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Governing by Soft Conditioning Program

Christian Schneijderberg *

Abstract: *»Das sanfte Konditionalprogramm als Governance-Instrument«.* Why are academics reactive to state-commissioned accreditation and evaluation regimes? The answer is: academic conventions have become embedded in a soft conditioning program (SoCoP) of law-applying. In a historical sociological perspective, the new SoCoP methodology is developed and reflected upon by analyzing the case of the German higher education accreditation regime. This provides an example of how the administrative and legal adaptation of a SoCoP in the specific environment is achieved by including the social partnership convention between the state and the academic profession and convention of academic peer review. Aiming at reactivity in social behavior, a SoCoP means "investments in forms" (Thévenot 1984), which establishes a long-term codification of procedures. The operational construction of legitimacy embedded in the SoCoP form is further theorized building on Luhmann's ([1969] 1983) notion of procedures and their social orders according to an analytical framework of plural orders of worth (Boltanski and Thévenot [1991] 2006). The conclusion presents an outlook on the use of the new SoCoP methodology, ranging from schools and health and welfare systems via the multi-national firm Amazon to governing grand challenges formulated in the Sustainable Development Goals.

Keywords: Accreditation, conventions theory, governance, higher education, investments in forms, orders of worth, soft conditioning program.

1. Introduction[1]

In Germany, the autonomy of the academic profession is ensured by a social partnership with the state. Upon the state's introduction of accreditation and evaluation of higher education at the beginning of this millennium, a great

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number of academics strongly complained about the narrowing of their autonomy in teaching and increasing review and bureaucratic requirements. A smaller number of academics welcomed the new attention given to higher education, and an even smaller number, particularly in leading positions in higher education institutions (HEIs) (e.g., rectors) and representative bodies (e.g., rectors conference), contributed to the formation of the "German higher education accreditation regime (HEAR)" (Schneijderberg and Steinhardt 2019, 6). In the social partnership, both the state and academics' institutional leadership, here referred to as institutional oligarchy, could rely in the HEAR negotiation and formation process on authority relations in higher education and the academic profession (Brennan 2010; Clark 1983; Pusser 2008). In 2024, about 25 years after the introduction of HEAR, a large number of academics still complain about increased review and bureaucratic burdens in the organizing and quality management of higher education. However, in principle, all academics have to participate in HEAR and do so to varying degrees as a study by Ohly and Schneijderberg (2020) shows. Theoretically, such a governance outcome of an administration and management process established by a small group (i.e., the state and institutional academic oligarchy) to change social behavior raises the question of why a much larger group becomes reactive (such as academics to state commissioned HEAR)? The *how-answer* theorized in this article is: embedding conventions in governance procedures to foster administrative and legal adaptation in a specific environment.

In *Rankings and Reactivity: How Public Measures Recreate Social Worlds*, Espeland and Sauder (2007) present a sociological argument for the voluntary and involuntary compliance of HEIs and academics with the quantification of academic performance, especially research (see also Kauppi 2018; Thévenot 2016, 2019). In *Engines of Anxiety: Academic Rankings, Reputation, and Accountability*, Espeland and Sauder (2016) conclude that academic rankings have become a public institution. As a systematic literature review by Steinhardt et al. (2017) suggests, in comparison to the quantified, primarily research-based global ranking game, the "(e)valuation" (Lamont 2012, 204) of teaching and learning in higher education seems torn between a quantitative management *evaluation* and qualitative higher education *valuation*. According to literature on the academic profession (Parsons 1968; Clark 1983, 1987; Marshall [1999] 2019; Müller and Schneijderberg 2020; Schimank 2005; Teichler, Arimoto, and Cummings 2013), the qualitative approach to higher education is rooted in the socialization of academics into local higher education traditions and national legislations. They are also reflected in the accountability and quality assurance of organizing higher education. For example, in the European Higher Education Area, quality criteria are diverse and national evaluation and/or accreditation practices vary within a negotiated reference

framework (e.g., ENQA 2015; Stensaker 2011; Westerheijden et al. 2014).[2] For readers interested in the European making of such reference frameworks – and the contribution of the institutional academic oligarchy as experts – I recommend the book *The changing epistemic governance of European education*, in which Normand (2016) analyses policy-making in education (e.g., for PISA) and higher education (e.g., Bologna-Process).

In comparison to established, stylized quantitative output measures for research, the accountability, quality management, and governance of higher education remains a political and (e)valuation process with qualitative legal reference frameworks and judgments (Schneijderberg and Steinhardt 2019; Serrano-Velarde 2008). This also holds true for the introduction of HEAR, which was consolidated in a bumpy political process of law-applying sometime between 2003 and 2007 (Akkreditierungsrat 1999, 2006, 2008; Kultusministerkonferenz 1998, 2003). However, the legal process of constructing HEAR took until 2017, when, after a verdict by the German constitutional court (Bundesverfassungsgericht 2016), the regulations of law-applying reestablished the responsibility of the German *Länder* (federal states) to assure the quality of higher education (Kultusministerkonferenz 2017a, 2017b). It had been outsourced to private accreditation agencies according to New Public Management ideals (Serrano-Velarde 2014).

In this article, I will use the operative construction of HEAR as an empirical case to theorize law-applying (Luhmann [1969] 1983) by what I term the *soft conditioning program* (SoCoP). A SoCoP pursues the soft conditioning of social behavior by "investments in forms" (Thévenot 1984, 2001, 2007, 2016, 2024), such as HEAR, assuring comparable quality of study programs across Germany and the European Higher Education Area. In the form of a SoCoP, the soft conditioning of social behavior over time is presented as a methodology for deductive empirical research based on the analytical framework of the plural, ideal type orders of worth (OW) (Boltanski and Thévenot [1991] 2006). In analogy to Espeland and Sauder's (2007) methodological concept of reactivity, i.e., the idea that social behavior changes in reaction to individual actors and collectives of actors being publicly (e)valuated, observed, and measured, the OW framework offers a systematic, categorical lens for disclosing how the SoCoP of the HEAR affects change. The OW framework categories provide equivalences of "main conventions of coordination" (Thévenot 2001, 411) for theorizing and empirical analysis of situations of conflict or dispute,

[2] Curiously, Germany was one of four countries that signed the Sorbonne Declaration in 1998, which initiated the Bologna Process, thus constructing the European Higher Education Area. In contrast to the efforts of harmonizing higher education across Europe, in 2006, the legislative competencies were transferred from the German Federal Republic to the governments of the 16 *Länder* (federal states) (Hoymann 2010). Already prior to the final handover of legislative competencies, the federal government and the governments of the *Länder* disagreed as to whether quality assurance of the newly introduced bachelor and master study programs should be done by evaluation or accreditation of study programs (Mittag 2006; Serrano-Velarde 2008).

such as the establishment of HEAR. Like public measures in rankings, a SoCoP aims at reactivity both on the explicit, formal side of law-applying and the implicit, taken-for-granted social behavior of individual actors and collectives of actors in organizations, such as HEIs. Analytically, investments in forms "combine a material basis with a cognitive component implied in human recognition" (Thévenot 2024, 6). The reactivity of HEAR as a SoCoP in law-applying counters the understanding of Power ([1997] 1999, 96-97, 102) of audit and (e)valuation procedures as window-dressing rituals of verification.

Based on a brief introduction to the German HEAR in Section 2.1, Section 2.2 will introduce the operational constructivism embedded in a SoCoP in comparison to the hard conditioning program by Luhmann ([1969] 1983). Section 3.1 explains the methodological approach to the combination of the sociology/economy of conventions and conditional programming. Section 3.2 provides a brief outline of HEAR as investments in forms. Section 3.3 describes the analytical OW framework that is used in a deductive, methodological way to further theorize the SoCoP as a composite arrangement of the Civic-Industrial OW. In the case of HEAR, this is also influenced by the Domestic OW (Section 3.4). According to the understanding of law in the sociology/economy of conventions (e.g., Diaz-Bone, Salais, and Didry 2015), law is subject to negotiation and construction of legitimacy in the specific environment of its application. In Section 4, the practical meaning and legitimacy of law-applying in a SoCoP and negotiations are traditionally embedded in the convention of social partnership between the state and the academic profession. The state is responsible for overseeing and assuring the quality of higher education (e.g., by issuing criteria of equivalence for the structure of study programs and their evaluation during recurring accreditation procedures). The academic profession is responsible for teaching and learning. Section 4.1 also explains how HEAR has to work around privileges of academics – a most sensitive and difficult task due to the protection of academic freedom by the German constitution (*Grundgesetz*). Further legitimacy for the (e)valuation of the organization of teaching and learning in the context of HEAR is constructed by including the convention of peer review in the SoCoP (Section 4.2). In the conclusion and research outlook (Section 5), I will sketch how the theorization of the SoCoP seems applicable in other areas of public administration and management (e.g., schools, health, and welfare), as well as other large organizations, such as the multi-national firm Amazon. Accordingly, this article also contributes to the study of organizations in the sociology/economy of conventions (Cloutier, Gond, and Leca 2017; Jagd 2007, 2011; Juusola and Kohvakka 2023).

2. Describing the Soft Conditioning Program for the Case of the German Higher Education Accreditation Regime (HEAR)

2.1 The Higher Education Accreditation Regime and Procedures in Law-Applying

In the Federal Republic of Germany, higher education is subject to legislation of the 16 federal states (the *Länder*). Accordingly, higher education is regulated in 16 similar but different higher education laws of the *Länder*. This has not always been the case. The last federal law for all of higher education (*Hochschulrahmengesetz*; HRG) in Germany was ratified in 1998. Said law introduced quality assurance to German higher education through accreditation and evaluation procedures (HRG 1998; Kultusministerkonferenz 1998). Over the following years, more and more *Länder* included accreditation and evaluation in their higher education laws. In the introductory process of HEAR, the coordinating body named *Standing Conference of the Ministers of Education and Cultural Affairs of the Länder in the Federal Republic of Germany*, here short: *Kultusministerkonferenz,* established the German accreditation council (Akkreditierungsrat 1999, 2006, 2008, 2009, 2013). It mandated the formalization of accreditation decisions, procedures and criteria (Kultusministerkonferenz 1998; Serrano-Velarde 2014).

Overall, the administrative and legal adaptation of HEAR was a process with a duration of 19 years (1998–2017), which ended in 2018 (Kultusminister-konferenz 2017a, 2017b) after a verdict of the German constitutional court (Bundesverfassungsgericht 2016). The verdict by the German constitutional court originated in the private University of Applied Sciences (*Fachhochschule*) *S.R.H. Hamm,* which filed a legal complaint against the accreditation agency *ASIIN* for denying accreditation of their bachelor program in logistics (Verwaltungsgericht Arnsberg 2010). After the verdict, the procedure of law-making by the parliaments of the *Länder* was executed. However, not all of the 16 higher education laws of the *Länder* make accreditation obligatory for HEIs, for example Bavaria and Baden Wuerttemberg. The *Kultusministerkonferenz* is responsible for coordinating the interests of the ministries of the 16 *Länder* and parliaments, and the organization of applying the law (procedure 1 in Figure 1). The coordinating function of the *Kultusministerkonferenz* is justified by the German *Sozialstaatsgebot*, the obligation of the *Grundgesetz* to assure social security and social equity across all German *Länder* (Art. 20 and Art. 28).

As accreditation is decreed by law, it belongs to the "state form" (Thévenot 1984, 26). The law bears a specific "feature of the established form" and how the legal form is "objectified" (Thévenot 1984, 15) by law-making and law-

applying. To specify accreditation as an investment in forms in the social context of German higher education, in a first step, I draw on Luhmann's ([1969] 1983) early work *Legitimacy through Procedure* (Luhmann's book *Legitimität durch Verfahren* is written in German, and translations are done by the author).[3] It is also based on the epistemology of operative constructivism embedded in investments in forms and ongoing formation (Thévenot 1984, 2024). Focusing on the German legal system, Luhmann ([1969] 1983) makes a distinction between law-making by parliament and law-applying by subsequent organizations, for example, in courts and public administration (Luhmann [1969] 1983, 53, 130, 253). Following legislation, the procedure of law-applying executes the codified intentions of the legislative branch "to attain an administrative and legal adaptation of the environment" (Luhmann [1969] 1983, 253).

In general, law-applying aims to reduce complexity (Luhmann [1969] 1983, 53, 58-9) by defining procedures and corresponding criteria, for example, codified in the criminal code guiding a lawsuit or accreditation criteria guiding accreditation procedures. Please be aware that accreditation criteria are not national or state laws but, once adopted by the accreditation council or *Kultusministerkonferenz*, have the status of a by-law or decree (*Verordnung*). However, in each procedure, decision-making is not predetermined, e.g., by accreditation criteria, and has its very own evolution and history towards a certain outcome to assure the legitimacy of the final decision (Luhmann [1969] 1983, 43-5), regardless of whether in the accreditation council or during the accreditation procedure of a study program, which includes an on-site visit by the review panel (see Section 4.2). However, the establishment of the German HEAR is a typical example that the administrative and legal process of law-applying is not merely directive but a process of negotiation according to the principle of subsidiarity: political issues and problems should be dealt with and solved at the most intermediate (or local) level, and a higher-level entity should only be involved in case a problem cannot be solved by the lower-level entity. Figure 1 illustrates these processes between organizations. In Figure 1, this interplay is emphasized by the arrows in-between (chains of) organizations (procedures 1-9; analytically, a procedure is assigned to action a) within an entity and b) in-between entities). The bold arrows indicate the formal authority during actions of law-applying, and the dashed arrows indicate the feedback and verification loops, and possibly counter communications.

The German Accreditation Council (*Akkreditierungsrat*) is a key actor for the adaptation of HEAR and for constructing legitimacy in the higher education

[3] Like for Boltanski and Thévenot ([1991] 2006) and Power ([1997] 1999), legitimacy is core to Luhman's ([1969] 1983) theory, for example, parliament and court as legitimate realms of compromise, critique, and justification. For an earlier attempt to combine Luhmann and sociology/economy of conventions in organization studies, see Besio and Meyer (2015).

environment. The Council is composed of representatives of the *Länder*, the Rectors' Conference, students, and the world of work (Akkreditierungsrat 1999, 2013; Kultusministerkonferenz 1998, 2003, 2017a).[4] In the pre-2018 HEAR, the Council was responsible for issuing the accreditation criteria.[5] For example, when protests about the rules governing examinations and sizes of modules by HEIs and students increased in 2008 and 2009, the Council created a new and differentiated criterion named *Studierbarkeit* in order to assure that study programs are not overloaded with exams and without structurally generated barriers (Akkreditierungsrat 2009, Art. 2.4).[6] A detailed analysis of the evolution and change of accreditation criteria was published by Schneijderberg and Steinhardt (2019). Another example of a bottom-up initiative (feedback loop of dashed arrows) was the introduction of cluster accreditation, i.e., several study programs of either natural or social sciences are accredited in one procedure. As an experiment, it was first introduced upon the initiative by a few HEIs and the accreditation agency AQCUIN, which involves the procedures 6-9. In 2003, legitimacy for cluster accreditation was achieved by consent among representatives of all collective actors involved. Cluster accreditation was added to the criteria about three years later (Akkreditierungsrat 2006).

The described institutionalized structure mirrors what Lamont (2012, 205) refers to as the "inter-subjective agreement" of how to operate procedures, for example, the agreement on the use of cluster accreditation with appropriate criteria (procedure 5) in HEAR as an application of the law. The criteria of procedures are the result of a social and cultural process of "negotiation about proper criteria and about who is a legitimate judge" (Lamont 2012, 205). The legitimate (e)valuation judges are assembled in a review group (procedure 8), while the final decision regarding accreditation is left to the Accreditation Council (procedure 5) – until the end of 2017, the final decision was made by the board of an accreditation agency (procedure 7). Especially during the establishment of HEAR, the accreditation agencies were probably the most agentic and criticized entities in the HEAR SoCoP (Serrano-Velarde 2014). As described above, accreditation agencies contributed several innovations to HEAR. In addition, they worked the last mile to HEIs (procedure 8) and imparted knowledge about accreditation procedures and criteria, and how to write a self-evaluation, provide statistics for evidence-based decision-

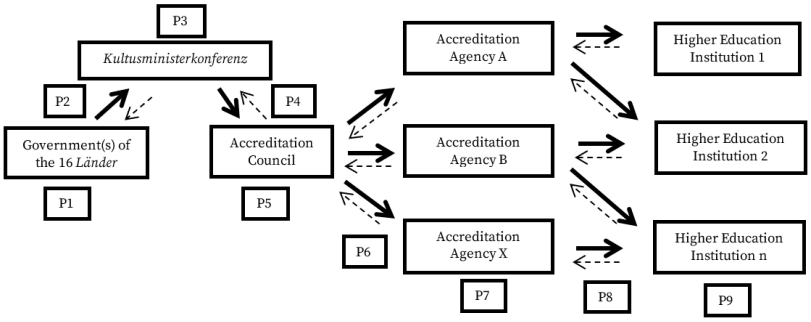
[4] Accordingly, representatives of the states, academic oligarchy, students, and the world of work have a say in the set-up of accreditation procedures and the definition of accreditation criteria (Akkreditierungsrat 1999, 2006, 2007, 2008, 2009, 2013). Representatives of accreditation agencies were included in consulting capacities in all accreditation governance issues (Serrano-Velarde 2014).

[5] In Germany, the term of use is accreditation criteria (*Akkreditierungskriterien*) and not the terminology of standards and guidelines (e.g., ENQA 2015).

[6] In post-2018 HEAR, the Council can only make recommendations for the criteria of the *Musterrechtsverordnung* (legal model decree) (Kultusministerkonferenz 2017a, Art. 5, 3, 6).

making, etc., to HEIs, their academics, and the growing body of administrators in quality management (procedure 9). Accreditation agencies were also solely responsible for organizing on-site visits and assembling a qualified review group, normally composed of three to four academics, mostly professors, and one representative each of students and the world of work (either union or employer). As part of the "chain of reliance" (Power [1997] 1999, 82), academics contributed to the construction of procedures and adjunct criteria, as well as the recognition of academic values by procedures and in the application of criteria, for example, as reviewers. The role of academics in review groups in procedure 8 will be discussed in Section 4.2.

Figure 1 Scheme of Law-Applying in the German Higher Education Accreditation Regime (HEAR; bold arrows = formal authority; dashed arrows = communication loop)



P = procedure

2.2 Introduction and Description of the Soft Conditioning Program (SoCoP) for the Case of the German Higher Education Accreditation Regime (HEAR)

Based on the analysis and reflection of the establishment, maintenance, and modifications in the German HEAR, in the following, I will introduce and provide one part of the theoretical foundation for what I named the soft conditioning program (SoCoP). Inspired by Luhmann's ([1969] 1983) hard conditioning program (HaCoP) of law-applying, for example, the execution of the legal system by judges, attorneys, etc., a SoCoP of law-applying is introduced in this article as a second type of conditioning program. In Table 1, both a SoCoP and HaCoP are based on basic characteristics of a conditioning program, which Luhmann ([1969] 1983, 129-35) distinguishes from a means-end program. In general, conditioning programs are established as structures of ordered conflict, i.e., defining procedures and roles for issuing critique and justification, and reaching a legitimate decision. A SoCoP shares common

Table 1 A Comparison of Means-end and Procedural Programming, and Hard and Soft Conditional Program Characteristics

	Means-end programming	Conditional programming	Hard conditional program (example trial)	Soft conditional program (example HEAR)
Proceduralization	Dual prerequisite of enabling and restricting conflict (means: documented and verbal expressions; no weapons)			
Legitimacy of procedure	Decisions guided by intended impact (e.g., by firms' executive board and in planned economy)	Contingent if-then decisions (e.g., cause-, reason- and information-based)		
Temporal isolation of problem	Future factual findings	Past factual findings	Primarily past factual findings – can consider future expectations and promises	
Objects of critique and justification	Intended consequences, outcomes, and outputs (are not achieved)	Criteria, premises, rules, etc. (their increasing vagueness decreases options for critique and justification needs)	Law, procedure, and expertise (legal, psychological, surveyor, etc.)	Criteria, indicators, procedure, and expertise
Predefined and accepted, qualified roles (disciplining and control of justification and critique)	Responsible entity and persons in charge	To be defined according to position, status, education and training, etc.	Judge, plaintiff, attorney, defendant, etc.	Quality expert, professor/higher education teacher, student, employer and union representatives
Binary basic decision mode	Yes and no (including partial achievement)	Likely, but not necessarily yes and no (e.g., factual findings)	Guilty (probation, fine or go to jail) and not guilty (go free)	Accredited (incl. with conditions) and not accredited
Singular or recurrent event structure	Singular (including possible sequential approval – possibly with modifications – by higher authority [e.g., by CEO and in political party])	Singular	Singular, however, follow-up in case of appeal to the next higher legislative authority	Recurrent (e.g., re-accreditation due after five to seven years)
Absorption of critique, e.g., by next higher responsible entity (individual or collectives of actors)	No: those who decide about means are responsible for (making) ends (meet)	Yes: those involved in law-applying are not responsible for conditioned decisions they make (exceptions: misconduct, fraud, etc.)	Yes: law-making (e.g., judge decides in trial based on laws and by-laws)	Yes: governing body deciding on rules, criteria, indicators, etc. (e.g., academic senate and accreditation council)

Source: Luhmann ([1969] 1983, 100-6, 129-35); translation and amendments by author.

features with a HaCoP, such as being defined by laws and regulations, predefined roles for the participation of people concerned, and the outcome not being pre-determined by a framing procedure. Like a law-applying HaCoP, such as criminal law, a SoCoP does aim at individual and collective conditioning and sanctions. Unlike in a HaCoP with direct sanctions for individuals (e.g., go to prison) and organizations (e.g., pay fine), sanctions of a SoCoP can address individuals in an indirect way via collective, organizational sanctioning. In law-applying of HEAR, for example, the conditioning addresses the formulation of learning outcomes, credits awarded per course, and explanations on the content of study programs in a module handbook. An example of a sanction is the definite non-accreditation of a study program, resulting in an admission stop of new students for a study program. Such a SoCoP sanction affects individuals in an organization only indirectly. It, for example, limits consecutive actions of academics in HEIs – however, professors (in public HEIs) do not get fired or suffer salary cuts for failing an accreditation. In addition, in the case of HEAR, the SoCoP allows for a second chance to meet legal requirements, for example, a second effort to get a study program accredited after taking into consideration the lessons learned in the previous, failed effort. In contrast to a HaCoP, a SoCoP is a recurring procedural event, such as the initial accreditation of a study program and consecutive follow-up accreditation procedures after a predefined period.

Conditioning programs are established for learning to trust a specific system (*Systemvertrauen*) based on institutionalized ways of reaching a decision – in a specific situation as well as in similar situations (Luhmann [1969] 1983, 199). The application of a SoCoP in the German HEAR was, at least partly, inspired by the New Public Management "doctrine" (Power [1997] 1999, 98) of the 1990s (see also Normand 2016, 170-81). The establishment of accreditation procedures and criteria aim at a soft conditioning of management systems and the organization of higher education, i.e., teaching and learning structures, within and across HEIs (Akkreditierungsrat 2001, 2012; Schneijderberg and Steinhardt 2019). HEAR public management of higher education includes social, in particular, culturally, economically, and politically motivated use of audits and evaluations (Donabedian 1988; Beerkens 2015; Bornmann, Mittag, and Daniel 2006; Dahler-Larsen [2011] 2012; Houston and Paewai 2013; Mittag 2006; Power [1997] 1999; Serrano-Velarde 2008; Stensaker 2011; Stensaker et al. 2011; Westerheijden et al. 2014).[7] Right from the beginning in 1998, the SoCoP of HEAR had both a learning and institutional legitimation function. As defined in *The Evaluation Society* (Dahler-Larsen [2011] 2012), the learning function does not rely on centralized, administrative planning but on feedback during the (e)valuation process, for example, from (peer) reviewers during the on-site visit (one to two days) and from the accreditation

[7] Other strands of evaluation literature focus on the evaluation of research (e.g., Glänzel et al. 2019) and HEI ranking and rating regimes (e.g., Espeland and Sauder 2016).

agency on formal requirements of higher education organization. According to Dahler-Larsen ([2011] 2012, 53), "learning-oriented evaluation often emphasizes the importance of collective sense making to create a feeling of ownership, common understanding, and shared responsibility for follow-up."

Although accreditation means the attainment of specific objectives defined in its criteria, the learning or development process did not cease in 2018 after the 19-year period of political and legal establishment of HEAR (1998–2017). The ritual of follow-up accreditation reiterates the process for established academics and introduces accreditation processes and criteria for the organization of higher education to new professors and academic staff. The fluctuation is high in German academia: every year, about 1,500 new professors are hired (in 2022, professors' total n = 51,161), and only about 16% of academic staff work on a permanent contract, while the others get fixed-term contracts of a maximum of six years (non-professorial academic staff total n = 227,074) (GFSO 2023). In addition to the learning function, HEAR pursues an institutional function of meeting the goals and getting the accreditation *signum* for study programs in order to secure "legitimacy, support, and recognition from their environment" (Dahler-Larsen [2011] 2012, 60). Such environmental legitimacy, support, and recognition is formalized in accreditation as a SoCoP through "organizational prescriptions, routines, scripts, action plans, and policies" (Dahler-Larsen [2011] 2012, 66). Of course, accreditation as an institutionalized ritual has "primarily to be understood on the basis of its function, namely to reinforce collective [academic] identity and enable society to be cohesive, organized around the myth," as Dahler-Larsen ([2011] 2012, 57-8) emphasizes with reference to Émile Durkheim. For example, rituals of accreditation are a symbol for the myth of assurance or enhancement or management of higher education quality (Williams and Harvey 2015). However, as stated above, accreditation as a SoCoP in law-applying is not an empty ritual of verification, as, for example, argued by Power with reference to audits ([1997] 1999, 96-7, 102).

Like any conditional programming, law-applying procedures of SoCoP work as conditional if-then programs, which have to process only a specific complexity during a procedure, or several procedures (Luhmann [1969] 1983, 130-1). In a HaCoP, the conditioning always works in a formal, direct way, making use of the full sanctioning power of the juridical system. For example, *if* you commit a crime, *then* you will go to prison (e.g., for murder), be on probation (e.g., for assault) or have to pay a fine (e.g., for minor theft). In HEAR, the soft conditioning of social behavior is not directly but indirectly pursued by social formation. To grasp the continuous governing efforts, in Section 3, I will further theorize the SoCoP in applying the law as investments in forms, i.e., a codification of organizing (Thévenot 1984, 2001, 2007, 2016). In the form of a SoCoP, the soft conditioning of social behavior is theorized in more detail according to the public, Civic and procedural, Industrial OW

(Boltanski and Thévenot [1991] 2006). For future empirical analysis, the more fine-grained theorization based on the analytical OW framework provides methodological tools for the study of conflict situations, in which the social behavior of individual and collectives of actors is challenged by a certain soft conditioning goal that is to be achieved over a mid- and long-term period. The categories and substantial terminology of the Civic and Industrial OW make the "structuration and internal moral logic" (Honneth 2010, 388) of conventions of coordination analytically explicit. I will explain this for the example of HEAR and with more details about the provision of higher education by the German academic profession in Section 4.

3. Theorizing the Soft Conditioning Program (SoCoP)

3.1 Methodology

For the theoretical construction of SoCoP, the OW framework is applied in a theoretical, deductive, and methodological way. Using the OW as a methodological research approach seems to be supported by Boltanski and Thévenot's ([1991] 2006, 1-3) emphasis that methods and theory in sociological research are mutually dependent.[8] Methodologically, the combination of sociology/economy of conventions theory and Luhmann ([1969] 1983) is understood as an effort to creating equivalency between Luhmann's elaborations on procedures of legitimacy and OW framework terms.

The OW framework categories and term-led coding practice did not produce ambiguities in the analytical process. First, the ideal type OW category terminology facilitated combining it with the characteristics of a SoCoP (Table 1). Second, the theoretical elaborations of investments in forms (Section 3.2), analytical framework of orders of worth, and procedural construction of legitimacy provide a high generality of statements – or in the words of Susen (2017, 358) are "context-transcendent." Third, the unit of analysis is a situation of theory development, which is supported by the empirical case of German HEAR. Fourth, also the empirical case and the conventions of the social partnership between the state and the academic profession, and peer review address a general situation of macro- and meso-organizing. However, these explanations about coding of practices should not imply that no difficulties and ambiguities will be encountered in the coding process by researchers when applied to SoCoP analysis of a specific case and situation of dispute.

[8] For the sociology/economy of conventions, I consider the deductive, methodological approach a second one to methodical holism (Diaz-Bone 2012). For a more general introduction to economy/sociology of conventions, see, for example, Boltanski and Thévenot ([1991] 2006, 1-21) and Diaz-Bone and Larquier (2022).

3.2 Investments in Forms: The Case of the German Higher Education Accreditation Regime (HEAR)

> *"Three main characteristics differentiate types of IF [investments in forms]: (1) durability or extent in time, from a short-lived model up to a perennial custom; (2) area of validity or extent in space, from a personally and locally attached rule of thumb or house rule, up to international standards or rights; (3) objectivity or material consolidation, from a mainly mental criterion, up to a solid template."*
> *(Thévenot 2024, 8)*

Theoretically, I understand the establishment of HEAR as investments in forms (Thévenot 1984) by applying the law in a SoCoP. In an abstract manner, Thévenot (2001) defines non-individual actors and objects as forms that are constructed by all kinds of investments. Investments are not just economic investments that can be counted but all efforts that count in a situation of critique and justification. As a "generalization of coordination," the investment in forms (e.g., a national statutory health and higher education system) "is costly and demands negotiation and material equipment, but the cost may be offset by returns in coordination which depend on the extension of the domain of time and space within which it is accepted" (Thévenot 2001, 407). For higher education policy, the introduction of HEAR as a form meant a "costly operation to establish a *stable* relation *with a certain lifespan*" (Thévenot 1984, 11). Once the investment-in-forms phase is completed, the HEAR is supposed to provide relatively stable rules to reduce the "cost of information, cost of adjustment [and] cost of uncertainty" (Thévenot 1984, 12), as well as public information by labeling successful HEIs as accredited, i.e., quality assured for a predefined period. According to Thévenot (1984), form-giving is intended to facilitate modes of coordination and engagement via a composite device of social orders of organizing human behavior (see Section 3.2).

The establishment of HEAR was a legal and political process with a duration of 19 years (1998–2017). The legal process was described in Section 2.1. The political process of the 1998 weakly codified accreditation form had its hallmarks in the introduction of cluster accreditation (in 2003). This allowed the accreditation of several study programs during one procedure instead of one accreditation per program and system (in 2007), i.e., the accreditation of a quality management system of a HEI to organize the accreditation procedures, for example, including or excluding an accreditation agency. In addition, as Schneijderberg and Steinhardt (2019) show, we find an ongoing, politically motivated modification of criteria (Akkreditierungsrat 1999, 2006, 2007, 2008, 2009, 2013). Theoretically, in accreditation procedures, accreditation criteria are a formation of the "rules of conduct" or "machine-tools" (Thévenot 1984, 10). In addition, pre-defined criteria and their application in procedures following a mostly standardized (e)valuation of study programs and quality management systems did help academics and administrations of HEIs "*to get into the habit*" (Thévenot 1984, 14) over a period.

This 19-year process reflects the understanding of law-applying processes in sociology/economy of conventions:

> One has to note [...], that it is the legal rules itself, which require efforts for understanding and interpretation from the persons for whom the rules are made. To the extent, in which legal statements have a general character, actors – who have to have to apply them – often have to determine which precise actions have to be exerted to be in accordance with these rules. They have to find out which practical meaning is to be given to legal rules in everyday life. Although the literal meaning of legal rules is hardly understandable, law always entails a part of incompleteness, imprecision and ambiguity (this to the extent in which law avoids to enumerate criteria or limits, which determine the legal or illegal character of a fact). [...] The majority of legal texts cannot be regarded as prescriptions for immediate executable actions. Instead, they offer principles and this is the reason why they need to be translated into the practical context. Therefore, actors conceive legal rules as something whose meaning can be negotiated. Because of a missing agreement about the meaning of the legal rule, the chance to achieve collective action is undermined. The tenor of this agreement about how to interpret these texts is necessarily influenced by actor's ideas, values and interest, who realized these agreements. (Bessy et al. 2011, 17, cited in Diaz-Bone 2015, 26-7)

For the case of HEAR, the practical meaning of legal rules in law-applying in HEAR procedures and their negotiations are expressed by the convention of the social partnership between the state and the academic profession (Section 4.1). This is rooted in the state's responsibility for higher education (e.g., by issuing criteria of equivalence for study structures and organization of evaluating those during accreditation procedures) and the responsibility of the academic profession for teaching and learning, as well as the convention of peer review (Section 4.2).

Prior to discussing the two conventions, in the following section, I elaborate the SoCoP in more analytical detail for the study of public administration and management in the state form and specify it for the case of HEAR. For the case of HEAR as a procedure of law-applying, a SoCoP is elaborated here on the basis of the Civic and Industrial OW (Boltanski and Thévenot [1991] 2006). As an ideal type of social order, the Civic OW emphasizes the democratic, equality-seeking organization by the state (Boltanski and Thévenot [1991] 2006, 107-17). However, the state form makes use of industrially (Boltanski and Thévenot [1991] 2006, 118-23) organized procedures in law-applying, for example, seeking efficient bureaucratic and management models for public administration in line with existing law. Accordingly, Civic and Industrial OW social orders are presented to guide the empirical study of competent actors in the analysis of a situation as well as their interpretation of legal texts, their incompleteness, imprecision, and ambiguity of executable actions.

3.3 Soft Conditioning Program as a Compromise of Civic and Industrial Orders of Worth

Before further theorizing the SoCoP, I provide a brief introduction to the plural orders of worth (OW) framework initiated by Boltanski and Thévenot ([1991] 2006, 1999, 2000).[9] In the OW framework, the original Civic, Domestic, Fame, Industrial, Inspired, and Market OW were amended by the Project OW (Boltanski and Chiapello [1999] 2007), Green OW (Thévenot, Moody, and Lafaye 2000), which still lacks a theoretical basis in political philosophy required for an OW (Boltanski [2009] 2012), and the Socialistic OW (Schneijderberg 2022). For non-violent regimes governing a situation, the OW "spell out the requirements a *higher common principle* must satisfy in order to sustain *justification*" (Boltanski and Thévenot [1991] 2006, 66).[10]

To answer the "how-question," the OW framework provides equivalency-constructing categories and theory-based substantial terms a) to guide empirical analysis, and b) to understand and interpret the results of analysis (Boltanski and Thévenot [1991] 2006, 3-5). As general social references for legitimate critique and justification, each OW is composed of a higher, impersonal principle called mode of evaluation (Boltanski and Thévenot 1999, 361). In addition to the mode of evaluation (worth), other OW categories are test, form of relevant proof, qualified objects, qualified subjects, time formation, and space formation (Thévenot, Moody, and Lafaye 2000, 241). The definition of terms according to OW categories that guide conventions of coordination implies a qualification of subjects' actions and/or objects in a situation of critique and justification. It is an analytical act of reducing complexity in order to construct coherence (Boltanski and Thévenot [1991] 2006, 130-4). In addition, the respective substantial terms, as Thévenot emphasized in an interview, provide clues to analyze the "implicit normative requirement of the orders of worth" (Blokker and Brighenti 2011, 394).

For the theory-led empirical analysis of a situation (Boltanski and Thévenot [1991] 2006, 146), the methodological application of the OW is "context-dependent" (Susen 2017, 358), i.e., dependent on a specific space in time. However, the OW are context-transcendent as ideal type social orders in a methodological plural framework. On the one hand, for context-dependent situational analysis, the analytical goal of the OW is to "uncover the common requirements shared by all orders and to account for a variety of modes of acting that may qualify for public legitimacy" (Thévenot, Moody, and Lafaye

[9] The OW are considered as a "research programme" (Wagner 2014, 235), which as a sociological program is "still and ever in progress" (Lemieux 2014, 164).

[10] The theoretical foundations of each OW are in practical political philosophy. Boltanski and Thévenot (2006) define five criteria for the selection of a canonical text and six axioms (for a summary, see Schneijderberg 2022, Table 4 [302-3], Table 5 [304-5]) to give a "direction to the ordinary sense of what is just" (Boltanski and Thévenot [1991] 2006, 74) in situations of critique and justification of valuation (see also Heinich 2020a, 2020b).

2000, 239). On the other hand, the context transcendence fosters cross-(individual)-case, cross-country, and cross-organizational comparisons. For example, for the German HEAR, the mode of evaluation (worth) (how-question) category denotes the higher principle of an OW, which is put to the test (why-question) in each accreditation procedure.

According to the analysis of German HEAR, accreditation, and its criteria by Schneijderberg and Steinhardt (2019, 14-22), the OW that are put to the test are the Civic and Industrial OW. In the Civic OW, the mode of evaluation (worth) is defined by "collective interest" (Boltanski and Thévenot [1991] 2006, 107-10), which is ensured by the state using "formal and official" information (form of relevant proof), such as laws, to display that the goal of (legal) "equality" (test) is achieved as a fundamental relation in a polity. This relation is defined as a disembodied political worth, in which "civil peace and the common good [...] [are] placed above private interests" (Boltanski and Thévenot [1991] 2006, 107). According to Boltanski and Thévenot ([1991] 2006, 204-5), information about "equality" or becoming a more or less "equal" polity can be based on "statistics and criteria" as "measures" (form of relevant proof) provided by the industrial OW, which means a compromise of two OW in the plural OW framework.[11] However, such a compromise between the Civic and Industrial OW means a challenge of (legal) "equality" (Civic OW) by issues of "efficiency" (Industrial OW) in the empirical analysis of a situation (context-dependence).

A SoCoP of applying the law, such as HEAR, is constructed as a compromise of the Civic and the Industrial OW. SoCoP as a governance instrument is designed as an Industrial OW test of the "competence, reliability, and planning" in public administration of HEAR, and assures "equal" (quality) standards of the organization of studies, i.e., a frame for teaching and learning in higher education. Building on the ideal type and context-transcendent idea of the OW framework, the SoCoP is summarized in Table 2 according to categories. For each category of the Civic and Industrial OW, the terminology of the OW is used to formulate the core characteristics of a SoCoP. In row four of Table 2, the characteristics and examples of accreditations are based on Luhmann's ([1969] 1983) definition of a law-applying procedure and Power's ([1997] 1999, 5) summary of audits.

[11] Another example of a compromise in public management is "competitive public service" (Boltanski and Thévenot [1991] 2006, 278), i.e., a composite device of "equality" in public service provisions (Civic OW test) and "competition" (Market OW test). Please be aware that double quotation marks without reference are used in the text and tables to highlight OW category specifications, which are made explicit by referencing the OW category in brakets, in most cases.

3.4 The Composite Arrangement of Civic-Industrial OW HEAR and Domestic OW Higher Education Teachers

SoCoPs are investments in forms by the state that establish a chain of reliance by defining mandates of entities (e.g., accreditation council; see Figure 1). They provide procedures (e.g., evaluation of quality based on documents and/or on-site visits by the review group) and tools (e.g., accreditation criteria) for public administration of "perennial" validity (Civic OW time formation) and "detachment" (Civic OW space formation) of applying the law. The legitimacy of the outcome of a SoCoP or its (accreditation) procedures are neither according to Boltanski and Thévenot's ([1991] 2006) nor to Luhmann's ([1969] 1983) operative constructivism merely subjective or objective. Law as well as law-applying "can be seen as a guide within the coordinations in which actors are committed" (Diaz-Bone, Salais, and Didry 2015, 9). The participation of people concerned (e.g., citizens and stakeholders) and the openness of the outcome are the fundamental principles for the establishment of legitimacy via a SoCoP, such as HEAR, which is designed by law to make an Industrial OW test ("technical efficiency") work. In Germany, HEAR is a SoCoP that is applied to more than 300 HEIs and more than 8,000 study programs attended by about 2.9 million students.[12] In the application of law in the context of HEAR, the *Länder*, according to the Civic OW of Boltanski and Thévenot ([1991] 2006, 188), are morally and politically bound to rely and to insist on assuring legal "equality" (test) in a polity. This was also emphasized in the verdict by the German constitutional court (Bundesverfassungsgericht 2016). The focus of control is not about content of studies and teaching but about securing the "collective interest" (mode of evaluation) by "formal" and "official" information (form of relevant proof) to display that the goal of "equality" among "citizens" (qualified subjects), e.g., students and their parents, is achieved across HEIs. For example, state-supervised HEIs issuing higher education diplomas is a Civic-Industrial OW compromise (Boltanski and Thévenot [1991] 2006, 316).

[12] Press release by the German Federal Statistical Office 2022: https://www.destatis.de/EN/Themes/Society-Environment/Education-Research-Culture/Institutions-Higher-Education/_node.html (Accessed 18 February 2024).

Table 2 State Form Law-Applying Soft Conditioning Program (SoCoP) Assuring Legal "Equality" (Civic OW Test) and "Competence, Reliability, and Planning" (Industrial OW Test): The Case of Accreditation of Higher Education

OW category	Order of Worth (OW)	OW terminology	Characteristics in soft conditioning program
Space formation	Civic	"Detached,"* non-individual approach	Application of procedure to all organizations in a jurisdiction (e.g., national higher education system).
	Industrial	"Cartesian connection" of the object with the form	Making the organization (e.g., HEIs) and its members (e.g., academics), responsible for its services and products (e.g., study programs).
Time formation	Civic	"Perennial"	Establishment or modification of permanent state function (e.g., assurance of quality of higher education).
	Industrial	"Long-term planned" operation	Execution of procedure on organizations in predefined regular intervals (e.g., accreditation must take place every five to seven years).
Qualified subjects	Civic	"Citizens" and/or representatives	Enable basic rights to participate and voice legitimate concerns, claims, etc. (e.g., stakeholders).
	Industrial	"Experts" (incl. recognition of their status)	Clear definition of roles and responsibilities of collective and individual actors, and their representatives (e.g., stakeholders), which are independent from the object of concern.
Qualified objects	Civic	"Rules and regulations"	Compliance with law-making, including limited space for modifications of procedures and criteria which have to be (later) adopted as part of law-applying.
	Industrial	"Infrastructure" (#1)	Set-up of a sequence of predefined organizations of law-applying as chain of reliance.
		Procedure as "method" (#2)	Procedure as if-then program to process actions of limited complexity applied to a clearly identified object. Each procedure develops a (hi)story towards a certain, not predefined decision or result.
Form of relevant proof	Civic	"Formalization," making decisions "official"	Entity in charge, which can include representatives of collectives of actors legitimately concerned about the qualified object (e.g., in accreditation council).
	Industrial	"Measures"	Predefined (e)valuation procedures and criteria, incl. criteria guided use for evidence gathering and decision-making for proposal to unit in charge.
Mode of evaluation	Civic	Negotiation of "collective interest"	Certain flexibility and responsiveness of organizations in charge of law-applying to collective expressions of will of collectives of actors, such as stakeholders (e.g., resolution of *Hochschulrektorenkonferenz* [2016] and student protests in 2009) and / or employees (e.g., represented by union).
	Industrial	"Technical efficiency"	Procedural organization of (e)valuation (e.g., accreditation of teaching and learning structures). Also, sanctions address a collective of actors and an organization.

Sources: Boltanski and Thévenot ([1991] 2006); Luhmann ([1969] 1983); Power ([1991] 1999); Thévenot, Moody, and Lafaye (2000, 241); author's arrangement. * Double quotation marks without reference are used in the text and tables to highlight OW category specifications.

Analytically, and here comes the *that is why public administration applies a SoCoP*: the Civic-Industrial compromise explained for HEAR is investments in forms that frame the higher education function of HEIs. First, the "general interest" (Civic OW test) requires the state, i.e., the *Länder,* to take responsibility for, "among other things, the equality of citizens as recipients of public services" (Boltanski and Thévenot [1991] 2006, 332). The assurance of the *Länder* of "X qualities instead of quality X" (Schneijderberg and Steinhardt 2019, 5) is formed by the HEAR procedures in the chain of reliance and accreditation criteria. These aim at the control of management systems and of the organization of higher education structures (Akkreditierungsrat 2001, 2012; Power 1999, 102).

Second, overseeing or assuring the quality of study programs in German HEIs addresses a public service "infrastructure" (Industrial OW qualified object).[13] The Civic-Industrial investment in HEAR as a form is a way around the actual execution of teaching and learning in higher education. According to Boltanski and Thévenot ([1991] 2006, 238, 240, 241, 243, 244, 246, 249), education[14] and higher education belong to the Domestic OW. Therefore, third, the Domestic OW becomes part of the Civic-Industrial compromise and its "composite arrangement" (Boltanski and Thévenot [1991] 2006, 277). For delivering the public service of higher education, academics, in particular professors – as Domestic OW "trustworthy" (test) "authorities" (qualified subjects) with a certain "esteem" and (professorial) "reputation" (mode of evaluation) – are commissioned by the *Länder* to execute the function of higher education in HEIs. According to the New Public Management doctrine, the governance of HE is not left to the responsibility of the individual academic, and the tribal and territorial, disciplinary standards only (Becher and Trowler [1984] 2001; Schimank 2005). Mandating academics to carry out teaching in higher education, the *Länder* rely on

> technical arrangements of very different orders whose implementation rests on the possession of specific competencies and whose evaluation appeals to the principle of industrial legitimacy. The tension between the civic [OW] and the industrial [OW] is inscribed in the very arrangement that presides over the implementation of each activity. (Boltanski and Thévenot [1991] 2006, 332)

In the chain of reliance, individual academics get connected to the Civic-Industrial OW logic via the SoCoP. Connected, as Thévenot (2022) explains, emphasizes the networking idea of the Project OW (Boltanski and Chiapello [1999] 2007), but rejects the project notion because of the agentic nature of New Public Management and its engaging, liberal and market-oriented way

[13] Analyzing studies on the level of HEIs would mean defining higher education as a service according to the "qualified object" of the Market OW, as explained by Schneijderberg (2020).

[14] See Imdorf and Leemann (2023).

of standardization (see also Thévenot 2009, 2024). Accordingly, when looking at how HEAR or a similar SoCoP affect individual academics and actual peer review in a SoCoP in a future study, we have to address the cleavage "that the academic manager [e.g., the institutional academic oligarchy] forges a compromise between the domestic, industrial and connectionist [OW], while the managed academic establishes equivalences between the inspired, domestic and civic [OW]" (Normand 2016, 213). Academics' teaching (and research) is a Domestic-Inspired-OW compromise. In terms of the Inspired OW, academics are supposed to be both committed, authentic, passionate, avant-garde, imaginative, and intuitive as well as humble, distanced, and detached about their teaching (as well as about their research) (Boltanski and Thévenot [1991] 2006, 238, 251, 261, 262, 303). The Civic OW stand for academics' mandate and implied common good orientation of teaching.

Acknowledging the difficulty of defining quality of teaching according to the category-led substantial terminology of the Domestic an Inspired OW, the quality aim pursued with a SoCoP like HEAR[15] follows the principle of fitness for purpose: "Quality is thus judged in terms of the extent to which the product or service fits its purpose. […]. It is a functional definition of quality rather than an exceptional one" (Harvey and Green 1993, 16). The fitness for purpose (quality) assurance in line with the *Länder's* public administration of the Domestic-Industrial compromise (i.e., convention of social partnership) limits the capacities of the *Länder,* as is explained in the following section.

4. The Negotiation of Meaning in the SoCoP According to the Conventions of Social Partnership and Peer Review

4.1 Convention of Social Partnership: Academic Freedom, Social Partnership of State and Profession, and the Organization of Teaching and Learning

In HEAR, academics are included in primarily four decisive procedures in Figure 1. First, representatives of academics are part of the accreditation council (procedures 4-6), which in the post-2018 HEAR is responsible for decisions and issuing criteria with respect to accreditation. In the pre-2018 HEAR, academics were part of the decision-making body in accreditation agencies (procedure 7). Second, academics represent the majority of

[15] Of course, in addition to establishing mechanisms of quality assurance, like HEAR, also performance indicators to monitor efficiency are relevant in higher education governance (Harvey and Green 1993, 23; Power [1997] 1999, 43).

reviewers in the review group (procedure 8), which strengthens their positions in evaluations (Musselin 2013). According to Table 2, the inclusion of academics in review groups is rooted in the understanding of academics as "experts" (Industrial OW qualified subjects) and their knowledge about the organization and quality of higher education. Third, academics define curricula and module handbooks, prepare the self-evaluation report for the accreditation of a program or cluster (of course, together with administrators, e.g., responsible for quality assurance), and are subject to evaluation by the review group (procedure 8). Fourth, the institutional academic oligarchy (Brennan 2010; Pusser 2008), in particular, the German Rectors' Conference (*Hochschulrektorenkonferenz* [HRK]), was consulted by the *Kultusministerkonferenz* (procedure 3) and published statements on the development of HEAR (e.g., HRK 2016). Accordingly, academics are involved across all stages of the SoCoP and contribute to the establishment and development as well as the legitimacy of HEAR. At the same time, academics (and HEIs) are the end of the chain of reliance, i.e., addressees of the SoCoP. In this section, I will first briefly introduce the origin of the academic profession's involvement in German governance of higher education. The description of the strong position of the academic profession will explain further why a SoCoP, in the present case of HEAR, is used in law-applying.

In the introduction, I defined public administration and management of higher education in Germany as a particularly challenging case, which combines material stabilization through instruments (e.g., legal texts and procedures) and cognitive stabilization through common interpretation and shared knowledge. On the one hand, for the adaptation of HEAR in the higher education environment, higher education policy has to comply with the traditional social partnership (*Sozialpartnerschaft*) in higher education governance between the state and the academic profession (McClelland 1990; Schimank 2005; Stichweh 1994). On the national level, the social partnership grants the institutional academic oligarchy (e.g., assembled in the German Rectors' Conference) a relatively strong position in higher education governance. Theoretically, the academic profession is recognized as a corporate group which coordinates and issues corporatist demands (Boltanski and Thévenot [1991] 2006, 259). The interests of single individuals are not recognized. The coordination is done via disciplinary and status associations and/or represented by officially recognized collectives, such as the German Rectors' Conference, and their elected representatives (Boltanski and Thévenot [1991] 2006, 185-7, 239, 254).

However, the German institutional academic oligarchy, partly still considered as *primus inter pares*, is bound by academic corporatism and traditions. In academia, social order is very much justified by seniority, habits, inherited rules, customs, and informal practices (e.g., academic culture) as well as hierarchies (including hierarchy of trust and reciprocal personal

dependencies), social positions (e.g., academic rank), and associated privileges (Boltanski and Thévenot [1991] 2006, 237-8, 259, 264, 270, 271). Professors are seen as an "authority" (Domestic OW-qualified subjects), as masters and teachers with substantial discretionary powers (e.g., judging and grading academic quality) (Boltanski and Thévenot [1991] 2006, 238, 240, 241). These features of the academic social order are captured in the plural framework by the Domestic OW (Boltanski and Thévenot [1991] 2006, 90-8). Based on the canonic text by Bossuet, Boltanski and Thévenot ([1991] 2006) define the generic characteristics of the Domestic OW as ideal type social order in private and workplace settings as well as social knowledge (e.g., of one's place) in hierarchical, almost authoritarian family ties (including maternalism and paternalism) governed by important and "trustworthy" (Domestic OW test) individuals, who are "to be distinguished, straightforward, faithful and to have character" (Boltanski and Thévenot 1999, 370).

In Germany, legally, the social partnership between the state and the academic profession is reflected by the special status of professors as civil servants for life, as well as the protection granted to academic freedom in the German Constitution (*Grundgesetz*). In article 5(3) of the constitution, the state grants considerable autonomy to individual academics, such as the free choice of what content to teach and what topic to do research about, which is very much in line with the definition of the Domestic OW by Boltanski and Thévenot ([1991] 2006).[16] The freedom of research and of teaching is replicated in the HE laws of the *Länder*. For example, in § 3, 1, 1, Lower-Saxony (2007) also stresses that teaching (and research) has to be done in respect and in support of the liberal, democratic, and social constitutional state (*Rechtsstaat*).

Therefore, on the other hand, the only options to influence research and teaching activities of academics – both by the state and the eligible bodies of a HEI – rest with the type of HEI, for example, to conduct more applied research in Universities of Applied Sciences, or if HEIs develop(ed) specific profiles, as, for instance, expressed in § 35, 3 of the Hessian higher education law (Hesse 2013). The legal statements about duties of academics are just as vague. The difference among the legal definitions of teaching and research duties of academics is most striking. The legal definitions for research state that research activities are about the advancement of sciences, the generation of new results, either with a basic and/or applied focus, and that research should funnel into teaching and foster knowledge and technology transfer

[16] Article 5(3) states: "Arts and sciences, research and teaching shall be free. The freedom of teaching shall not release any person from allegiance to the constitution." Academic freedom means freedom from direct influence from authorities – rooted in the instrumentalization of science by the Nazis (1933–1944) – and trust in the academic as a civil servant in the social partnership between state and profession. The German constitution emphasizes freedom and does neither refer to "creative" nor "inspired" (OW) research and teaching. See also footnote 12.

(e.g., Bavaria 2007, § 6, 1; Saxony 2011, § 45). For teaching, only the definitions of teaching loads of academics are precise – stressing why professors are traditionally referred to as higher education teachers (*Hochschullehrer*) in Germany (e.g., Lower Saxony 2007, § 4; Bavaria 2007, § 2, 1). A university professor has to teach eight or nine term-hours (*Semesterwochenstunden*) per term, with an academic year consisting of two terms. A professor at a University of Applied Sciences (*Fachhochschule*) has to teach, on average, 18 term-hours per term. The number of term-hours is lower for academic staff. For example, academic staff in pre-doctoral positions at a chair in a university generally teach two to four term-hours per term.

The "numeric" or "metric" (Industrial OW form of proof) definition of teaching loads in a "law" (Civic OW form of proof) constructs legal "equality" (Civic OW test) among academics according to rank. The durable "formal" reference to term hours per semester (Civic OW time formation) assures that the "collective interest" (Civic OW mode of evaluation) is met by academics complying with the set number of term-hours. The actual (e)valuation of academics complying with set term-hours turns into an accounting exercise of "technical efficiency" (Industrial OW mode of evaluation). Of course, the ministries of the *Länder* responsible for higher education require HEIs to provide further proof of the "technical efficiency" (Industrial OW mode of evaluation) of teaching according to certain performance "indicators" (Industrial OW relevant form of proof), such as students' completion and attrition rates, as well as time-to-degree.

The only formal definition of teaching duties of academics and the strong security provided by the German constitution (keyword: academic freedom) limits the applicability of quality definitions for HEAR, and prevents the (e)valuation of academics' teaching.[17] The work of the Civic-Industrial SoCoP around the (e)valuation of academics' actual teaching and the focus of HEAR on studies and the organization of teaching and learning marks one side of negotiating legitimacy, which is based on the convention of the social partnership between state and academic profession. As described above, the convention of social partnership shapes HEAR procedures 1-9 (Figure 1), with more legitimacy of the state in SoCoP in procedures 1-5 and increasing legitimacy of the academic profession from procedure 5 to procedure 9. The latter seemingly justifies the inclusion of the convention of peer review in HEAR as

[17] The autonomy of an individual academic, most notably the professor as master, in the Domestic OW is highlighted also by the difficulties faced due to the (e)valuation of teaching focusing on didactics, teaching skills, interaction in class, etc. The (e)valuation of teaching aims at the identification of good and poor teaching, which is extremely difficult to define despite a long-lasting and extensive debate about teaching quality (Marsh 1984; Steinhardt et al. 2017, 229). Accordingly, the recognition of teaching merit is a rather insular activity, for example, by awarding a teaching prize, and of very limited (self-)governance use in German higher education (Wilkesmann and Schmid 2012).

the second side of SoCoP negotiating legitimacy, which is discussed in the following section.[18]

4.2 Inclusion of the Convention of Academic Peer Review for Legitimacy in SoCoP of HEAR

The evaluation of study program(s) and quality management systems of HEIs is analytically defined as procedure 8 in Figure 1 in the chain of reliance in HEAR as a SoCoP of Civic-Industrial OW applying the law. In Table 3, the evaluation by the review group during an accreditation process is defined as type 4 academic peer review. The comparison of four types of peer review highlights the meaning of conventions as coordinating devices of action, which are neither strict rules nor standards. The four types of peer review are negotiated material and cognitive adaptations of the convention of peer review. According to Schneijderberg et al. (2022, 222), the characteristics of type 4 peer review are:

1. Open panel review procedure (similar to panel peer review of research grants; Lamont 2009; Langfeldt 2001).
2. Majority of panel members are academics, mostly in the rank of professor – according to the Domestic OW the "authority" (qualified subjects) in higher education, which is held in high "esteem" and considered because of their "reputation" (mode of evaluation [worth]), and "trustworthiness" (test). The majority of seats granted to academics respect a verdict by the German Constitutional Court (Bundesver-fassungsgericht 1973), according to which professors and docents (i.e., post-doctoral academics) have to be the majority of a body deciding about teaching and research issues. Other panel members are, at least, one representative, each, of students and the world of work.
3. During the procedure (i.e., material stabilization of investments in forms), evaluation is based on written documents (similar to a manuscript and grant application) as well as on-site visits and face-to-face interviews with actors concerned (e.g., academics, administrators, and students).
4. The review group has to write a joint review (similar to panel peer review of research grants). The joint review informs the final decision of the responsible body in the accreditation council (in the pre-2018 HEAR of the accreditation agency), which is similar to decision-making by journal editors and in national research councils.
5. The (e)valuation of the review group is guided by explicit, i.e., written accreditation criteria. In comparison, manuscripts and grants are

[18] The majority of academics engage as reviewers in accreditation procedures because they feel obliged to participate in such (e)valuations as a contribution to their profession (Ohly and Schneijderberg 2021).

evaluated by reviewers based on implicit academic criteria, such as originality (Lamont 2009; Lovitts 2007). However, in all types of peer review, academic valuation dominates professional judgment during evaluation and valorizes each (e)valuation procedure (i.e., cognitive stabilization of investments in forms).

6. The review group is accompanied by a person responsible from the accreditation agency commissioned by the HEI (similar to panel peer review of research grants).

The summary of the six characteristics of type 4 peer review includes all references to academic peer review conventions applied for reviews of journal manuscripts (type 1), individual research grants (type 2), and open panel grant reviews (type 3). The non-standardized and no-hard rule nature but taken-for-granted (e.g., based on socialization of practices) and negotiable understanding of the convention of academic peer review is visible in Table 3, for example, in the number of reviewers included and the application of single blind (i.e., the reviewer knows who the authors are), double blind (i.e., neither reviewer[s] nor authors are disclosed), and open review (i.e., both reviewer[s] and authors are disclosed) (Bornmann 2011; Gläser and Laudel 2005; Pontille and Torny 2015).[19]

Table 3 Comparison of Procedural Characteristics of Four Legitimizing Peer Review (E)valuation Types in Science

	Type 1	Type 2	Type 3	Type 4
	Individual journal peer review	Peer review for individual grants	Panel peer review grants	Panel peer review accreditation
Focus of procedure				
Research	Yes	Yes	Yes	-
Studies, teaching, and learning	-	-	-	Yes
Organization and structures	-	-	Yes	Yes
Kind of review				
Blind review	Yes	Yes	-	-
Open review	Partially	-	Yes	Yes
Sequence of procedure (upon submission)				
Pre-selection (e.g., by editor or agency representative)	Yes	Yes	Yes	Yes
Written review	Yes	Yes	Yes	Yes
Direct communication/test situation	-	-	Yes	Yes

[19] In comparison to the understanding of conventions, according to the operative constructivism of Luhmann (1983, 58-9) and in the audit ritual (Power [1997] 1997, 5), legitimacy in a situation (of peer review) is achieved in a more strict compliance with system requirements.

Intermediary presentation of results by reviewers	-	-	-	Yes
Reviewee option to respond to intermediary review	-	-	-	Yes
Written final review(s) and decision	Yes	Yes	Yes	Yes
Formal right of appeal/legal course of action	-	-	-	Yes
(E)valuation				
Implicit criteria (partially captured by keywords, e.g., originality and current state of international research)	Yes	Yes	Yes	Yes
Explicit criteria (e.g., accreditation criteria)	-	-	-	Yes
Reviewers				
1-3 reviewers	Yes	Yes	-	-
4 and more reviewers	-	-	Yes	Yes
Selection by peers (e.g., editors)	Yes	-	-	-
Suggested by subject specialist (e.g., research council)	-	Yes	Yes	Yes
Interdisciplinary background of reviewers	-	-	Partially	Partially
Exclusively professors or scientists	Yes	Yes	Ja	-
Inclusion of stakeholders	-	-	-	Yes
Published review	-	-	Yes	Yes
Review				
Individual review	Yes	Yes	-	-
Collective review	-	-	Yes	Yes
Interaction				
With subject specialist	-	-	Yes	Yes
In group of reviewers	-	-	Yes	Yes
Structured by group leader	-	-	-	Partially
With those reviewed/examined	-	-	Yes	Yes
Decision after review				
By editors	Yes	-	-	-
Designated body of organization	-	Yes	Yes	Yes
Publication of results	-	-	-	Yes
Final review decision				
Individual/collective peer reviews inform final decision	Yes	Yes	Yes	Yes
Accepted/accredited	Yes	Yes	Yes	Yes
Accepted/accredited with (minor) revisions/conditions	Yes	Yes	Yes	Yes
Accepted/accredited with (major) revisions/conditions	Yes	Yes	Yes	Yes
Reject/not accredited	Yes	Yes	Yes	Yes
Potential gain in reputation				
Individual	Yes	Yes	Yes	-
Organizational	Yes	Yes	Yes	Yes

Source: Schneijderberg et al. (2022, 223); author's translation.

The convention of academic peer review is rooted in the Domestic OW, i.e., the status-based valorization of outcomes of (e)valuation procedures. However, the use of peer review by journals, grant applications, and all kinds of (e)valuations, such as in HEAR, makes peer review a service by the academic profession for the academic profession (Lamont 2009; Ohly and Schneijderberg 2021) at an industrial scale (Musselin 2013; for a critique, see Roumbanis 2019). For example, academics have to "efficiently" (Industrial OW mode of evaluation) manage their time budget and accept or decline the ever-incoming review requests, which also includes the consideration of gain in "reputation" (Domestic OW mode of evaluation). In HEAR, the substantial discretionary powers of academics and especially professors in (e)valuating quality, which is based on their "reputation" (Domestic OW mode of evaluation) and legally secured freedom as teachers of higher education (convention of social partnership), are balanced by including them in the function of "experts" (Industrial OW qualified subjects) for (e)valuating the quality of study programs and quality management systems of HEIs.

In addition, in accreditation procedures, "criteria" (Industrial OW form of relevant proof) provide formal rules of conduct and tools for reaching a (non-)accreditation decision. This has to be negotiated (e.g., seeking a compromise) among three to four academics and with representatives of students and the world of work as well as their different (e)valuation regimes. According to Luhmann ([1969] 1983, 52-3), in the SoCoP if-then program, the communicative decision-making in the review group during and after the on-site visit fosters the process of disentangling or loosening of (status) roles (Luhmann [1969] 1983, 102) and supports OW compromises according to the practices of the convention of peer review (see also Derrick 2018). Embedded in procedure 7, the status recognition based on "esteem, reputation" (Domestic OW mode of evaluation), in which the "access to worth" depends on "the position one occupies in a hierarchical chain of dependencies" (Boltanski and Thévenot [1991] 2006, 107), seemingly compromises the common good of Civic OW. This is "placed above private interests" (Boltanski and Thévenot [1991] 2006, 107) of academics, which also captures the conflicting composite arrangement according to the convention of social partnership.

5. Conclusions and Research Outlook

The methodological construction of the SoCoP according to the ideal type OW provides an additional concept of reactivity to public (e)valuation and accountability developed by Espeland and Sauder (2007, 2016). The conventions according to the ideal type OW enable finding systematic "how-answers" to "why-questions" of (changing) social behavior. Integrating the convention of peer review and respecting the negotiation of meaning according to the

convention of social partnership between the state and the academic profession in Germany, HEAR as a SoCoP fosters changes in social behavior in reaction to collectives of actors in HEIs being publicly (e)valuated, and study programs and quality management systems having to be accredited. The case of HEAR provides an example of how the systematic, categorical lens of the OW framework discloses the conflicting situation in the composite arrangement of Civic, Industrial and Domestic OW in the SoCoP designed to effect change via HEAR with a mid- to long-term time perspective.

In general, I claim that the presented theorization makes SoCoP applicable in other areas of law-applying, and public administration and management, such as health and welfare. It will require the inclusion of the Socialistic and Market OW in the Civic-Industrial OW compromise to answer the "how-question." According to Schneijderberg (2022, 300), the abstracted categorized terminology of the Socialistic OW is "(collective) welfare" (mode of evaluation [worth]), "(communal and reciprocal) solidarity" (test), "safety, quality of life" (form of relevant proof), "health, accident, pension, subsistence, unemployment" (qualified objects), "solidaristic singularities" (qualified subjects), "human lifetime" (time formation), and "nation state, alliance" (space formation). Despite rising complexity due to the context-dependence of the OW application, the context-transcendence of the plural OW framework methodologically guides the analysis of conflicts (i.e., justifications and critiques), for example sacrifices in a large-scale, Industrial OW organized health and welfare system between the Socialistic and Civic OW, and the Market OW. The social order of the Market OW is constituted by "price, cost" (mode of evaluation [worth]), "competitiveness" (test), "monetary" (form of relevant proof), "goods, services" (qualified objects), "customer, consumer – merchant, seller" (qualified subjects), "short-term, flexibility" (time formation), and "globalization" (space formation) (Thévenot, Moody, and Lafaye 2000, 241). The methodological study of health and welfare regimes could be conceptualized as demonstrated for the case of HEAR in Table 2 by adding all relevant OW and formulating characteristics of a compromise, possibly even conflict and sacrifice hypotheses for research in an additional column.

In addition, the OW methodology of a SoCoP does not seem limited to law-applying and public management of professional, expert organizations such as HEIs, schools, and hospitals but also applicable to engineering firms as expert organizations (Abbott 1988; Freidson 2001; Larson 1977; Müller and Schneijderberg 2020). In the shift from the public to the private sector, for example, for the methodological analysis of engineering firms or for-profit hospitals, in the SoCoP theorization, the Civic OW has to be replaced by the Market OW, which forms a composite arrangement with the Domestic and Industrial OW. The conceptualization of the SoCoP following the OW methodology also seems applicable in future research of primarily non-professional "goods" and "services" (Market OW qualified objects) providing large

(multi-national) firms. The Amazon Leadership Principles are a salient example of how the Market OW dictates the conventions of social behavior and demands changes in social behavior from new and particularly career aspiring employees.[20] For instance, the "competitiveness" and "monetary" gain (Market OW test and form of relevant proof) is supposed to compromise "competence, reliability, planning" and "measurable: criteria, statistics" (Industrial OW test and form of relevant proof) in the principle "Ownership: Leaders are owners. They think long term and don't sacrifice long-term value for short-term results. They act on behalf of the entire company, beyond just their own team. They never say 'that's not my job.'" Although bound by "price, cost" consideration of their "goods" and "services" (Market OW mode of evaluation and relevant objects) expressed in the principle of "frugality" ("accomplish more with less. Constraints breed resourcefulness, self-sufficiency, and invention. There are no extra points for growing headcount, budget size, or fixed expense."), future and present leaders across all hierarchies at Amazon are requested to express their own ideas and, in case of negative feedback from the "esteemed" "authority" (Domestic OW test and relevant subjects), render unconditional subordination. This is expressed in the principle "[h]ave Backbone; disagree and commit: Leaders are obligated to respectfully challenge decisions when they disagree, even when doing so is uncomfortable or exhausting. Leaders have conviction and are tenacious. They do not compromise for the sake of social cohesion. Once a decision is determined, they commit wholly." In the "spirit of [industrial] capitalism" (Boltanski and Chiapello [1999] 2007), the Amazon Leadership Principles push development and revenue goals, accountability, and deadlines

> down into the organization, while metrics were fed upward, via weekly and quarterly business reports and biannual companywide reviews, [...]. The performance of each team was evaluated by Bezos's hallowed leadership council of like-minded math whizzes: the S-team (for senior team). Sitting atop it all was Bezos himself, who would home in on promising new projects, or on fixing teams whose results were disappointing, with the same focus and exacting standards the he had brought to Amazon's earliest days. [...] While the brutal leadership style and distinct culture was enervating to many employers, it was also proving unmistakably effective. In the spring of 2011, Amazon was valued $80 billion. Buoyed by the rise of his stock holdings, the forty-seven-year-old Bezos was the thirtieth richest person in the world, with $18.1 billion net worth. (Stone 2022, 10-1)

Of course, the Amazon example provides merely a glimpse at the study of SoCoP in large, multi-national firms in global "hypercapitalism" (Piketty 2020, 1). Thorough future methodological studies are needed to observe how the SoCoP and chain of reliance procedures (see Figure 1) from the top to the bottom of the leadership hierarchy and *vice versa* (e.g., principles of frugality,

[20] See https://amazon.jobs/content/en/our-workplace/leadership-principles (Accessed 10 December 2024).

disagree, and commit), as well as between departments, affect social behavior. I would assume that the more direct SoCoP approach of firms' performance (e)valuation would require a modification of the formulations of characteristics of a SoCoP in the third column of Table 2 (for instance, considering raise of income or a demotion, in case of bad performances, which might also depend on the overall team performance). Returning to the political, Civic OW, and Industrial OW regime, my final suggestion for the application of a SoCoP is to theorize and empirically study the how of administrative and legal global challenges formulated by the United Nations in the 17 Sustainable Development Goals (SDGs).[21] Unlike the Civic-Industrial structure of HEAR in law-applying, the 17 SDGs seem to be pursued by governments and activists according to the Project OW (Boltanski and Chiapello [1999] 2007) or a liberal mode of engagement according to the connectionist convention (Thévenot 2009, 2022, 2024), i.e., a soft (global) governance approach through incentives and investments in forms (see also Desrosières 2011; Thévenot 2016).

The latter emphasizes the difference between a SoCoP and a HaCoP. For HaCoP, Luhmann ([1969] 1983) assumes the existence of forms, such as decision premises of law, a trial, etc. Luhmann ([1984] 1995) developed this further in his even more formal systems theory (for an introduction, see Albert 2019). SoCoPs are procedures for (new) governance modes and their institutional investments in forms, which can be studied methodologically based on the analytical OW framework. In comparison to sociological neo-institutionalism and its lack of a common understanding as to whether an institution is a cultural rule, metaphor, organized procedure, etc. (Alvesson and Spicer 2019, 206), the theory of conventions, as presented in this article, has a shared understanding of how to study institutions and institutional work (e.g., as investments in forms), complying with the scientific and theoretical requirement of analytical parsimony. In addition, also the "methodic holism" (Diaz-Bone 2011, 44) sociology/economy of conventions approach relies on the OW framework methodology, for example, for an analytical, reflexive approach to institutional organizing.

I hope it became clear that plural social orders are to be considered in the theory-led study of SoCoPs, and that the focus on the Market OW, especially on competition and commodification, and New Public Management fall short of understanding and explaining the complexity of higher education governance and social change in general. My confidence in the applicability of the SoCoP in such vastly different areas seems justified by the ideal type, context-transcendent construction of the plural OW framework in the research program initiated by Boltanski and Thévenot ([1991] 2006). Moreover, my hope is that the categories of equivalence-led, methodological study of conventions

[21] See https://sdgs.un.org/goals (Accessed 10 December 2024).

of social order will generate comparative patterns of social behavior across sectors, situations, as well as temporal and spatial social contexts.

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