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# Summary

In its submission to the Scottish Government's review of university governance Universities Scotland, the body which represents university principals, defines universities as follows:

Universities are large and increasingly complex businesses operating on a global stage – we need to be agile and able to take decisions and operate quickly and flexibly

The implication is that universities are too complex to be governed by anything other than a professional class of managers. The implication is also that proper scrutiny or accountability might prevent 'agility' (taken to mean the ability to make decisions without wider consent). And this statement almost explicitly proposes that the governance of universities must be modelled on that of the corporate sector.

It is therefore unsurprising that there has been a move to a model of governance which can be described as a 'corporate hegemony model' in which a professional class expect governance to be a process of 'rubber-stamping' of decisions. At its worst this can mean that the governing body of a university is made up of the principal, members of academic staff appointed by the principal, lay members proposed by the principal and the senior management team - and an elected student representative. This governance model appears to allocate to the university principal a status similar to that of an owner of an enterprise. It has also occured during a period where it has become routine for university management to merge the concepts of 'academic freedom' (the protection of academics from interference by university managers) and 'institutional autonomy' (the right of university managers to operate without external interference).

However, much as university managers might wish it otherwise, universities are large national civic institutions with a primary responsibility to their own community of academics and learners. The vast majority of university business is domestic, not international. And since universities must be seen to be 'owned' by their wider community, a governance model which is based on internal managerial control does not appear appropriate.

This paper therefore proposes that the long-term strategic role of universities should be protected from radical-change-without-consent by democratising the governance structure. University courts should become bodies wholly elected by the wider university community (staff and students) and the role of the university principal and the senior management team should be to advise that body and to enact its will.

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#### Introduction

Universities inhabit an unusual constitutional position. They deliver what can only be considered a core central function of a modern democratic state (providing advanced education for the population). They do this with very substantial amounts of government funding (over £1bn)¹. They are required to deliver specific outcomes established by government and its arms-length agency (the Scottish Funding Council). Yet they are almost entirely independent bodies with the constitutional status of large private charities (although they are treated as 'public bodies' in a number of legislative contexts².

Universities themselves make a strong case that they are better able to deliver their important social and economic role with that degree of independence from the annual cycles of politics<sup>3</sup>. They present themselves as 'generational institutions' which work to time horizons that stretch well beyond those of politics (many crucial research discoveries take longer to achieve than the length of career of many politicians).

There is much to be said for this defence of 'institutional autonomy' and it is certainly the international norm. There is very little to suggest that students, academics or society would get better outcomes if universities were either centrally managed or taken under tighter governmental control.

However, this only provides a solid defence of the constitutional relationship between government and institutions. It tells us nothing about the governance model that should be used to steer these institutions nor does it tell us anything about the relationship between university management and its academic staff.

There is therefore a very large space between the statements 'we should be autonomous institutions' and 'we should be autonomous institutions in which management is able to run institutions as they see fit'. Universities are far too important to the future of society and the economy to get this relationship wrong. It is therefore worth considering what the governance model in universities should be and how that can guarantee the delivery of the best outcomes for Scotland.

# Is there any reason for concern?

Broadly, and especially at an administrative level, there is every reason to believe that universities are well run as institutions<sup>4</sup>. Is that sufficient? Well, it must first be noted that the two arguments 'last year's audit says we were well managed' and 'we're generational institutions that must be run in terms of decades, not accounting quarters' are in conflict. While there is every reason to believe that universities are being well administered, it is much harder to identify whether long-term strategic planning is effective.

In recent years there have been a number of very significant changes in parts of Scotland's university sector<sup>5</sup> and the stated strategic aims of the sector as a whole has changed since devolution with a much greater focus on direct economic outputs<sup>6</sup>. Some of this has come as a result of direct guidance from government which has tended to push the sector on widening access issues. There is some shared strategic shift such as the increased the emphasis on knowledge transfer activity and near-market research<sup>7</sup>. However there is very little public influence over the spread of course offerings or what is being taught. Thus there has been (for example) shifts away from

language provision<sup>8</sup> and an increasing 'vocationalisation' of subjects in the new part of the sector (the post-1992 institutions)<sup>9</sup>. These are taking place with little or no democratic oversight of what is happening in individual universities never mind across the sector as a whole.

It is possible that this is fundamentally altering the nature of a degree education, that provision is moving towards what can be 'marketed' to students, that excessive focus is given to profitable subjects (those where cost of delivery is lower than price paid by Funding Council), that drivers to carry out research relevant to business may reduce the fundamental quality of research and so on. These are all arguable points; the authors of this paper have concerns across all of these issues but also recognise that university education is always changing and adapting to new eras.

It is not therefore the purpose of this report to address whether these strategic decisions are or are not in the interests of Scotland, its economy and its student and academic body. Rather it aims to demonstrate that the governance structures that would be necessary to engage in a serious national debate about these issues is not in place. It argues that there is very little accountability on the part of those who make the decisions to take these new strategic directions and that there are few (if any) mechanisms to ensure that these decisions are informed by the wider university community.

Fundamentally, it argues that institutions with the national importance of universities must not have governance arrangements that preclude real democratic consideration of their future direction or of the impact on the wide body of people who make up the university community.

The reason for these concerns can be summed up by looking at three aspects of the process of university governance:

- **Decision-making process:** put simply, so long as a senior management team (SMT) can get a decision approved by the university court (or other governing body) there is no meaningful requirement to involve the wider university community in making that decision. Where individual universities have policies on consultation with staff and students, these are not underpinned by any constitutional requirement and there is certainly no binding methodology for engaging others in consultation. Some universities may be better than others, but in all cases that is largely a matter for the SMT and the university court. External influence on these issues is all 'soft' there is little or no capacity for university managements to be compelled to be inclusive in their governance.
- Short-term accountability who controls the SMT?: The power of the Senior Management Teams in universities has increased significantly as most universities have sought to implement corporate governance models inspired by private sector practice (echoed by the increasing tendency to appoint senior staff and Member of Court with business backgrounds) [REF: SFC KPIs]. This has led to the increased use of financial management tools which are new to higher education, recruitment processes mirrored from the private sector and an 'executive' mode of governance. Critics often see this as crude 'financialisation' of the institution and there is little sense of how that 'executive' is held to account or on what basis it was selected. The overarching symbol of this is senior staff salaries which for almost all of the last 15 years have been rising at will, often with almost explicit disinterest in how this has been received by staff, students and the outside world. That university governing bodies are entirely complicit in this process is part of what raises concern.
- Long-term accountability who 'owns' the university? Many academics will have a longer (often much longer) association with a university than its principal or

management team. They see institutions they have dedicated their working lives to go through cyclical periods where a new principal arrives most often from outside the institution and seeks to change strategy, emphasis and direction. Then another one arrives. The academic has no say in the appointment or the change in strategy and becomes weary of the 'constant revolution'. This raises questions about who actually 'owns' the university and how they are held accountable. This question also vexes others who get drawn into disputes over decision-making such as local MSPs who can't understand why there seems to be such constant conflict. The overall impact of this is a lack of confidence that the 'core values' of these institutions are in safe hands or that their fundamental role in society is being put first by those running the institution.

This can be seen as 'practical', 'structural' and 'philosophical' or 'what', 'who' and 'why' or as 'hand', 'head' and 'soul'. They are a sort-of 'trinity of anxieties' about whether our universities are safe in the hands of those running them.

# What governance model is used in universities?

There are a number of different ways that models of governance can be defined. The following list<sup>11</sup> outlines a number of different approaches;

- A democratic model: here governance takes place via open elections on the basis of one person one vote with pluralism (i.e. that representatives will represent different interests), accountability to the electorate and the separation of elected members, who make policy, from the executive, who implement policy decisions.
- An agency model: here 'owners' of an institution and those that manage it will have different interests so the owners use corporate governance arrangements as a 'compliance model' to ensure that management acts in the best interests of shareholders
- A stewardship model: here it is assumed that in general managers want to do a good job and will act as effective stewards of an organisation's resources. As a result senior management and governors are better seen as partners. Hence, the main function of the board is not to ensure managerial compliance but to improve organisational performance. The role of the board is primarily strategic, to work with management to improve strategy and add value to top decisions.
- A resource dependency model: this is a co-optation model which views organisations as interdependent with their environment. Organisations depend crucially for their survival on other organisations and actors for resources. As a result they need to find ways of managing this dependence and ensuring they get the resources and information they need. From this perspective the board is seen as one means of reducing uncertainty by creating influential links between organisations through for example interlocking directorates. The main functions of the board are to maintain good relations with key external stakeholders in order to ensure the flow of resources into and from the organisation, and to help the organisation respond to external change.

- A stakeholder model: this is based on the premise that organisations should be responsible to a range of groups (or stakeholders) other than just an organisation's owners or mandators. By incorporating different stakeholders on boards it is expected that organisations will be more likely to respond to broader social interests than the narrow interests of one group. This leads to a political role for boards negotiating and resolving the potentially conflicting interests of different stakeholder groups in order to determine the objectives of the organisation and set policy.
- A managerial hegemony model: this is a 'rubber stamp' model where governance control has been ceded to a new professional managerial class and the role of governance is to approve the decisions of management unless there is serious concern about decision.

Every university in Scotland is an independent body and has its own governance arrangements and processes. It is therefore difficult to draw firm conclusions about exactly which of these governance models best describes practice.

However, it is not that hard to make a clear assessment about direction of travel. The traditional mode of governance (and that used in many institutions internationally) is a hybrid of the stewardship, stakeholder and democratic models. Traditionally the Court would have representatives of staff, students and the wider community. The student representation would be elected by the student body but would almost always be in a small minority on the Court. The academic representation would be drawn from Senate which itself was often made up of academics who were elected or had been selected by other academics to be heads of department etc. The wider community was represented by co-opted appointments. Some Courts contain trade unions appointments but not all.

There are clear elements of democratic election, though they are only part of the model. There are clearly stakeholder elements. And the overall attitude tended towards a stewardship model.

However, a number of changes can be observed to this approach. Perhaps fundamental among them is that increasingly (and in some institutions completely), Senate is made up of heads of department who are appointed to those roles by the SMT. Which means that appointments from Senate to Court represent selections among SMT appointments. The SMT also generally has significant control over lay appointments, the executive drawing up lists to be considered which are then agreed by Courts which are themselves made up of previous recommendations from the same senior managers. Only the student representatives (the smallest group and the least experienced participants) have any real legitimacy other than that conferred by appointment.

It is also important to note that while university management tends to present the fact that there is an in-built majority of lay appointments to the Court as a measure of the robustness of governance arrangements; in fact, since lay members are the members of governance bodies with by far the least democratic accountability and usually with the greatest direct patronage relationship with SMTs, the opposite is almost certainly the case.

That the Courts are then wholly reliant on recommendations and policy proposals from the SMT (there is no other administrative capacity linked to university courts which is credibly able to put counter proposals or to formulate its own strategic approaches) means that there is an extremely strong degree of control over these processes by the SMT.

It is easiest, therefore, to understand this model as a Managerial Hegemony Model in which the Court is seen as there to endorse the work of a professionalised management class in the university. The increasing regularity of appointments to senior management positions from the private sector, the increasing use of private sector financialised performance monitoring and management practices and the rise of the influence of the finance directors inside universities are indicative of this model.

Put most simply, once a university principal is appointed to post he or she is then able to manage the process of decision-making in that university in the following way:

- He/she is able to appoint key members of the SMT
- He/she is able, over time, to significantly influence key academics appointments and senior promotions, influencing the make-up of Senate
- He/she is able to manage the recommendations for those to be considered as lay members of Court
- He/she is then able to control the advice given to Court from his/her SMT
- There is little or no democratic counterweight other than the university court itself

This clearly raises reasons for concern.

# **Academic Freedom versus Institutional Autonomy**

The doctrine of academic freedom has always been central to university education in the UK<sup>12</sup>. It means that, within the law, academic staff have a right to explore controversial or difficult issues without fear of their job being at risk. Here it is clear what is being protected: the academic and his work from the risk of loss of job. This can be read quite clearly; it is protection of the academic from the actions of management. So academic freedom means senior managers cannot fire academics because they are 'troublesome' or 'might harm our institutional reputation'.

Institutional autonomy is quite different. Universities are constituted in a number of ways – by Papal Bull in the ancient universities, through acts of the Privy Council for the middle group and (in Scotland) via the 1992 Education Act for the modern universities. However, in all cases the closest description of the status of universities is as large, self-governed charitable institutions. In legislation<sup>13</sup> the institutional autonomy of universities is protected. This is slightly complicated by their designation in various pieces of legislation – as noted above, that includes their designation as 'public bodies' for both the Freedom of Information Act and the Disability Discrimination Act. While not publicly available, legal advice has been sought by universities to clarify the position and the result is somewhat ambivalent – yes, they are independent institutions but no, that does not mean that in any given circumstance they may not be considered as public entities.

There is no serious proposal to suggest that university institutional autonomy should be challenged. The European Universities Association has looked at a scorecard of measures of institutional autonomy<sup>14</sup>. As can be seen, the UK comes top of the table with a 100 per cent record across all measures, core

1	United Kingdom	100%
2	Denmark	94%
3	Finland	93%

4	Estonia	87%
5	North Rhine-Westphalia	84%
6	Ireland	81%
7	Portugal	80%
8	Austria	78%
	Hesse	
	Norway	
11	Lithuania	75%
12	The Netherlands	69%
13	Poland	67%
14	Latvia	61%
15	Brandenburg	60%
16	France	59%
17	Hungary	59%
18	Italy	56%
19	Spain	55%
	Sweden	
	Switzerland	
22	Czech Republic	54%
23	Cyprus	50%
24	Iceland	49%
25	Slovakia	45%
26	Greece	43%
27	Turkey	33%
28	Luxembourg	31%

This may be read positively, but it is also possible to read this in a more negative light; universities in the UK are least responsive to any democratic interest of wider society than any other in Europe. Where Spanish universities may be governed by bodies of up to 300 academics in a Senate, UK universities may be governed by a majority of as few as eight or nine external appointments subject to no democratic scrutiny at all.

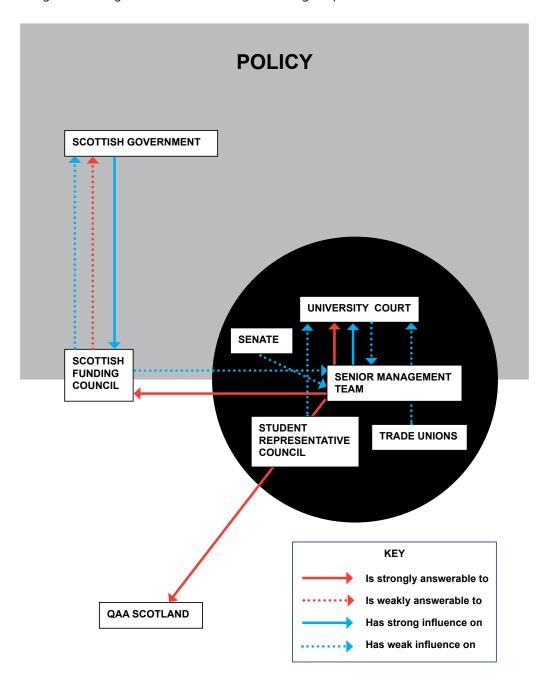
So there is little or no reason to be concerned about institutional autonomy in Scotland. However, in defending autonomy, the university sector has tended to collide the question of autonomy and governance as if these are the same thing. That universities should not be run by governments is universally agreed<sup>15</sup>. That this should mean that they should therefore be run internally by a professional management class is is implied in this defence. Equally problematically is the convergence in meaning in university statements of institutional autonomy and academic freedom. Again, academic freedom is about the right of individual academics to work without small-p political interference from their employers. However, as we can see from this extract from Universities Scotland's submission to the recent Scotlish Government review of governance in Scotlish universities, the meaning seems to have subtly changed:

Universities Scotland would be deeply concerned if "democratic accountability" was interpreted by the Review as meaning increased direct accountability to elected politicians [which would be at odds] with the entrepreneurship which is necessary for universities' success, and consistent with the exercise of academic freedom which, already protected by legislation, includes the capacity to be a constructive and challenging voice in civic debate without fear of political retribution.

The implication here appears to be that 'academic freedom' belongs to the university, not to the academic. Here and elsewhere it seems that there is a not-too-subtle redefinition by university managers of 'academic freedom' from meaning 'freedom of academics from us' to 'freedom for us from everyone'. And this is taking place at a time of growing concern about whether real academic freedom is really being protected<sup>16</sup>

#### What is the external environment?

The following diagram attempts to depict the environment in which university governance takes place, indicating the strength of influence of different groups.



**PROCESS** 

We can infer from this the key questions that should be asked about governance in universities:

- a) How is a strategy for the institution established and approved and who gets to input into that 'guiding vision'?
- b) How is the Executive (especially principal) appointed, who has influence over this, how is institutional priority reflected in this and how transparent it is to all staff?
- c) How is the Court (or governing body(ies)) appointed, how is it composed, in what capacity do members take part and who manages appointments and proposed appointments? Who has access to Court and what sort of access do they have?
  - d) And what is the relationship between the Executive and the Court does the Executive appoint its own 'watchdog'?
- e) How are big strategic decisions communicated and how are players consulted and involved?
- f) Do those making decisions have sufficient detailed knowledge of what they are managing and the wider operating environment, how do they gain that knowledge and do they correctly interpret that knowledge?
- g) Who can initiate proposals, ideas and suggestions, how are they treated and how likely are they to be progressed?
- h) Where and how are ideas progressed into properly-formed proposals and what input is there from outside the group given that task? Can those from outside that group get equal access to the information resources on which those proposals are formed?
- i) How do proposals get approved, with what level of scrutiny and who gets input into proposals? Can counterproposals be put and can opponents of proposals get equal scope to advocate their rejection as those advocating their acceptance?
- j) How is the implementation of agreed proposals carried out and how much 'interpretation and interpolation' is involved?
- k) How is financial (and other accounting) performance reported and scrutinised, with what level of detail and how regularly?
- l) Are actions, decisions and individual policies measured against the overall vision and strategy of the institutions, by whom, how often and with what level of scrutiny?
- m) How is staff performance measured and assessed and how is that assessment used to make strategic and resourcing decisions?
- n) Are policies and decisions properly monitored for impact and for the extent to which they achieve their stated goals? Who monitors this, with what degree of scrutiny and at what stage in the implementation process?
- o) How is the performance of the Senior Management Team (or other Executive) monitored, measured and assessed? In particular, how is a link made between the effectiveness of policies, strategies and decisions emerging from the SMT and the decision-making process, who does the monitoring and what sanctions and actions are in place if there is any question about any aspect of the SMT performance?

p) How is the overall strength of governance in an institution monitored? For example, if there are perceived deficiencies in a decision taken but there is no subsequent action taken to remedy the issue, how are governance arrangements assessed to identify if they have functioned correctly?

## Conclusions about the existing arrangements

If we look at the recommendations contained in the submission from Universities Scotland to the Governance Review, we see a consistent thread. It is repeatedly recommended that university governance issues should be resolved via 'guidance' to be written primarily by Universities Scotland (a committee of university principles) and the Chairs of Court (the non-democratic appointees who lead boards of governance). This should be done in the context of financial-style indicators of performance, making the strategic direction of universities an accountancy matter. On the subject of the only democratically elected non-stakeholder on the Court (the Rector in the five universities that use them) the submission concludes: "We do not see the case for further extension of the current model of Rector and recommend that the Review does not give this further consideration".

However, the clearest expression of how university managements view themselves is to be found in comments about their purpose: perhaps most tellingly in the following (also from Universities Scotland's review submission):

Universities are large and increasingly complex businesses operating on a global stage – we need to be agile and able to take decisions and operate quickly and flexibly. All of this points to the need to have efficient governance arrangements and to ensure that the regulatory burden is minimised – while still complying with good practice;

The authors of this paper express great concern at this description of universities (particularly as this is the primary description used of universities, not an 'and they are also...'). This self-definition by management seems to contain within it no suggestion whatsoever that they are institutions of domestic significance delivering a civic purpose. It points very heavily indeed to the assumption that they must now be run and governed by 'a professional management class'. That university management believes that this is necessary to enable big decisions to be taken rapidly equally indicates that they no longer believe that consensual governance (for example, the ability to properly consider or scrutinise big decisions) is a hinderance to modern university management.

There is no sense in the description of universities by their management that they see them as 'owned' by anyone other than themselves. Universities have become institutions not only autonomous from government but from their own students, staff and communities. The authors of this paper do not believe this is acceptable.

# A note on the outcome of the Review of HE Governance

As a result of expressions of concern about university governance, in June 2011 the Scottish Government established the panel to review higher education governance in Scotland<sup>17</sup>. The panel that considered submissions to the report was a well-balanced mix of academics, students and others with an interest in university governance, The task given to the panel was to produce an independent report and to make recommendations for reform. It was Chaired by Professor Ferdinand von Prondzynski and while there is much in the final report of this review to support, it does not address sufficiently the question of who 'owns' a university and who has the mandate to run these 'generational institutions'. But the problem is more direct; since its publication university managers have sought to ensure that it is not implemented. This in itself raises a very clear question about the extent to which universities function with any sense of wider 'consent'; in fact, this appears to be the practice of an insulated elite which seeks to defend its position in the face of concern from their own stakeholders. We believe it makes the case for a more radical reform of governance.

## **Proposal**

Universities in their beginnings were collegiately governed with the academic body electing (or perhaps more accurately selecting) those among their own to govern universities. As we have seen above, this model continues to this day in some university sectors. Where this model may be lacking is in representing the views of other stakeholders – notably students and the wider community. However, in line with the principles set out in the Reid Foundations Report of its Commission on Fair Access to Political Influence (forthcoming 2013), the authors of this report believe that the democratic principles of governance should be the default model for any public body. In this context, universities function like public bodies. It is therefore proposed that universities should be governed as follows:

- The Senate should be wholly elected by the academic staff of an institution;
  no automatic right of membership should be conferred by the appointment by management of individuals to posts
- The University Court should be wholly elected. This paper does not seek to specify the exact arrangements for this but suggests that it should be made up of representatives elected from the academic and student body, representatives of staff (not synonymous with 'academics') possibly elected through trade unions, and external representatives of the wider community elected by all staff and students. The proportions of these and overall size of the Court are open for debate.
- The university principal should be considered a paid appointment of the university, recruited to advise the Court appropriately and to act on the decisions made by the Court.
- Individual members of the Court should have access to the senior management team and its research and advisory capacity to ask it to formulate and assess proposals other than those presented by the SMT itself.

The case against democratic governance is consistent and consistently a defence of the 'managerial hegemony model' outlined above. It argues that a democratically-run university would hamper the ability of professional managers to made the big, rapid decisions that they see as necessary to radically alter universities as they operate like large businesses in an international market.

This, we argue, is the case for reform accurately summarised in a sentence. As we have seen throughout governance failure in so many parts of the British state and commercial sector, the belief that a small cadre of 'expert managers' more able than anyone else to make autonomous and lightly-scrutinised decisions that radically alter behaviour in large organisations has caused massive failure of governance. The fetishisation of the ability to make 'big decisions fast and without hinderance' is taken by that class to be a universal truth. By the time that the wider stakeholders of the institutions they run that way are aware of the enormous risk contained in that governance model it is often too late.

Put simply, there is little reason to be confident that a handful of people on their own and with little real accountability are able to secure the future of our universities for the next generation – certainly not if intellectual rigour and a civic-over-profit motivation is to be preserved.

Universities represent a large and easily identifiable community. There is absolutely no reason why that community is not able to select among and beyond itself people able to govern that community effectively and with consent.

#### Notes and references

- 1) See http://www.sfc.ac.uk/funding/funding.aspx for details
- 2) For example, universities are listed as public bodies in both the Freedom of Information (Scotland) Act 2002 and the Disability Discrimination Act 2005
- 3) Universities Scotland submission to the Review of Higher Education Governance, September 2011
- 4) See reports of the Audit and Compliance Committee of the Scottish Funding Council, http://www.sfc.ac.uk/aboutus/council\_board\_committees/council\_committees/audit\_committee/council\_committees\_audit.aspx
- 5) See for example http://www.heraldscotland.com/news/education/top-academics-attack-on-university-cuts-plan-leading-academic-attacks-university-plan-to-cut-courses.13918469 and http://www.bbc.co.uk/news/uk-scotland-glasgow-west-12467789
- 6) Scottish Executive (2004) Phase 3 Higher Education Review The Competitiveness of Higher Education in Scotland
- 7) See for example http://www.universities-scotland.ac.uk/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=99&cntnt01returnid=23
- 8) http://www.bbc.co.uk/news/uk-scotland-glasgow-west-12467789
- 9) For example Million+ (2013) Breaking With Tradition: Universities at 21
- 10) For a description of traditions of university governance see European University Association (2011), University Autonomy in Europe ii: The Scorecard
- Adapted from Cornforth, Chris (2004). The governance of co-operatives and mutual associations: a paradox perspec- tive. Annals of Public and Co-operative Economics, 75(1), pp. 11–32

- 12) For example 202(2)(a) Education Reform Act 1988: the HEI has a duty 'to ensure that academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at their institutions'.
- 13) Further and Higher Education (Scotland) Act 1992 and Higher Education Act 2004
- 14) European University Association (2011), University Autonomy in Europe ii: The Scorecard
- 15) See submissions to the Review of Higher Education Governance in Scotland at http://www.scotland. gov.uk/Publications/2011/10/25103503/44
- See David Palfreyman "Is academic freedom under threat in UK and US higher education?" at http://oxcheps.new.ox.ac.uk/MainSite%20pages/Resources/OxCHEPS\_OP23.pdf,
- 17) Scottish Government (2012) Report of the Review of Higher Education Governance in Scotland