

Date: Updated October 20, 2011 (originally published 1/26/11)
Subject: Variations in Institutional Autonomy among the UW and its Peers

This brief explores varying levels of institutional autonomy--an institution's legal authority to manage its internal business and affairs free from external control--among the UW's Global Challenge State (GCS) Peers and the University of Michigan. It finds that while constitutionally protected institutional autonomy is rare and unlikely to emerge where it does not already exist, several states have expanded institutions' ability to manage their own resources, including freeing them from state agency status. However, even in the case of full constitutional autonomy the state often has the ability to manage certain aspects of institutional business, particularly pricing, public health and safety, employment, compensation, and accountability to the public.

Introduction

The so-called "privatization" of public universities has been a hot topic in the US for at least a decade as two recessions have accelerated a decades-long trend of reduced state support for higher education. In fact, after recent cuts, **state support for many large public research institutions comprises less than 10 percent of the annual university budget**, and tuition revenue now exceeds state funding for the first time in history in such states as Washington and California. However, isolating the research, health, and auxiliary enterprises reveals that **the remaining state support is still vital to the core educational enterprise**. In fact, [IPEDS](#) data from 2009-10 show that state appropriations cover from 29 percent to 70 percent (36 percent at the UW) of core educational revenue for the group of institutions in the chart below.

Selected Comparative Data for UW Global Challenge State Peers (plus Michigan)

Institution	Constitutional Autonomy	Tuition Authority*	Tuition \$/Student	State \$/Student	Total \$/Student	Endowment 2009-10	2011-12 Tuition*
University of Connecticut	No	University System	\$8,945	\$20,624	\$29,569	\$245,845,448	\$10,670
Rutgers University	No	Institutional	\$12,222	\$16,812	\$29,034	\$550,661,000	\$12,754
University of Michigan	Yes	Institutional	\$18,857	\$7,930	\$26,787	\$5,914,285,000	\$13,437
University of California-LA	Yes	University System	\$11,810	\$13,518	\$25,329	\$997,111,000	\$12,686
University of California-Davis	Yes	University System	\$10,285	\$14,860	\$25,145	\$155,855,000	\$13,860
University of Maryland	No	University System	\$11,358	\$13,006	\$24,364	\$479,635,575	\$8,655
University of California-SD	Yes	University System	\$11,221	\$10,695	\$21,916	\$308,012,000	\$13,202
University of Virginia	No	Institutional	\$15,372	\$6,219	\$21,592	\$3,531,688,000	\$11,576
University of Massachusetts	No	Statewide agency	\$10,193	\$10,242	\$20,435	\$267,513,139	\$12,612
University of Washington	No	Legislative	\$12,010	\$6,903	\$18,913	\$1,770,280,869	\$10,574
University of California-Irvine	Yes	University System	\$8,708	\$9,481	\$18,190	\$161,314,000	\$13,122
University of Colorado**	No	Statewide agency	N/A	N/A	N/A	N/A	\$9,152

* Undergraduate Resident only.

** Note that recent funding changes for the University of Colorado, wherein much state support comes via student vouchers, make the IPEDS funding numbers non-comparable to other institutions.

The economic outlook for state budgets remains bleak and additional steep cuts to public higher education look inevitable, making it imperative to **re-imagine how institutions can become more efficient and self-sufficient while remaining both effective and accountable to the public**. For many institutions greater autonomy from the practices and requirements of state government seems attractive, and this topic is explored below.

Constitutional Autonomy among UW Peers

Full legal autonomy enshrined in the state constitution and upheld by legal precedent is very rare for public institutions of higher education. In fact, **in the US, only institutions in Michigan, Minnesota, and California enjoy state constitutional autonomy**. Although they are state institutions with state employees, the autonomy bestowed on institutional governing boards (often comprised of elected or appointed representatives serving set terms) in these states elevates them almost to a parallel branch of state government. They have authority to set tuition; manage institutional resources almost entirely free from state interference; determine mission and size; hire, procure and build largely outside of state requirements; and sometimes even operate free from prevailing local and state laws (often depending on court interpretation of applicability).

However, **even constitutional autonomy does not make universities immune from state influence**, especially the ability, at any time, for the citizens to revoke constitutional autonomy, and for the legislature to reduce annual appropriations, which continue to be substantial (in 2008, \$325 million at the University of Michigan, \$622 million at the University of Minnesota, and \$2.6 billion for the University of California System, compared to \$385 million for the UW). For example, in the 1980's, the Governor of Michigan used the threat of state budget cuts to successfully pressure institutions to keep tuition increases low for at least a three year period. Although the University of Michigan receives one of the lowest levels of state appropriations in the country, state support still covers over one third of instructional expenditures and the threat of losing that funding is powerful. Other examples of continued state influence include:

- **California:** The Legislature has some powers to constrain and direct appropriations for salaries and also to 'ensure the security of its funds'; also, the Universities must abide by all laws pertaining to health and safety and the general welfare, and any statewide legislation that is not considered to interfere with the internal management of the institutions.
- **Michigan:** The state requires an annual accounting of all income and expenditures and submission to state audit; that formal meetings of the board be public; and that all institutions abide by the state workman's compensation law, public employee relations law (e.g. court determined that the hospital could not decline to collectively bargain with medical residents and interns), and any law that is intended to promote the general welfare of the citizens and state.

Institutional Autonomy among Selected GCS Peers

While not enjoying the level of state constitutional autonomy discussed above, several GCS peers have negotiated varying levels of legal and fiscal autonomy from their respective states.

- **Colorado:** Even though Colorado's state constitution provides some autonomy for higher education institutions, the state's courts have not upheld these protections. In 2004, Colorado restructured higher education by creating the College Opportunity Fund (vouchers for Colorado residents in lieu of general operating subsidies to institutions), and created performance agreements between the institutions and the state in exchange for increased autonomy from state regulations including onerous reporting requirements. Additionally, legislation in 2010 gave Colorado institutions greater authority to raise tuition to make up for lost state support, enroll more international students, and enjoy greater financial flexibility in areas such as construction and procurement.

- **Maryland:** After creating the University of Maryland System in 1988, the state designated the system as a public corporation and an independent unit of state government in 1999 in order to increase flexibility and autonomy in regulating financial affairs.
- **New Jersey:** A major higher education restructuring act in 1994 gave institutional governing boards the authority to set tuition and fees, invest institutional funds, and generally oversee their own fiscal affairs within the bounds of state law; however, they are still accountable for performance standards, subject to state audit, and bound by state laws that do not explicitly exempt higher education.
- **Virginia:** Virginia massively restructured higher education in 2005-06 granting UVA, Virginia Tech, and the College of William and Mary authority to set tuition levels, and flexibility in the areas of finance and accounting, capital construction, leasing, information technology, procurement, and human resources. These institutions are still state agencies with state employees, accountable to applicable state laws and performance targets.

Note that recent history shows that even when a state delegates certain authority to institutions, it can choose to re-enter the picture if circumstances or public policy interest warrant. For example, while the University of Maryland system has authority to set tuition, in 2006 the Governor recommended a politically popular tuition freeze, which the legislature mandated. Similarly, although institutions have the authority to set tuition in New Jersey, the governor imposed a 4 percent tuition increase cap in 2010. Additionally, during the Great Recession, Virginia has reversed key components of higher education restructuring agreements, including violating the institutions’ ability to keep money raised from auxiliary enterprises, and reducing state payments into the retirement system for higher education workers and retaining the resulting savings at the state level.

Pursuing State Enterprise or Public Corporation Status for a Public University

Based on legislative precedent provided by Maryland, New Jersey, Colorado and Virginia, the University System of Ohio has teamed with the Governor to advocate for an [enterprise university plan for Ohio](#) that would provide staged relief from various state mandates in exchange for less funding, higher institutional commitments to financial aid, and performance agreements. In 2011, Wisconsin considered making a similar change for the [University of Wisconsin at Madison](#). While that plan was not passed as proposed, Wisconsin did create a pilot project wherein the Department of Natural Resources was designated the state’s first ‘enterprise agency’, a status that will allow the agency freedom to improve services and generate alternative revenue in exchange for a decrease in state funding and a commitment to improved outcomes.

Closer to home, after considering a failed proposal to provide additional autonomy to the University of Oregon and cutting state funding for public higher education by 17 percent, the [Oregon state legislature enacted a bill](#) in 2011 that freed all of its public institutions of higher education from state agency status, enabling new flexibilities in managing and spending resources. In addition to freeing institutions from state processes guiding building projects and repairs, contracting, and employment, the bill ensured that institutions keep all interest earned on tuition revenue, and added three members to the State Board of Education. In exchange, the institutions must meet agreed upon performance targets regarding enrollment, graduation, and other measures.

An enterprise, entrepreneurial or charter university proposal in Washington State would represent a more aggressive, but potentially clearer approach to achieving the kinds of incremental reforms the UW has already been pursuing. **Concerns that must be addressed alongside bids for autonomy include the perceived decline in public accountability, as well as increases in tuition and changes in the citizenship, ethnic or economic profile of the student body that often result.** Additionally, the UW will need to consider whether state funding and support can be adequately replaced by other forms of revenue while maintaining the public mission of the institution, what performance measures or other requirements would be acceptable in return for gaining such autonomy, and how such a change would include and/or affect the other public institutions in Washington.

Ultimately, the level of autonomy from the state for institutions of public higher education has waxed and waned over time, often in tune with a state's ability to provide adequate levels of funding. The dramatic and prolonged nature of the current economic crisis has produced a newfound interest in the promise of such reforms in helping to relieve state budgets yet keep institutional funding intact; **however, all public institutions in the US rely on some level of state financial support, and no state in the US has completely abdicated its right to regulate or oversee public higher education.**

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