy analysis

My method of inquiry was grounded in two theories of interpretation. First, analysis and interpretation of textual data was guided by scholarship regarding hermeneutic interpretation of legal texts (Binder & Weisberg, 2000; Eskridge, 1990, 1994; Feldman, 2000; Mootz, 1999; Phelps & Pitts, 1985). This work is grounded in Gadamer’s (1960/1997) philosophy of hermeneutic interpretation (Warnke, 1987; Weinsheimer, 1985). Second, I used narrative policy analysis to synthesize textual data and organize my interpretation (Kaplan, 1993; Roe, 1994). Five principles guided this interdisciplinary inquiry.

First, hermeneutic interpreters acknowledge that we are inextricably situated in a historical and linguistic reality in which we are always engaged in interpretation (Eskridge, 1990; Feldman, 2000; Gadamer, 1960/1997; Mootz, 1999). Because we cannot step outside this reality and appeal to objective guarantees, any interpretation of texts is inevitably shaped by our perspective and the traditions, as expressed in language, framing the texts.

Second, interpretation occurs through dialogue and flexible interplay with texts (Eskridge, 1990; Gadamer, 1960/1997). We come to texts with a perspective shaped by our cultural context. This context, which includes the traditions shaping our understanding of the world, frames our horizon. As we question texts and become aware of the limitations of our perspective, our horizon is clarified and extended. Similarly, texts exist within a given historical context and this defines their horizon. The horizon of specific texts is extended as we attribute new meanings to them. Our dialogue with textual data occurs within a hermeneutic circle, where, as we question and challenge texts' meanings, horizons fuse, historical understanding emerges, and we construct an interpretation (Eskridge, 1990, 1994; Mootz, 1999). Although a good interpretation must be coherent, it is not objectively true or final (Gadamer, 1960/1997).

Third, hermeneutic interpretation provides an avenue for developing critical interpretations of texts (Gadamer, 1972/1976). To be sure, some have questioned hermeneutics' suitability for this work, because tradition plays an essential role in the development of understanding and interpretation (e.g., Habermas, 1988). Along with others, however, I argue that a critical capacity is secured by holistic and persistent interpretation and the rejection of any "final" account (Kincheloe & McLaren, 2000; Pappas & Cowling, 2003).

Fourth, although philosophical and legal hermeneutics do not provide a method for qualitative inquiry (Hekman, 1986; Schwandt, 2000), they serve as a theoretical foundation for such research (Crotty, 1998). Hermeneutic research begins when a person is addressed by a significant experience or text that provokes inquiry (Gadamer, 1960/1997; Moules, 2002). This provocation provides a starting point for analysis and interpretation. For hermeneutic research, however, "analysis becomes synonymous with interpretation" (Moules, 2002, p. 29). This means that data analysis must honor dialogue and flexible interplay, the hallmarks of hermeneutic interpretation. Once inquiry is initiated, it is sustained within a hermeneutic circle in which we continuously interrogate the text, challenge our beliefs, and then develop new understandings while acknowledging the broader historical and linguistic realities that inevitably condition our interpretation (Thompson, 1990).

Finally, the hermeneutic interpretation of legislative and administrative texts may be supplemented by the use of narrative policy analysis (Fischer, 2003; Kaplan, 1993; Roe, 1994). This form of analysis is premised on the assumption that complex policy issues are often (a) ambiguous or polarized, (b) constrained by

technical or voluminous data, and, (c) framed by internal or programmatic considerations. Narrative policy analysis responds to these challenges and develops new interpretations of policy issues by telling a story about them and highlighting critical subtleties obscured in more conventional analyses (Roe, 1994). This approach employs literary devices to weave data into a rich narrative that produces a new understanding of the policy (Kaplan, 1993).

Method

In spring 2004, I taught a graduate seminar on the Law of Higher Education and encountered a draft of Senate Bill 04-189 (2004), the legislation that would eventually create Colorado's new integrated funding and accountability framework for public colleges and universities. After reviewing the bill, I examined statutes from other states establishing performance-based institutional accountability programs. I found that when compared to other jurisdictions in the United States, Colorado's use of MBMs was distinguished by two considerations. First, from 1996 to 2004, the state's reliance on MBMs was extensive. Individual mechanisms were incorporated into legislative appropriations and governing board allocations. Data produced from MBMs were used in the new program approval process and campus program review. Second, the enactment of Senate Bill 04-189 in late spring 2004 distinguished Colorado as the first state in the nation to adopt an integrated funding and accountability process for public colleges and universities using vouchers, fee-for-service contracts, and institutional performance contracts. These unique circumstances encouraged me to look more closely at the textual data creating and implementing the state's MBMs (Marshall & Rossman, 1999).

In the summer of 2004, I reviewed the enacted law and outlined a study to examine its evolution. I began with a purposive sampling strategy (Patton, 2002) and used the LEXIS legal database to locate legal texts related to Senate Bill 04-189. After identifying a wide range of legislative documents including bills, statutes, and resolutions, I moved out of LEXIS to search for related government documents using online catalogues maintained by state government offices and government documents collections at two state research universities. This search led me to important legislative committee reports, reports from the State Auditor's Office, fee-for-service contracts, and institutional performance contracts. I also identified reports and meeting minutes from the Colorado Commission on Higher Education (CCHE), the central policy and coordinating authority for all public institutions. Throughout this

process, I secured copies of these public materials by downloading digital texts and photocopying hard copy documents.

I then created an electronic archive that included digital texts and transcribed sections from hard copy documents. I used the electronic archive to organize the texts (Hill, 1993). Three core legislative texts concerning specific accountability initiatives (House Bill 85-1187, 1985; House Bill 96-1219, 1996; Senate Bill 04-189, 2004) constituted the first level in the archive. Forty-one other legislative texts, including excerpts from appropriation bills and legislative committee reports, were organized in a second level. The third level consisted of 52 documents generated by government agencies. I catalogued these texts chronologically within each level and constructed an index within each level to facilitate my research (Guercio, 2001).

Data analysis was conducted in two stages. I began with open coding of sentences and paragraphs of the core legislative texts (Strauss & Corbin, 1998). This led to the development of major concepts and major themes. The major themes were (a) searching for accountability data, (b) building the accountability machine, (c) breakdowns, and (d) market solutions for public policy problems. These themes supported the generation of an internal interpretation that explained the evolution of Colorado's accountability legislation from a programmatic perspective.

This internal interpretation described how laws passed in 1996 and 2004 ratcheted up the state's institutional accountability process while responding to specific deficiencies in preceding programs. However, I soon realized this account of Colorado's institutional accountability laws was technical in nature, was decontextualized, and lacked a critical edge sufficient to pry open the texts and illuminate underlying power dynamics. Another narrative was needed to develop a more comprehensive, coherent, and critical account of legislation and incorporated MBMs. To accomplish this, I turned to hermeneutics to critically examine the core texts against a wider range of texts and writings (Kincheloe & McLaren, 2000). This work became a second stage of data analysis.

I placed the core texts against these other documents and asked what a given text meant in light of specific legislation or government reports. I also read core texts in light of research and scholarship on accountability and marketization. I developed tentative interpretations and revised them as I located and studied new texts and writings. Gradually, another interpretation of Colorado's institutional accountability laws emerged. This external interpretation acknowledged the programmatic significance of specific MBMs, but it went beyond this and explained how

MBMs in the state's most recent legislation (Senate Bill 04-189, 2004) operate ideologically at two interrelated levels. First, they rationalize a marketized public higher education system and greater state control of institutions. Second, they effectively create new de facto institutional missions validated by marketization and secured by centralization of state control.

To present and explain these parallel internal and external interpretations, I turned to narrative policy analysis. I used narrative policy analysis to synthesize and organize my interpretations of the texts. I created a rough script built on major themes, rich descriptions of the texts, excerpts from critical texts, annotations, and personal reflections. I then identified acts and scenes in the script and edited them, and moved from part to whole and from whole to part to create a metanarrative acknowledging the data, my theoretical framework, and my objective (Kaplan, 1993).

Trustworthiness was attained through three strategies. I relied on "positional reflexivity" (MacBeth, 2001, p. 37) to locate my role as a critical interpreter. I also used consistent practices in acquiring, indexing, and coding core texts (Patton, 2002). Finally, theoretical validity helped ensure that my interpretation was congruent with the data, my method of inquiry, and the principles of hermeneutic interpretation and narrative policy analysis (Johnson, 1997).

National and state contexts

The new accountability movement

In the late 1980s and early 1990s, state and federal legislators responded to complaints of runaway tuition and fiscal mismanagement in higher education by conducting hearings targeting public colleges and universities (Dill, Massy, Williams, & Cook, 1996; Kearns, 1998). These events and later calls for greater institutional responsibility led to the emergence of the "new accountability movement" (Ewell, 1994, p. 27). Leading college and university presidents responded to this political pressure by proposing incorporation of accountability standards into the regional accrediting process. When this effort stalled, politicians argued that institutions were unable or unwilling to control costs and focus on state priorities (e.g., Romer, 1995). Meanwhile, rising expenditures for corrections and Medicaid foreshadowed a deteriorating budgetary environment for many states (Roherty, 1997). These converging political and fiscal conditions led to the adoption of new state accountability programs, which attempted to measure and compare institutional performance. States also attempted to appropriate funding based on performance (Burke & Minassians, 2003). By

1996, similar conditions were unfolding in Colorado. The State Auditor criticized CCHE, contending it had failed to measure and compare institutional performance systematically (Office of State Auditor, 1996). The legislature encountered the same fiscal pressures confronting other states (Joint Budget Committee [JBC], 1996).

Colorado's higher education environment

A hermeneutic interpretation of the texts establishing and implementing Colorado's accountability programs must acknowledge the history of the state's higher education environment. This environment was shaped by institutional missions, governing authorities, and the state funding process. It was also influenced, however, by specific demographic conditions and the Taxpayer's Bill of Rights (TABOR), a voter-approved 1992 amendment to the state's constitution (Colorado Constitution, Article X, Section 20, 1992).

During the 1980s and 1990s, institutional missions for Colorado's public colleges and universities were similar to those for public institutions in other states. Legislation passed by the General Assembly identified essential institutional responsibilities, and these were supplemented by goals and purpose statements adopted by the boards of trustees. The statutory components of these missions committed institutions to deliver various instructional programs (e.g., Colorado Revised Statutes [CRS], 1973, §23-31-101). In some cases, they articulated a responsibility to serve certain regions in the state (e.g., CRS, 1973, §23-53-116) or described levels of selectivity in the student admissions process (e.g., CRS, 1973, §23-51-101). These responsibilities were supplemented by board-approved provisions committing institutions to such values as academic excellence, student access and opportunity, lifelong learning, and student diversity (e.g., Colorado State University, 1987). Considered collectively, these institutional missions were broad, altruistic statements describing the ideals of a public higher education system committed to serving students and the public good through the development of a well-educated citizenry.

At all times relevant to this study, governance of Colorado's 24 public colleges and universities was in the hands of citizen lay boards entrusted with the responsibility to identify and satisfy long-term educational needs consistent with their institutional missions (e.g., CRS, 1973, §23-30-101). These boards were also responsible for establishing institutional policy, hiring presidents, and holding the institution accountable to the public. Twenty-one of these institutions were governed by boards made up of members appointed by the Governor and, in some cases, approved by the Senate

(e.g., CRS, 1973, §23-30-101, §23-40-104, §23-41-102). The remaining three institutions were governed by elected boards (e.g., CRS, 1973, §23-20-102, §23-72-107).

State funding for public colleges and universities was made through legislative appropriations to institutional governing boards. During the 1990s and early 2000s, appropriations of general funds (tax revenues) and cash funds (tuition) were made on a formula-funding basis. This formula varied slightly from year to year, but annual reports by the legislature's Joint Budget Committee indicate total appropriations typically followed a base plus enrollment growth plus inflation pattern (e.g., JBC, 1990, 1994, 1998).

The state's higher education environment was also influenced by an unusual demographic disparity and TABOR. This demographic disparity has become known as the "Colorado Paradox" and contrasts the state's high proportion of college-educated adults with its low transition rate for students moving from high school to college (Blue Ribbon Panel, 2003; Senate Bill 04-189, 2004). In 1999, for example, Colorado ranked first in the nation, with 34% of its adults aged 25 or older holding a bachelor's degree, while placing "31st among the states with only 38% of its high school freshmen entering higher education four years later" (Blue Ribbon Panel, 2003, p. 3). The causes of the disparity remain a matter of debate, but policy analysts acknowledge that the state imports much of its human capital and falls short of its peers in transitioning high school graduates to college (Bell Policy Center, 2005).

The tax and expenditure limitations imposed by TABOR severely constrained appropriations to the state's public colleges and universities. TABOR prohibits increases in state tax rates (Colorado Constitution, 1992, Article X, Section 20). It also limits state revenues and expenditures by using a formula effectively capping annual increases in total general fund appropriations at 6%. Even though economic growth and population increases might generate revenues exceeding 6%, TABOR prohibits the legislature from appropriating these "excess" funds, which must be rebated to taxpayers. From Fiscal Year (FY) 1992 to FY 2002, the confluence of TABOR's limitations resulted in curtailed appropriations to public colleges and universities to accommodate (a) the increasing cost of other government programs such as corrections and Medicaid and (b) a constitutional mandate (approved in 2000) to increase funding for public K-12 education (Bell Policy Center, 2003). Thus, from FY 1992 to FY 2002, total general fund appropriations to institutional governing boards decreased on a per capita basis (adjusted for inflation) at an average annual rate of -0.9% (Bell Policy Center, 2003). Most re-

cently, a referendum passed by voters in November 2005 granted the state a 5-year window to retain and expend revenues exceeding the 6% cap. This referendum will speed up recovery from a decline in state tax receipts precipitated by the 2001 recession (Colorado Revised Statutes, §24-77-103.6, 2005). Still, the referendum did not guarantee public colleges and universities a significant share of these revenues.

Act I: The Higher Education Accountability Program, 1985 to 1996

Initiating the program

Colorado's first institutional accountability program (House Bill 85-1187, 1985), established before TABOR and the new accountability movement, was the 1985 Higher Education Accountability Program (HEAP). HEAP required that all public institutions work with their constituencies to identify desired student outcomes and create campus assessment plans promoting "improvements in student knowledge, capacities, and skills between entrance and graduation" (House Bill 85-1187, 1985, p. 761). Colleges and universities were also invited to examine and assess, "other dimensions of student growth, such as self confidence, persistence, leadership, empathy, social responsibility, understanding of cultural and intellectual differences, employability, and transferability" (p. 761).

As required by the law, campus officials developed their assessment plans. Progress under these plans was reported annually to CCHE. However, these reports did not provide data facilitating system wide comparisons of institutional efficiency and effectiveness. In 1990 the JBC noted this and called for a new program that would systematically measure institutional productivity on specific statewide criteria such as graduation rates and graduates' employment rates (JBC, 1990). These recommendations were repeated in 1991 and 1992, but the legislature declined to amend HEAP (JBC, 1991, 1992).

Instead, in 1992, the General Assembly established a supplemental grants program to fund specific higher education priorities (Senate Bill 92-59, 1992; Senate Bill 93-136, 1993). CCHE was directed to identify these priorities, "in collaboration with the Governor, the Speaker of the House of Representatives, the President of the Senate, the majority and minority leaders of the House of Representatives and the Senate, and the Joint Budget Committee" (Senate Bill 93-136, 1993, p. 2123). The first set of five priorities was identified in 1994 (House Bill 94-1110, 1994). However, the General Assembly revised them in 1995 and then again in

1996 (House Bill 95-1196, 1995; House Bill 96-1088, 1996). Funding for this initiative was limited. The legislature appropriated only \$13.9 million for the priorities in FY 1995 (JBC, 1994), \$5.3 million for FY 1996 (JBC, 1995), and \$8.6 million for FY 1997 (JBC, 1996).

Like HEAP, however, this effort failed to produce data facilitating measurement and comparison of institutional efficiency and effectiveness on state-wide priorities. In the spring of 1996, the State Auditor's Office criticized CCHE for this deficiency and joined the JBC in calling for a new initiative that would measure institutional performance on state-wide priorities and link funding to campus achievements (Office of State Auditor, 1996). In June 1996, the General Assembly repealed HEAP, signaled the end of the supplemental grants program, and passed a new comprehensive accountability program later characterized as "accountability with a vengeance" (Ewell, 2000, p. 14). The new Higher Education Quality Assurance Act (HEQAA) had two objectives (House Bill 96-1219, 1996). The first was to create a centralized accountability system measuring, comparing, and reporting institutional performance on critical state priorities. The second was to link funding to performance.

Opening the door to marketization and centralization of state control

When viewed from an internal, or programmatic, perspective, HEAP and the supplemental grants program recorded the General Assembly's efforts to mandate institutional accountability and establish specific policy priorities for public colleges and universities. When read from an external, or hermeneutic, perspective, however, the texts explain how the operation and then rejection of these initiatives opened the door to greater marketization and centralization of state control.

HEAP gave governing boards, campus officials, and institutional constituencies a leading role in assessing performance and demonstrating accountability to the state. When this arrangement failed to produce data satisfying the JBC, the committee called for a new accountability initiative. The General Assembly responded by authorizing the state's highest political leaders to set specific policy priorities for all public colleges and universities. Although funding for these priorities in a TABOR-restricted environment was minimal, the new direction was clear. The state's political leaders would now have greater control in establishing goals and objectives for public institutions. Still, neither HEAP nor the supplemental grants program effectively marketized public higher education or

centralized state control. Neither initiative directly undermined the authority of citizen lay boards. Neither program piloted MBMs such as the performance reporting and performance budgeting mechanisms, to be created under the HEQAA, or the voucher, fee-for-service contract, and institutional performance contracts, to be established under Senate Bill 04-189.

Instead, HEAP and the supplemental grants program contributed to marketization and centralization of state control incrementally and indirectly through their failure. The JBC (1990, 1991, 1992) and State Auditor's Office (1996) portrayed the limitations of HEAP and the supplemental grants program as programmatic deficiencies. The General Assembly responded by enacting the HEQAA as a programmatic remedy. Under the HEQAA, institutional governing boards and campus officials would now have a more limited role in identifying priorities and leading their institutions. The law also created new performance reporting and performance budgeting mechanisms. But these two developments were not characterized as a revision in state policy to increase state control or marketize public higher education. They were aspects of a programmatic solution to a programmatic problem.

Act II: The Higher Education Quality Assurance Act, 1996-2004

Performance expectations and the quality indicator system

The HEQAA identified 25 performance expectations for all public institutions. These performance expectations or goals were loosely organized under five domains. The domains and selected performance expectations within them were (a) delivery of efficient, effective, and high-quality academic and student development services (e.g., improving student advising and course scheduling); (b) collaboration with public schools (e.g., increasing the number of teachers entering the workforce); (c) workforce development (e.g., promoting the state's economic development); (d) use of technology to improve the quality of instruction and lower costs (e.g., increasing the use of distance learning technologies); and (e) operational productivity and effectiveness (e.g., improving administrative services) (House Bill 96-1219, 1996).

The law also required the development of two MBMs to measure and fund performance on these expectations (House Bill 96-1219, 1996). First, the law mandated a performance reporting mechanism to collect, analyze, and publish data concerning institutional achievements on the performance expectations. Sec-

ond, the HEQAA created a performance budgeting mechanism to establish a permanent albeit indirect linkage between institutional performance and funding.

The HEQAA provided that institutional progress on the 25 performance expectations would be reported through the QIS, or Quality Indicator System (House Bill 96-1219, 1996). The QIS would provide data for a new student "consumer guide" offering state-sanctioned product information. This guide would help students and their families choose "the most appropriate and cost-effective method of obtaining higher education in the state" (House Bill 96-1219, 1996, p. 1822). Campus administrators were required to factor QIS data into the academic program review process and CCHE was required to consider the QIS in its new program approval procedures. Governing boards were directed to consider QIS data in making internal institutional allocations. The legislature charged itself with reviewing the QIS when making institutional appropriations.

Aligning performance expectations and performance indicators

Throughout 1998 and 1999, governing board members and senior campus officials worked with CCHE staff to identify QIS performance indicators (CCHE, 1999). This continued even as the General Assembly amended the HEQAA in 1999 and reduced the number of statewide performance expectations from 25 to 21 (Senate Bill 99-229, 1999).

In fall 2000, CCHE approved 21 QIS indicators that, despite the numerical correlation, did not align with the 21 performance expectations identified in Senate Bill 99-229 (CCHE, 2000). Moreover, only 10 of the 21 QIS indicators were used for the performance budgeting process. Performance indicators for performance budgeting required measurement of (a) institutional graduation rates, (b) faculty teaching workload, (c) retention of first-year students, (d) achievement scores on licensure and graduate school admissions tests (for bachelor degree graduates) or employment and transfer rates (for associate degree graduates), (e) availability of lower division general education courses, (f) minority student retention and graduation rates, (g) institutional support expenditures, and (h) the number of credits required for a degree. The 9th and 10th indicators were left open for campus-proposed measures to be approved by CCHE (CCHE, 2000).

In December 2002, CCHE reduced the 21 QIS indicators to nine and all were used for performance budgeting (CCHE, 2002). Despite these efforts, however, by 2002 the HEQAA was faltering. CCHE's nine QIS

indicators were unable to assess institutional performance on the majority of the General Assembly's 21 performance expectations. Most performance expectations only retained symbolic importance and the consequences of this lack of alignment soon became evident. CCHE was unable to produce QIS reports that could effectively guide students, campus officials, and governing boards in assessing institutional performance. The legislature could not use the QIS as a guide in appropriating significant funding based on performance.

Funding for performance

The General Assembly's first performance budgeting appropriations under the HEQAA were made for FY 2001. The state's total appropriation to higher education was \$1.4 billion, but only \$12.6 million was set aside for performance (JBC, 2003). For FY 2002, the performance funding appropriation increased to \$20.1 million (JBC, 2003), but this was later offset by a cut of \$13 million in general funds as the 2001 economic recession began to reduce state tax receipts. The performance appropriation for FY 2003 was \$20 million, and this, too, was later offset by a general fund reversion exceeding \$83 million (JBC, 2003). No appropriations for performance were made for FY 2004, as overall general fund appropriations to governing boards were reduced by \$99 million (JBC, 2003). By 2003, the state's long term ability to fund performance was in doubt. The General Assembly had appropriated \$80.5 million for performance or as supplemental grant funding from FY 1995 to FY 2004, but these appropriations had been offset by general fund reductions exceeding \$195 million. The HEQAA was failing, and the legislature began to consider alternative frameworks for funding and accountability (Blue Ribbon Panel, 2003; House Bill 03-1336, 2003).

Emerging marketization and centralization of state control

When texts establishing and implementing the HEQAA are read through an internal or programmatic lens, they describe how the performance reporting and performance budgeting mechanisms failed to accomplish the law's stated objectives. These shortcomings might be explained as a consequence of specific programmatic limitations. CCHE was unable to develop specific performance indicators to measure institutional achievements on the General Assembly's state performance expectations. Furthermore, the law did not end the state's formula funding process. This precluded significant appropriations to public colleges and universities based on their performance.

However, when read as a part of a developing external narrative, the texts tell a different story. Considered hermeneutically, they articulate two new perspectives rationalizing marketization and centralization. First, despite the HEQAA's programmatic failings, the texts characterized colleges and universities as components in a well-organized, state-regulated market system where (a) higher education consumers (private and public) used (b) state-sanctioned performance information to (c) facilitate their choice of specific products and services from higher education providers. Second, they described the HEQAA as a reasonable state centralized accountability framework enabling all public institutions to "demonstrate good educational and administrative practices in offering their programs, allocating their resources, and being accountable to their students, taxpayers, and the public" (CCHE, 2003, p. 3). This description validated the continuing subordination of governing boards and campus officials in identifying institutional priorities and leading their institutions. It also established an equivalency between serving the public good and satisfactory performance under the HEQAA. Finally, these characterizations reinforced an appearance the HEQAA had been hobbled by programmatic problems and not TABOR or public policy deficiencies. Because a marketized public higher education system appeared coherent and a policy of state centralization seemed beneficial, legislation establishing stronger MBMs was logical. The General Assembly moved in this direction in enacting Senate Bill 04-189 in spring 2004.

Act III: Senate Bill 04-189, 2004 to present

Senate Bill 04-189 replaced formula funding to institutional governing boards and HEQAA accountability procedures with three new MBMs introduced here and explained below (Senate Bill 04-189, 2004). First, a voucher or stipend system was adopted to subsidize undergraduate education. Second, fee-for-service contracts were mandated to subsidize graduate education, professional education, and selected high cost undergraduate programs. Third, the law conditioned an institution's eligibility for voucher funding on the execution and performance of a long term institutional performance contract.

The voucher mechanism

Under Senate Bill 04-189, in-state undergraduate students are the beneficiaries of an annual voucher. Students can receive voucher funding for up to 145 undergraduate credit hours, with the exception that stu-

dents already holding a bachelor's degree are also eligible for voucher subsidization for an additional 30 undergraduate credit hours. The voucher mechanism operates in the following manner. The legislature appropriates funds to a state trust, which then allocates moneys to institutions based on their full-time equivalent enrollment of voucher eligible students (Senate Bill 04-189, 2004). Eligible students may use the voucher as a credit toward tuition at state colleges and universities. They may also use the voucher (at reduced value) at certain Colorado-based private institutions. Although the voucher system might appear similar to traditional enrollment-based funding mechanisms, it does not include base or band features mitigating decreases in funding when enrollment falls significantly. Virtually all of an institution's state funding for undergraduate education is now received through the voucher system, and this funding can fluctuate substantially from year to year. This is a significant change from the previous formula-funding process, which granted institutions a stable base of funding with additional resources added for enrollment growth and inflation.

Fee-for-service contracts

Under the fee-for-service contract mechanism, CCHE negotiates with governing boards and campus officials to purchase delivery of specialized undergraduate programs (e.g., nursing, engineering, and forestry), graduate programs, and professional programs (e.g., law, medicine, and veterinary medicine). These contracts specify (a) the programs or degrees to be subsidized, (b) a fixed sum for payment, and (c) the means of assessing satisfactory performance (e.g., Department of Higher Education 2005a, 2005b). Contracts are granted on a year-to-year basis. Senate Bill 04-189 (2004) also grants CCHE the discretion to determine which programs should be subsidized through this MBM and then the appropriate amount of funding for each.

Institutional performance contracts

Senate Bill 04-189 (2004) also requires that each voucher funded institution execute a long term (2005 to 2009) performance contract. These agreements provide a contractual basis for requiring that each institution contribute towards achievement of the following statewide goals: (a) improving residents' access to higher education, (b) improving the quality of institutions and the success of their students, (c) improving the efficiency of campus operations, and (d) meeting the higher educational needs of the state (e.g., Department of Higher Education, 2005c). Each contract also identifies institution-specific performance objectives (e.g., Department of Higher Education, 2005c, 2005d, 2005e). Some performance objec-

tives require that institutions meet specific quantified targets (e.g., increases in overall student retention and overall student graduation), but these provisions require only modest improvement over a 4-year period. Other performance objectives require annual reports to CCHE concerning (a) enrollment, retention, and graduation of undergraduate students in underserved populations; (b) summaries of departmental assessments of student learning; (c) undergraduate grade distribution; (d) faculty compensation plans and methods; and (e) auxiliary operations (e.g., Department of Higher Education, 2005c).

Satisfactory performance under these contracts grants institutions greater flexibility in developing curricula and new latitude to set tuition rates (subject to General Assembly review). Satisfactory performance also provides institutions an exemption from the HEQAA although CCHE retains authority to approve enrollment caps, new programs, and program termination. Unsatisfactory performance, on the other hand, requires the parties agree to a resolution or renegotiate the contract. The precise determination of what constitutes overall satisfactory or unsatisfactory performance is not addressed in the contracts. Theoretically speaking, a continuing failure to meet performance objectives could result in termination of the agreement and forfeiture of voucher funding eligibility.

The justifications for Senate Bill 04-189's MBMs

The preamble to Senate Bill 04-189 (2004) attempted to justify these new MBMs on several grounds. Vouchers were intended to help accomplish three objectives: (a) resolution of the Colorado Paradox, (b) increase efficiency and effectiveness through competition, and (c) avoid TABOR's limitation on tuition increases. The General Assembly's thinking on these three objectives was as follows. First, legislators believed that undergraduates would view their new vouchers as a personal asset and adopt a "use it or lose it" attitude. This would resolve the Colorado Paradox by encouraging high school students to enroll in greater numbers (Senate Bill 04-189, 2004). Second, the preamble reflected the legislature's belief that the repeal of formula funding and the adoption of the voucher MBM would force institutions to compete for enrollment and become more efficient and effective. Third, the voucher mechanism was explained as a device that would successfully sidestep TABOR's constitutional limitation on tuition increases. The legislature

believed that a substantial reduction in direct general fund appropriations to colleges and universities would reduce state funding to a level that would enable most if not all public institutions to claim enterprise status (Senate Bill 04-189, 2004). Enterprise status excuses state agencies from TABOR's constitutional restriction on revenue (tuition) increases.

Similarly, annual fee-for-service contracts were viewed as a means to promote competition between institutions. The preamble to Senate Bill 04-189 reflected the legislature's belief that this competition would also improve efficiency and effectiveness. Additionally, fee-for-service contracts would provide CCHE with greater control over the size and scope of costly graduate, professional, and undergraduate educational programs.

Institutional performance contracts, on the other hand, were intended to focus institutional efforts on state government priorities while also limiting adverse consequences resulting from the increased competition fueled by vouchers and fee-for-service contracts. In order to ensure accomplishment of these objectives, performance contracts hold institutions responsible for specific performance objectives. As the preamble to Senate Bill 04-189 (2004) asserted, these contracts would provide, "a more focused accountability for institutions to students and the people of Colorado" (p. 702).

Considered collectively, these MBMs were consistent with the General Assembly's expression that in Colorado, "the provision of higher education services is a business" (Senate Bill 04-189, 2004, p. 702). The bill underscored this commitment to a new market-based environment by announcing that subsidization of higher education was no longer an entitlement for the state's adult learners. The General Assembly warned that in the event of future state budget deficits, it would balance the budget through a variety of means, including, "reducing appropriations to institutions of higher education, decreasing the value of the stipend, or placing a limit on the number of stipends funded under this act based on the overall budgetary needs of the state" (Senate Bill 04-189, 2004, p. 703).

Programmatic Issues under Colorado's New Marketized and State Centralized System

When viewed from an internal perspective, Senate Bill 04-189 attempted to improve on the programmatic deficiencies of the HEQAA. It did this by mandating new MBMs that use market forces to accomplish state government objectives. But, each of the law's MBMs has its own programmatic limitations and might ultimately fail to achieve its intended purposes.

The future of the novel voucher mechanism is uncertain for several reasons. First, it might yet be challenged in the courts as an illegal evasion of TABOR that permits excessive tuition increases. Second, the year-to-year volatility of voucher funding and its limited duration (145 credit hours) might prohibit smaller colleges from effectively competing with larger, more selective institutions that benefit from economy of scale, significant external funding, and a better prepared student body. This could lead to closure of smaller institutions located in rural parts of the state—a result that might be ideologically but not politically acceptable for the General Assembly. Third, the voucher system might lead to budget instability at some institutions, triggering accreditation inquiries from regional and disciplinary associations concerned about academic integrity. Fourth, voucher funding rewards enrollment and not student outcomes, so vouchers might not produce the effectiveness commonly assumed under a marketized system. This could erode political support for the mechanism. Finally, the voucher mechanism steers around TABOR and grants institutions greater flexibility in raising tuition, but this merely places more of the burden of higher education on students and institutions. The voucher mechanism does not commit new public resources to achieve objectives deemed important by the state.

Fee-for-service contracts have their own limitations. The state has no track record to determine how institutions will respond to subsidization through such MBMs, and the implementation of these agreements could lead to unanticipated consequences. For instance, governing boards and campus officials might believe the flourishing of any one institution is best assured by the survival of all. This might lead institutions to take on the bargaining characteristics of a cartel. If this occurs, institutions might not compete vigorously for contracts. Alternatively, pressure on institutions to secure state funding might be intense and result in commitments for performance that cannot be met.

The effectiveness of institutional performance contracts is also uncertain. For example, quantified performance objectives under institutional performance contracts require only modest long-term improvement (e.g., increasing student retention). Other performance objectives (e.g., the enrollment, retention, and graduation of undergraduate students in underserved populations) require only annual reports to CCHE. Furthermore, although a failure to perform under these contracts could lead the General Assembly to deny institutions voucher funding, the agreements are ambiguous on this point and do not explicitly identify this outcome as a penalty for poor performance. Finally, institutional performance contracts are explicitly condi-

tioned on factors that could, arguably, excuse poor institutional performance. These factors include state assurance of a constant base for funding and the quality of entering students (e.g., Department of Higher Education, 2005c, 2005d, 2005e).

The ideological power of Colorado MBMs

When the texts establishing these new MBMs are read from an external perspective, however, their programmatic limitations become only a part of the story. Considered from a broader perspective, they disclose a continuing, incremental movement towards greater marketization and centralization of state control. They characterize institutions as businesses in a state regulated market system where (a) higher education consumers (public and private) use (b) state-sanctioned performance information to (c) facilitate their choice of specific products and services from higher education providers (public and private) and (d) market incentives and (e) performance contracts ensure (f) a direct linkage between funding and performance. This characterization appears coherent and beneficial and therefore rationalizes a new state-controlled, marketized public higher education system.

But this rationalization must be regarded as illusory. Recent scholarship suggests that if constructive, state-sponsored, market-driven change in public higher education is possible, it must include the following: (a) transparent transactions based on accurate information concerning student needs and program quality, (b) institutional autonomy to enter and leave the marketplace, and (c) effective market incentives that promote achievement of complex educational outcomes such as academic quality and higher educational equity (Dill & Soo, 2004; Johnstone, 2004; Massy, 2004). Colorado's new integrated framework for funding and accountability falls short on each count. For example, none of the MBMs provides students or institutions with accurate and relevant information concerning the consequences of their respective long-term decisions. None provides institutions with the autonomy to cap enrollment or initiate and terminate programs. And none provides students with real alternatives to public colleges and universities. The Colorado MBMs might result in better reporting on selected priorities. They might encourage institutions to reach specific performance targets. But, success in reaching these objectives cannot be accepted as actual achievement of complex educational outcomes.

What the MBMs do secure, however, is greater centralization of state control where the bureaucracy and legislature can encroach on campus affairs and overrun

the autonomy traditionally entrusted to colleges and universities under their institutional missions. Institutional goals and objectives can no longer be debated by campus constituencies, at least in a meaningful way, in light of broad, altruistic missions intended to serve students and promote the public good. Now, significant discussions about goals and objectives are reserved to the bureaucrats and politicians licensed to interpret new de facto mission statements inscribed in Senate Bill 04-189.

This hermeneutic, or external, reading of Senate Bill 04-189 reveals its ideological power operates at two levels. First, the law rationalizes marketization and centralization of state control because its MBMs appear coherent and beneficial. As I have explained, however, this appearance is illusory. The new MBMs promise the flexibility of a traditional marketplace, but they fail to provide institutions and students with the information and autonomy needed to make long-term decisions. They promise the effectiveness commonly associated with market-based incentives but are not focused on the complex outcomes expected from a comprehensive higher education system.

Second, the MBMs authorized by Senate Bill 04-189 create new de facto institutional missions validated by marketization and secured by centralization of state control. These de facto missions effectively override the traditional, altruistic missions of the past. They force institutions to concentrate on securing volatile voucher funding and meeting performance obligations imposed by annual fee-for-service contracts and institutional performance contracts. Attending to the long term interests of students, the institution, and the public good must be deferred to these short-term priorities. Also, the authoritative interpretation of these de facto missions now occurs in the state's legislature and central bureaucracy beyond the reach of citizen governing boards and career higher education professionals.

Conclusion

My discussion above shows how a method of inquiry grounded on hermeneutics and narrative policy analysis leads to a deeper and critical understanding of official government texts. More specifically, my interpretation explains how the legislative and administrative texts creating and implementing the MBMs rationalize the increasing marketization and centralization of state control in Colorado public higher education. These MBMs have also created new de facto missions that might yet transform Colorado's colleges and universities into the amalgamated, state-regulated businesses envisioned in Senate Bill 04-189.

Such a transformation will undoubtedly have many consequences. However, like other market-based distributions of public services, it will probably leave the disadvantaged with a disproportionate share of the risk. Students with adequate financial and cultural capital will succeed in locating, acquiring, and exploiting a high-quality education. They will not be limited to Colorado's public institutions, and their success in college will not depend on the effectiveness of institutional performance contracts or the anticipated benefits of competition promoted by vouchers and fee-for-service contracts. Students without such capital will receive only what the Colorado higher education market can deliver. They will enroll in institutions caught at the hazy intersection of market ideology and state control.

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