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Measuring academic freedom in Europe: a criterion referenced approach

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ABSTRACT

Using comparative data from 28 states within the European Union, this paper is a comprehensive assessment of the protection for, and (by extension) the health of, academic freedom in the universities of the nations of the European Union. The paper, extending previous work in this area, adopts a 'bottom-up' approach utilising 37 specific parameters that relate to international treaties, and national, constitutional, and legislative protection for academic freedom, along with legal regulations concerning institutional governance, the appointment of the rector, and the existence of academic tenure, in order to create a composite picture of the health of academic freedom in the universities within the European Union nations.

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Introduction

In 2007, *Higher Education Policy* published a paper by Karran entitled 'Academic Freedom in Europe: A Preliminary Comparative Analysis'. The paper's purpose was a comparative assessment of the protection for, and health of, academic freedom in the universities of the then 23 European Union nations. The paper addressed the constitutional and legislative frameworks in relation to academic freedom in the EU, assessing them against the different elements of UNESCO's *Recommendation Concerning the Status of Higher-Education Teaching Personnel* (1997), in relation to freedom for teaching and research, institutional autonomy, shared governance and tenure. The study subsequently featured as one of 'three seminal articles published in *Higher Education Policy* (*HEP*) on academic freedom and university autonomy', in a review paper in *HEP* by Ren and Li. They argued 'Karran's analysis … demonstrates that it is practically feasible to measure how far academic freedom is protected in various contexts with a comparative approach' and, although they acknowledge that 'it is quite difficult, at least based on comparable empirical evidence, to capture the total, real effect of the parameters that he measures', they believed that paper's 'unique comparative approach and the policy implications … should not be underestimated' (Ren and Li 2013, 507, 513, 516).

Prior to the 2007 article (or since), few, if any, attempts had been made to measure the strength of the protection for academic freedom in individual nations and

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universities, despite the widespread belief in academia and beyond, that: 'without such freedom, there would have been no Shakespeare, no Goethe, no Newton, no Faraday, No Pasteur, and no Lister' (Einstein 1933). A study of Australia examined compliance with the UNESCO instrument in relation to 'commensurability of pay for higher education teaching personnel' and 'independent research for higher education teachers', but omitted autonomy, governance and teaching, before asserting (largely without evidence) that 'Australian universities fail to meet international standards, as enunciated in the 1997 Recommendation' (Page 2007, 98). The Scholars at Risk non-governmental organisation does not measure the protection for academic freedom but verifies violations when they occur. Its 2015 monitoring report documented 333 such violations worldwide between 1 January 2011 and 1 May 2015, of which 111 constituted killings, physical violence or disappearances (Scholars at Risk 2015, 44). Such statistics clearly demonstrate the importance of, and need for, more research on this topic.

The reasons for this dearth of research are complex, but one cause may lie in the fact that legal instruments are assessed by legal scholars, in terms of their moral and philosophical underpinnings, rather than their empirical realities. Surveys of the academic freedom literature (Sinder 1990; Aby and Kuhn 2000; Horn 2002) confirm that most studies discuss the validity and coverage of the law on academic freedom, with respect to individual cases, rather than attempting to measure the generic effectiveness of the law, in operational terms, against international benchmarks. Additionally, undertaking comparative research of this nature, involving the collection, collation, translation and analysis of constitutional and legal instruments, from the (now) 28 EU states is extremely time-consuming and research intensive.

Subsequent work has confirmed the originality and utility of the method used in the 2007 paper, but also pointed to its possible weaknesses, as alluded to in Ren and Li's appraisal. The method is very simple to apply, as it is a 'top-down' approach utilising single benchmarks for individual elements. Consequently, it does not address other significant international agreements and their operation across the EU countries, or the technical minutiae of national legislation, and the operation of such laws in individual EU states. Most significantly, this approach only enables individual states to be compared (and ranked) with each other, with respect to their protection for academic freedom, thus the measures derived can be described as nominal or ordinal. Such an approach can be considered as norm referenced; that is, it enables an assessment of whether the protection for academic freedom in one nation is greater than that in another. However, this approach does not allow the derivation of individual scores, which would show how closely a nation comes to meeting all its commitments, or whether the level of protection over time has altered, as this could only be undertaken with an interval measurement and criterion referencing. Such an interval measure, derived from a 'bottom-up' approach which embraces a wide set of criterion referenced parameters, would make it possible to see (for example) if any nation scored 100% in terms of its protection for academic freedom, or show how the level of protection in individual nations has altered over time, or what the average score was for a group of nations, which was not possible with the previous nominal norm-referenced measure.

Measuring academic freedom: a criterion referenced approach

The parameters used in the 2007 HEP paper were: constitutional and legal protection, self-governance, the appointment of the rector, and academic tenure. This paper includes these measures, but utilises additional inter-related measures, and thereby provides a much clearer and richer picture of the protection for academic freedom within the contemporary European Union states. For example, the 2007 paper examined the process of appointing the rector, but this study also examines the process for dismissing the rector, and the staff input into appointment/dismissal procedures for middle managers (Deans and Departmental Heads). Furthermore, this study includes an additional important dimension – the ratification by EU states of international agreements that are supportive of the protection of academic freedom.

As occurred with the previous study, some compromises had to be made. Firstly, this study only includes universities. In addition to universities, a minority of EU nations has a second tier of tertiary education (e.g. the schools of higher vocational education, 'Ammattikorkeakoulu', in Finland). In such institutions, the emphasis is on vocational training, rather than academic research and, therefore, academic freedom for research is less important. Additionally, these institutions are frequently funded by sub-national authorities (municipalities govern the Ammattikorkeakoulu in Finland) rather than by central government (as are universities), and therefore, possess different status with respect to institutional autonomy. Furthermore, universities in different EU states, many of which are long established, are marked by a similarity in their functions and modus operandi. By contrast, second-tier non-university h.e. institutions (where they exist) are often recently founded, and with specific objectives and organisational structures, and differ, both from each other, and from universities. In Finland, for example, the last five Ammattikorkeakoulu were granted permanent status in August 2000 (350 years after Finland's first university), as 'multi-field regional institutions focusing on contacts with working life and on regional development' (Vossensteyn 2008, 19), indeed, regional development is a legislated objective of each Ammattikorkeakoulu.

Secondly, this study excludes private universities. However, as Kwiek (2009, 100f.) points out '[i]n Europe, not only is the experience of private higher education very limited, … (but) … they are very small or relatively small institutions within their respective national higher education systems'. Indeed, Levy (2012, 179), using EUROSTAT data, estimated that within the (then) 27 EU nations, the 'private share is 12.0%'. Consequently, the information provided in the tables represents legislation as applied to public universities, rather than a definitive statement covering all higher education institutions, both public and private.

The majority of EU nations are unitary, with the exception of Germany, in which each Länder has its own h.e. system. Consequently, the decision was taken to study the situation in the two most populous Länder (Bavaria and North Rhine-Westphalia), which together account for 37% of Germany's population, and have been governed by conservative and social-democrat governments, respectively. Additionally, Belgium has a federal structure for h.e., which required separate consideration of the Flanders and Wallonia regions (the German-speaking community has no universities). Finally, in the UK, the situation in England was taken as representative, as more than 80% of the U.K.'s full-time h.e. students are enrolled at universities there. Legislation for the EU nations at the start of 2014 formed the basis for the analysis, which was sourced, wherever possible, from

government agencies in the individual states. Gathering these data was unproblematic, as the importance of constitutions is such that English translations freely exist, while the implementation of the Bologna Process necessitated the translation of many h.e. legal instruments. In some cases, recourse was made to online translation tools, followed by double-checking via secondary sources.

The measurement method enables the calculation of a composite measure of the protection for academic freedom out of 100%, and comprises the sum of the scores for five dimensions, each worth 20%. These dimensions are: academic freedom for teaching and for research, institutional autonomy, self-governance, academic tenure, and adherence to international agreements. As yet, there has been no analysis of the relative importance of these different elements of academic freedom (is tenure more important than governance, for example?). Until such analyses are done, the assumption is that they are equally important; indeed, the literature suggests that individual elements are less important than the fact that they mesh together – tenure, for example, enables full participation in governance. In the previous 2007 paper, examples were given to illustrate the method used; similarly, in this paper the calculation of each parameter has been explained using data for Austria, to elucidate the approach. Austria was chosen only because it was alphabetically the first in the list of EU nations; as such its legislative instruments were no more limited or extensive than those in other nations. The following legislative instruments and papers were used to compile the Austrian case study: the Staatsgrundgesetz vom 21 Dezember 1867, über die allgemeinen Rechte der Staatsbürger für die im Reichsrate vertretenen Königreiche und Länder (Basic Law of 21 December 1867 on the General Rights of Nationals in the Kingdoms and Länder represented in the Council of the Realm)[1]; the 1930 Bundes-Verfassungsgesetz (Federal Constitutional Law and its subsequent amendments)[2]; Universitätsgesetz (2002 Universities Act[3]) , the 2011 Bundesgesetz über die externe Qualitätssicherung im Hochschulwesen und die Agentur für Qualitätssicherung und Akkreditierung Austria) (Federal Act on the External Quality Assurance in Higher Education and the Agency for Quality Assurance and Accreditation Austria[4]), and the 2012 Kollektivvertrag für die ArbeitnehmerInnen der Universitäten (Collective Agreement for University Employees[5]).

Teaching and research

The previous analysis used a three-point scale, adjudicating between full compliance, qualified compliance, and non-compliance with elements from the 1997 UNESCO *Recommendation*, to assess the protection in legislation for academic freedom for teaching and research. In-depth examination of the legal articles indicated that a more nuanced scale, allowing greater discrimination, was possible. Hence, for this dimension, the study adopted a five-point scale to calculate the respective values for each nation (out of a 20% maximum), as is shown in Table 1. Assessing the extent of compliance with legal instruments in this way will always involve some element of subjectivity, as Rosga and Satterthwaie (2009, 315) point out indicators 'are tools like any other. All tools can be misused … The key lies in knowing where – and how – human judgment and political contestation should enter'. However, legal instruments are, by their very nature, designed to be as clear, explicit and unequivocal as possible, as if there are ambiguities in the law, this may lead to disputes, and further amendments to the legislation. Hence, in all but a very few instances,

Table 1. Protection for teaching and research: compliance levels and scores.

0%	***non-compliance***: there is no reference to academic freedom at all in the constitution or in h.e. legislation
5%	***between non- and partial compliance***: a general statement is made on academic freedom but there is an absence of elaboration plus limitations or deficiencies (e.g. freedom for research is mentioned but not for teaching), or, where provisions exist addressing academic freedom, they reveal major substantial deficits when assessed against generally agreed criteria on academic freedom
10%	***partial compliance***: a general statement is made on academic freedom, but without the necessary elaboration or concretisation of this statement elsewhere in the h.e. legislation or, where provisions exist addressing academic freedom, they reveal some serious deficits when assessed against generally agreed criteria on academic freedom.
15%	***between partial and full compliance***: provisions exist showing that academic freedom serves as a guiding principle for activity in higher education, but there are a few minor deficits when provisions are assessed in the light of generally agreed criteria on academic freedom.
20%	***full compliance***: provisions on academic freedom are in full compliance with generally agreed criteria, showing that academic freedom serves as a guiding principle within universities, such that it forms 'general principles' in the h.e. legislation, or is referred to in various contexts throughout the legislation.

assessing the extent of compliance was relatively easy; where the intention of the legislation was difficult to interpret, recourse was made to the wider literature on (for example) legislation on academic employment rights, and by cross referencing within the respective national legislation. Latvia's Law on Institutions of Higher Education of 1995, for example, in Chapter 1 on 'General Provisions,' Section 6, specifically deals with 'Academic Freedom', and requires academic freedom to be ensured in institutions of h.e. (Para. 1), and then provides detailed descriptions in respect to freedom of study, freedom of research, and freedom of teaching (Paras. 2, 3, and 4, respectively). Additionally, references to academic freedom recur in various sections of the Law. For example, institutions of h.e. are expected to guarantee the academic freedom of academic staff and students in their statutes (Sect. 5(6)); the rector is required to protect academic freedom of staff and students (Sect. 171(4)); all members of staff are obliged to promote freedom of study, research, and teaching (Sect. 26(2)); students have the right to freedom of study and research (Sect. 50(1)(4)). Furthermore, the law provides for an academic arbitration tribunal with the competence to consider claims by staff and students that their academic freedom has been restricted or infringed (Sect. 19(1)(1)). Nevertheless, it will be appreciated that coping with voluminous and diverse sets of legislation in different languages is a daunting task; however, by double-checking the data, it is hoped that whatever errors may have occurred, they will be minimal.

Austria's Universities' Act of 2002 is very comprehensive. In Part 1 Sub-Chapter 1, the Act specifies Guiding Principles, namely: 'freedom of sciences and their teaching and freedom of scientific and artistic activity, the dissemination of the arts and their teaching' and the right to study: 'Lernfreiheit'. Elsewhere, the Act includes sections relating to academic freedom on (*inter alia*): principles, responsibilities, and scope of application; university governance and internal structures; management and internal organisation; students' rights and duties; freedom of conscience and research; employment law and extended protection for tenure

> The termination of employment or dismissal of a member of the scientific or artistic staff of a university shall be null and void where this takes place as a result of an opinion or method advocated by such staff member in the course of his/her research or teaching activities.

On the basis of a detailed examination of the legislation, in line with the above criteria, Austria was allocated 20% out of 20% for this dimension.

Institutional autonomy

The second dimension is that of autonomy. In the 2007 analysis, autonomy was not examined on the grounds that, as Anderson and Johnson's study of university autonomy in 20 countries concluded, '[i]nstitutional autonomy is a necessary but not a sufficient condition for academic freedom' (1998, 8). Historically, the fight for institutional autonomy was a determining factor in the genesis of the first European universities. Repeatedly, staff in these fledgling universities were subjected to external attempts at control, and were forced to move to other cities. Bologna University, for example, withdrew from the town for three years, until the civic authorities met its demands for greater control over the studium. Similarly, the Great Dispersion of 1229 saw scholars abandon Paris for Angers, as Cobban (1969, 2) relates, 'Paris University was in large measure a response to conflict … (and) … The struggle for university autonomy in the face of ecclesiastical domination'. Such migrations only ended when vested authorities (Monarchs, Popes and, later, governments) agreed to recognise university autonomy as a right. As Eaton (2011, 183) notes: 'institutional autonomy has been acknowledged in both federal and state law as the expectation that colleges and universities will carry out their academic leadership in a context of responsible independence. Autonomy is about academics leading and managing academe'.

However, as Neave (1988, 39) relates

> the expansion of higher education contributed powerfully to redefining the nature of academic autonomy. From the latter parts of the 1960s established models, the origins of which could be traced back over the previous century and a half, were revised.

He further demonstrates (46) that parallel legislation in different European states in the 1960s and 1970s created a situation in which 'autonomy can be exercised only on condition that the individual institute or department fulfils national or establishment norms which are continually to be renegotiated in the light of public policy'. Consequently, national and European governments and non-governmental organisations have called for greater institutional autonomy for universities, for example, the EUA's Prague Declaration (2009) stated that:

> Universities need strengthened autonomy to better serve society and specifically to ensure favourable regulatory frameworks which allow university leaders to design internal structures efficiently, select and train staff, shape academic programmes and use financial resources, all of these in line with their specific institutional missions and profiles.

In statements such as this within the Prague Declaration, it needs to be recognised that the term 'universities' comprises a handy and impersonal portmanteau expression, thereby conveniently glossing over that which is actually being advocated, i.e. greater power for university rectors, and consequently less power for staff. Consequently, the academic community has criticised the transformation of the definition and function of university autonomy. For example, Wright and Ørberg (2008, 52f) believe that

> the Danish model combines the worst of both the free trade and the modernising state models of autonomy: universities, their leaders and academics are given freedom in the sense of individual responsibility for their own economic survival, whilst the sector comes under heavy political control. This is called 'setting universities free'.

Similarly, in the UK, Tapper and Salter (1995, 70) describe how 'university autonomy has been reconstituted while donnish domination has declined. In the process, the link between institutional and individual autonomy … has been broken'. Additionally, Piironen (2013, 142), applied a transnational focus to university autonomy and concluded that:

> the idea of university autonomy is clearly conceptualized in a different manner today than two decades ago. … Autonomy is increasingly seen as the managerial property of the university leadership, and not as the property of the entire academic community.

This tendency to use pleas for greater institutional autonomy as a rationale for greater managerialism in universities has been marked in the UK. In this regard, Henkel (2007, 88) notes key differences in perceptions of the concept:

> In Anglo-Saxon contexts, the single term 'academic autonomy' incorporates two distinct but connected ideas: individual academic freedom, and university autonomy or the right to institutional self-governance. … In other contexts, such as the Humboldtian system, this duality is absent; the protection by the state of the academic freedom of those appointed professors or chair-holders (who essentially are the university) is central.

Furthermore, as Jasper (1990, 453) observes: 'The danger in treating institutional autonomy as academic freedom lies in the fact that the freedom of the individual academic may become submerged into, or be seen as irrelevant compared with, the freedom of the university'. Institutional autonomy can help secure individual academic freedom – as Barendt (2010, 67) points out 'free universities are much more likely to allow and indeed encourage their staff to exercise academic freedom, because they appreciate its essential role in discharging their responsibility to teach students to think for themselves and to advance knowledge'. However, without shared governance, institutional autonomy may easily lead to managerial tyranny. Consequently, when (as in the UK) the link between individual and institutional autonomy is lost, as Davies (2015, 990) notes 'Academics may find themselves fighting not *with* their university against external encroachment, but *against* their university as a direct threat to aspects of their academic freedom' (original author's emphasis). Interestingly, the authors of UNESCO's 1997 *Recommendation* foresaw this development and its dangers, as paragraph 20 states: 'Autonomy should not be used by higher education institutions as a pretext to limit the rights of higher-education teaching personnel provided for in this Recommendation or in other international standards' (1997, 28). Hence for the previous study, autonomy was seen an enabling factor, but neither a necessary nor sufficient condition for academic freedom, and thus was excluded. However, today, the manner in which autonomy is operationalised within universities may disable, rather than enable, individual academic freedom. Consequently, owing to the rapid changes in higher education management in recent years in most EU nations, there are strong grounds for including a measure of autonomy.

Consequently, this paper adopts an aggregative approach, focusing on four interrelated elements within this dimension: legal provision for institutional autonomy (=4%), operational autonomy (=8%), state regulation (=4%), and private interest powers (=4%). For each of these elements a three-point scale (full, partial, and non-compliance) was utilised to calculate the respective values for each nation. For the legal provision for institutional autonomy (=4%), the scale of compliance and the relative values were as shown in Table 2.

Table 2. Legal provision for institutional autonomy: compliance levels and scores.

0%	***non***: either no provision exists, or that which exists is seriously deficient.
2%	***partial***: provision on institutional autonomy exists, in the HEA, but is problematic (e.g. too general in nature, or does not comprehensively address all elements)
4%	***full***: comprehensive provision on institutional autonomy exists in the legislation

With respect to institutional autonomy, Part I, Chapter 1, Sub-Chapter 1 of the Austrian Universities Act 2002 states:

> The mission of the universities is to serve academic research and teaching … To enable them to respond to the constantly changing demands made on them … the universities … shall constitute themselves under conditions of the greatest possible autonomy and self-administration.

However, the Act does not explicitly describe the competences which the university should enjoy, with respect to autonomy, and fails to address financial autonomy. For this reason, the situation comes nearest to the description of partial compliance (=2%), given above.

The second element, the internal operation of autonomy, is a composite measure addressing specific elements of academic management and administration, namely:

(a) state involvement in appointing the rector (1%);
(b) the university's ability to determine its structure and academic units, faculties, departments, etc. (1%);
(c) restrictions on state funding (1%);
(d) the ability to undertake commissioned research (1%);
(e) discretion to appoint academic staff (2%);
(f) the determination of entry criteria for student applicants (1%);
(g) the need for state accreditation (1%).

These different contributions are assessed in the same way (i.e. full, partial, or non-compliance) and worth a maximum of 8%, as shown in Table 3.

Close examination of the Austrian Universities Act of 2002 reveals that 'The Rector shall be selected [by the university council, section 21(1)(4)] from a short list proposed by the Senate' [s. 20(3)], with the university free to establish 'organisational units … in the interests of research, advancement and analysis of the arts, teaching study and administration'. Additionally, Section 12(6) of the Act notes that 'Each university shall receive a global budget … Universities shall be free, … to use their global budgets as they see fit'; while Section 26(1) guarantees that 'Members of the scientific community shall be entitled to undertake … research commissioned by third parties' [s. 20(4)]. Hence, the situation is one of full compliance for these elements of the internal operation of autonomy. However, with respect to staff appointments, the situation is one of partial compliance. The law provides minimal details on the categories of academic posts and the criteria for their fulfilment – Section 94(2) merely states that the university academic staff comprises 'the university professors, the associate professors and other research, artistic and teaching staff', while Section 100(1) requires that the teaching and research staff 'must be appropriately qualified for the employment envisaged'. The power of the

Table 3. Internal operation of autonomy: compliance levels and scores.

(a) Rector's appointment	0%	***non***: the state chooses and affirms or appoints the Rector
	0.5%	***partial***: the university chooses the Rector and the state formally appoints or confirms such appointments
	1%	***full***: the university appoints the Rector without any state involvement
(b) Internal structures	0%	***non***: university structures, and the creation/abolition of faculties and departments are prescribed by law, or university determines faculty and departmental structures, but the state legally creates/abolishes them and can order a university to create a faculty or department
	0.5%	***partial***: the university determines faculty or departmental structures but the state creates/abolishes them (or confirms such changes) *or* the university determines internal structures and creates/abolishes faculties or departments, but the state can order a university to create a faculty, or department
	1%	***full***: the university determines internal structures (i.e. creates/abolishes faculties, and/or departments) without state intervention
(c) State funding	0%	***non***: the university receives a hypothecated block grant and is unable to determine revenue allocations between budget headings
	0.5%	***partial***: the university receives a block grant but with certain restrictions or conditions
	1%	***full***: the university receives an un-hypothecated block grant without restrictions and can determine its own revenue allocations
(d) Commissioned research	0%	***non***: power to undertake commissioned research not mentioned in legislation
	0.5%	***partial***: power to undertake commissioned research mentioned in h.e. laws, but the provision lacks clarity
	1%	***full***: power to undertake commissioned research expressly detailed in h.e. laws
(e) Staff appointments	0%	***non***: The law specifies in substantial detail the categories of academic posts and the criteria for their fulfilment, and may impose substantial restrictions on the recruitment/promotion of staff (e.g. moratorium on appointments for economic reasons) with a further possible requirement that professorial appointments are made or confirmed by the state
	1%	***partial***: The law specifies in some detail the categories of academic posts and the criteria for their fulfilment, and may impose certain restrictions on staff recruitments/promotions (e.g. specifying staff numbers per faculty) and/or require that professorial appointments are performed or confirmed by the state
	2%	***full***: The law specifies minimal detail on the categories of academic posts and the criteria for their fulfilment; universities have complete discretion to recruit/promote staff, without state involvement; professorial appointments are neither made nor confirmed by the state
(f) Student recruitment	0%	***non***: the state plays a dominant role in determining entry criteria and selecting students
	0.5%	***partial***: = responsibilities for entry criteria and the selection process are shared by the university and the state (which may, e.g. impose minimum entry standards)
	1%	***full***: the university determines the selection criteria and undertakes the process of choosing students for entry to degree programmes
(g) Degree accreditation	0%	***non***: degree programmes require state accreditation
	0.5%	***partial***: degree programmes need not to be state accredited, but some measures of state control exist
	1%	***full***: degree programmes need not to be state accredited

university is very restricted as to student selection, because Section 60(1) requires that the university 'shall, on application by persons fulfilling requirements for admission [set by the Act] … admit such persons'. Conversely, with respect to accreditation, Estermann, Nokkala, and Steinel (2011, 63) report that 'Austrian and Swedish institutions face only minor constraints: in Austria, the introduction of degree programmes is related to the performance agreements negotiated between universities and the government'. Hence, these factors lead Austria to score 6% (out of 8%) for these elements of the internal operation of autonomy.

The third element within the dimension of autonomy is state regulation, the scale of compliance (and the associated values) for this concept is as shown in Table 4.

Table 4. State regulation of autonomy: compliance levels and scores.

0%	***non***: the state has a high level of involvement in regulating universities' activities. University governing bodies usually require state approval to enact some regulations and make decisions, and the state may have some decisive majority control over university governing bodies and their composition
2%	***partial***: university governing bodies may require state approval to enact some regulations and make decisions (or subsequent state confirmation), and the state may have some control over university governing bodies and their composition
4%	***full***: university governing bodies are free from state control and enact regulations and make decisions without prior state approval. The state has minimal involvement in regulating universities' activities, but merely checks compliance with legal requirements

Table 5. Private sector constraints on autonomy: compliance levels and scores.

0%	***non***: universities possess no legislative protection against the influence of private interests, and have no requirement to divulge the source and extent of private funding, and risk undue influence via private interests representation on the university's governing bodies
2%	***partial***: universities possess some legislative protection against the influence of private interests, and may be required to divulge the source and extent of private funding, and may risk undue influence via private interests' representation on the university's governing bodies
4%	***full***: legislation states categorically that the independence of university teaching and research activities cannot be compromised by private funding; requires absolute transparency concerning the source and size of private funding; and imposes restrictions on private sector representation on university governing bodies

Scrutiny of the Universities Act 2002 reveals that universities can enact regulations and make decisions without prior state approval or subsequent confirmation. However, according to Section 21(3) of the Universities Act, 50% of the members of the university council, which is the university's senior governing body, are appointed by the Federal Government. In consequence, for this element of the autonomy dimension, Austria has only partial compliance (=2%).

The final element of the dimension of autonomy concerns the extent of private sector influence, the scale of compliance (and the associated values) for this concept is as shown in Table 5.

The Universities Act 2002 allows Austrian universities to undertake privately and publicly commissioned and funded research, using funding from third parties but requires safeguards to ensure that such activities do not compromise the tasks of universities and the rights and duties of other university members. However, the Act does not require universities to reveal the sources and scope of private funding. Moreover, under the Act, 50% of the university council members are external state appointments and all council members are external experts, which thereby risks that private interests may exert a disproportionate influence on university policy. For these reasons, the situation comes nearest to the description of partial compliance, given above (=2%). Summation of the values relating to the contributory elements that comprise the second dimension of academic freedom, autonomy, shown in Tables 2–5, gives Austria an aggregate score of 12% out of 20% for this dimension.

Self-governance

The third dimension is self-governance. Research commissioned by the UK Leadership Foundation for h.e. highlighted the centrality of self-governance to academic citizenship, maintaining that 'self-governance is a core academic right … as self-directed professional

academics have both a right and a responsibility to participate in leadership, governance and citizenship within and on behalf of their institutions and communities' (Bolden et al. 2012, 13, 34). The 2007 preliminary study of academic freedom found that university governance systems (and the participatory role of academic staff) varied considerably within the EU, and that legislation was being introduced in many states, which would diminish the role of the academic staff in the governance process. In Finland, for example, the Universities' Law of 2009 changed the composition and mode of appointment of the University Board (the university's executive arm), thereby diluting the power of the academic community to control strategic decisions. The pace of similar changes in university governance in other EU nations has accelerated in recent years. In summary, Stensaker and Vabø (2013, 259) argue that the

> marketisation of higher education has … contributed to push back the notion of the university as a representative democracy in favour of more corporate governing structures streamlining internal decision making and where it is the external rather than the internal voices that has the upper hand.

Such trends raise clear concerns about governance, and academic freedom. As Steek (2003, 81) points out:

> The core values and mission of the university must be sustained if the university is to fulfil its traditional role of learning, scholarship, and service. A fully corporatized university is only the shell of a university, and the task facing the academic community is to ensure that the inner core as well as the outer shell are preserved,

leading Birnbaum (2004, 8, 20) to remark: 'the essential debate may not reflect differences about how the university should be governed, but rather conflicting ideologies and differences in belief about what a university should be', 'the basic question to ask is not whether we want to make governance more efficient, but whether we want to preserve truly academic institutions. If the answer is affirmative, then shared governance is an essential precondition'.

There are clear links between governance and the previously considered dimension of autonomy. Indeed, until recently, the individual autonomy of academics resonated beyond their functions of teaching and learning, as it enabled academics to participate in their universities' internal management via a process of collegiality, i.e. governance by peer review and consensus-seeking deliberation. In recognition of the significance of self-governance, in protecting academic freedom from ever more omnipresent managerialism in h.e., this paper adopts an aggregative approach to measure self-governance, focusing on three inter-related elements: legal provision for self-governance (=2%), operational self-governance (composition and powers of faculty/departmental governing boards and Senate = 12%), and senior staffs' powers of appointment and dismissals (of the Rector and Deans/Heads of Department = 6%). For each of these elements, a three-point scale (full, partial, and non-compliance) was utilised to calculate the values for each nation for this dimension.

For legal provision (=2%), the scale of compliance and the relative values are as shown in Table 6.

With respect to governance in Austrian universities, the 2002 Universities' Act, Section 2 (8) specifies 'collaborative relationships between members of the university' (i.e.

Table 6. Legal provision for self-governance: compliance levels and scores.

0%	***non***: No express provision exists on the right of self-governance or, if one is extant, it is seriously deficient
1%	***partial***: An express provision on the right of self-governance exists, but this is problematic or deficient in some respects (e.g. mentioning only some aspects of the right of self-governance)
2%	***full***: an express and satisfactory provision on the right of university self-governance exists in the legislation

collegiality) as a guiding principle for universities in pursuance of their goals of teaching and research. Additionally, Section 25 explicitly describes staff involvement in the university Senate; however, there is no general provision granting the right of self-governance to staff. For this reason, the situation for this element comes nearest to the description of partial compliance (=1%) given above.

The second element is operational self-governance, which comprises the following aspects of academic governance:

(a) provision of collegial bodies (1%)
(b) composition of collegial bodies (2%)
(c) composition of Senate (3%)
(d) strategic decision-making (6%)

These different contributions are assessed in the same way (i.e. full, partial, or non-compliance) and worth a maximum of 12%, as shown in Table 7. The Universities' Act of 2002 is silent on both the existence and composition of collegial bodies at faculty and departmental levels. Such bodies are a requirement in terms of international human rights law (see, e.g. UNESCO's 1997 *Recommendation Concerning the Status of Higher-Education Teaching Personnel* paras. 31–2), so there should at least be a provision at the legislative level (in the Universities Act) mandating the existence of collegial bodies at faculty and departmental levels, and specifying that academic staff in the faculties and departments concerned should have the right to elect a majority of representatives to these bodies. Consequently, the situation is one of non-compliance with respect to the existence (0%) and composition (0%) of faculty and departmental collegial bodies. By contrast, Section 25(1 & 2) of the 2002 Universities' Act specifies that 13 out of 18 (72%) or 19 out of 26 (73%) members of the Senate are representatives drawn from the academic staff and elected by them, resulting in full compliance (3%) with element 7(c), as shown in Table 7.

With respect to academic participation in university strategic decision-making, the 2002 Universities Act (Section 22) indicates that many strategic decisions (*inter alia*, preparing the university's development plan, drafting the university budget) are undertaken by the Rectorate, with the Senate having the limited power of approving such plans, and receiving, 'for information' only, the draft budget, before the University Council, which is the final arbiter regarding these strategic decisions, gives its approval. The University Council comprises external members only, with the Senate and the State each determining 50%. Hence, strategic decisions are essentially taken by the Rectorate, and ratified by the Council, of which half the members are elected by the Senate, 70% of the members of which are elected by, and drawn from, the academic staff. In such circumstances, the input of the academic staff in strategic decision-making can, at best, be described as only partial (3%).

Table 7. Operational self-governance: compliance levels and scores.

(a) Existence of collegial bodies	0%	***non***: legislation does not provide for collegial bodies
	0.5%	***partial***: the legislation provides for collegial bodies but does not specify their duties
	1.0%	***full***: the legislation provides for collegial bodies and specifies their duties
(b) Composition of collegial bodies	0%	***non***: academic staff have minority representation (>50%) on Collegial Academic Bodies, and/or the provisions on composition reveal major 'democratic' deficiencies (e.g. certain categories of academic staff are excluded)
	1%	***partial***: academic staff have majority representation (50–59%) on Collegial Academic Bodies, and there are no or only limited 'democratic' deficiencies (e.g. too many professors)
	2%	***full***: academic staff are guaranteed overwhelming representation (<60%) on Collegial Academic Bodies, and there are no 'democratic' deficiencies
(c) Composition of Senate	0%	***non***: a minority (less than 50%) of Senate members are representatives of academic staff, and/or the provisions on the composition of the Senate reveal major 'democratic' deficiencies (e.g. academic staff are only represented by professors that are appointed by the state)
	1.5%	***partial***: a majority (50–59%) of Senate members are representatives of the academic staff, and there are no or only limited 'democratic' deficiencies (e.g. there is a high number of professors compared with other academic grades)
	3%	***full***: an overwhelming majority (60% or more) of university Senate members are representatives of all levels of the academic staff, and there are no 'democratic' deficiencies.
(d) Strategic decision-making	0%	***non:*** academic staff have no representation on the strategic decision taking body/bodies i.e. the Senate and/or board/council.
	1.5%	***between non and partial:*** academic staff have very limited representation (<30%) on the strategic decision taking body/bodies i.e. the Senate and/or board/council
	3%	***partial compliance***: academic staff have minority representation (30–39%) on the strategic decision taking body/bodies i.e. the Senate and/or board/council
	4.5%	***between partial and full:*** academic staff have minority representation (40–49%) on the strategic decision taking body/bodies, i.e. the Senate and/or board/council
	6%	***full:*** academic staff have at least 50% representation on the strategic decision taking body/bodies, e.g. the Senate and/or board/council

The third element of self-governance centres on the academic staffs' powers of appointment and dismissal of senior managerial staff (Rector and Deans/Heads of Department). Where senior managers are required to be competent academics coming from within the institution/faculty/department, and academic staff have the power to appoint or dismiss them, the staff are able to exercise indirect power of decision-making, even where the formal direct powers available to them via the Senate or university may be limited. This element comprises the credentials of the Dean/Head of Department (1%) and the Rector (1%) and the authority of the academic staff to both appoint the Dean/Head of Department (1%) and the Rector (1%), and conversely, to dismiss the Dean/Head of Department (1%) and the Rector (1%). Between them, these six elements constitute 6% of the self-governance dimension, and are assessed in the same way as before (i.e. full, partial, or non-compliance), and are displayed in Table 8.

With respect to the appointment of the head of a research/teaching unit, Section 20(5) of the Austrian Universities Act states:

> The rectorate shall, on the basis of a nomination by university professors in the organisational unit concerned, appoint a suitably qualified person regularly employed by the university as the head of each organisational unit entrusted with research and teaching tasks or tasks relating to the advancement and analysis of the arts and the teaching of art.

Clearly, the Dean has to be nominated by the staff, but need not have a PhD or be a Professor, which indicates only partial compliance (0.5%). The same section of the Act

Table 8. Staff powers of appointment and dismissal: compliance levels and scores.

(a) Dean's/Head of Department's credentials	0%	***non***: The dean/head of department can be an external appointment and need not have a PhD or Professorial rank
	0.5%	***partial***: the dean/head of department can either be an external appointment, (but must have a PhD or hold Professorial rank) or an internal appointment (but need not have a PhD or Professorial rank)
	1%	***full***: The dean/head of department is an internal appointment and must have a PhD or Professorial rank
(b) Appointing the Dean/Head of Department	0%	***non***: Academic staff have no right to participate in the selection of the dean/head of department
	0.5%	***partial***: Academic staff have a right (with other bodies) to participate in the selection process of dean/head of department
	1%	***full***: Academic staff exercise control over the appointment of dean/head of department posts
(c) Dismissing the Dean/Head of Department	0%	***non***: academic staff have no right to participate in the dismissal of the dean/head of department
	0.5%	***partial***: academic staff have a right (with other bodies) to participate in the dismissal process of a dean/head of department
	1%	***full***: academic staff can dismiss the dean/head of department via a vote of no-confidence (or similar procedure), the state is not required to approve, undertake or confirm such dismissals
(d) Rector's Credentials	0%	***non***: The rector can be an external appointment and need not have a PhD or Professorial rank
	0.5%	***partial***: Either the rector can be an external appointment, but must have a PhD or hold Professorial rank or the rector is an internal appointment and need not have a PhD or Professorial rank
	1%	***full***: the rector is an internal appointment and must have a PhD or Professorial rank
(e) Appointing the Rector	0%	***non***: academic staff have no right to participate in the selection of the Rector
	0.5%	***partial***: academic staff have a right (with other bodies) to participate in the selection process
	1%	***full***: academic staff exercise control over Rectoral appointments
(f) Dismissing the Rector	0%	***non***: academic staff have no right to participate in the dismissal of the Rector
	0.5%	***partial***: academic staff have a right (with other bodies) to participate in the dismissal process
	1%	***full***: academic staff can dismiss the rector via a vote of no-confidence (or similar procedure)

demonstrates that, while academic staff cannot appoint the Dean, they have an important right of participation by making the nomination; hence, again the situation is that of partial compliance (0.5%). However, when it comes to dismissing the Dean, the Universities Act (Section 20) specifies that the 'Rectorate may dismiss the head of an organisational unit entrusted with research and teaching tasks', so no procedures exist which could enable academic staff to dismiss the Dean, and the situation is that of non-compliance (0%)

With respect to the Rector's appointment, the duties of the Senate and the Council are distinct. The Senate has the duty of 'approving the advertisement for the post of rector within two weeks upon receipt from the university council', and 'drawing up a shortlist of three candidates for the election of the rector by the university council' (Universities Act 2002, Section 25). The Council has the duty of 'advertising the post of rector' and 'electing the rector from a shortlist of three candidates nominated by the Senate' (Universities Act 2002, Section 21).

The division of responsibilities between the Senate and the Council in appointing the Rector is such that the situation is best described as partial compliance (0.5%). Similarly, the academic staff do not have the unilateral power to remove the Rector (although Senate has the right to initiate dismissal procedures). Section 21(1) of the 2002 Universities Act grants the University Council (of which half the members are Senate nominees) the

duty of dismissing the Rector. Hence, the division of powers of dismissal equates most readily with a situation of partial compliance (0.5%). Summation of the values relating to the contributory elements that comprise the third dimension of academic freedom, self-governance, shown in Tables 6–8, gives Austria an aggregate score of 9% out of 20% for this dimension.

Academic tenure

The preliminary analysis in 2007 revealed that less than half the EU nations surveyed had a strong level of protection for academic tenure. This was surprising, as all the EU nations had signed UNESCO's 1997 *Recommendation Concerning the Status of Higher-Education Teaching Personnel* which unequivocally advocates that higher-education teaching personnel should possess security of employment, because it 'constitutes one of the major procedural safeguards of academic freedom and against arbitrary decisions' (UNESCO 1997, 32). The world economic crash of 2008 caused many European governments to undertake austerity policies, including public sector retrenchment and reductions in public spending, allied to measures designed to improve productivity, such as the casualisation of labour. Within this policy context, tenure arrangements for academics were seen as an anachronistic, unaffordable luxury, such that in some states, attempts were made to weaken tenure. In Finland, for example, Herbert and Tienari (2013) relate how, following the 2009 new Universities Act (Yliopistolaki 558/2009), an American style tenure-track system was introduced into the newly formed Aalto University. With some irony, Herbert and Tienari (2013, 158) report 'Our findings show that when new governance principles allow senior management strategists to determine the system of employment of academics, the choice of a tenure-track system does not necessarily defend individual academic freedom.'

The 2007 study showed that employment protection for academics in the EU states varied considerably. For example, Article 56 of the Spanish 2001 Ley Orgánica de Universidades specifies that tenured Professors (Cathedraticos) are subject to the general law applicable to civil servants, whereas under Article 52 Profesores Contratados also have indefinite contracts, but without the status of civil servants. By contrast, in Ireland Section 25(6) of the 1997 Universities Act 1997 states that the university shall 'provide for the tenure of officers', thereby demonstrating a legislative commitment to the principle of academic tenure. However, the Act does not define what the term means, and entitles a university to dismiss any employee, after consultation through normal industrial relation structures. Such complexity indicates the need for a more sophisticated approach to this dimension of academic freedom. Consequently, this paper utilises five measures for this dimension: the legal framework for the duration of contracts (=4%), the situation in practice for the duration of contracts (4%), the provision in h.e. laws for terminating academic contracts (3%), the provision in other laws for terminating academic contracts (3%), and the provision for academic advancement (6%), which are shown in Table 9.

The 2002 Austrian Universities Act states that 'University professors … shall be employed by the university under permanent or fixed-term contracts. … They shall be full-time or part-time employees' (Section 97(1)), and Section 109(1) further specifies that 'Employment contracts may be of unlimited or limited duration', thereby leaving it to the University's discretion whether permanent or fixed-term contracts of employment

Table 9. Protection for academic tenure and promotion: compliance levels and scores.

(a) *De jure* protection: duration of contracts	0%	***non***: The legal framework does not envisage permanent contracts (or fixed-term contracts with a long-term perspective) for academic staff, or it leaves the conclusion of permanent contracts to the university's discretion
	2%	***partial***: The legal framework: envisages permanent contracts only for more senior academic staff; envisages permanent contracts only after an extended period of time; or leaves the conclusion of permanent contracts to the university's discretion, but offers some protection for fixed-term contracts
	4%	***full***: The legal framework envisages permanent contracts (or fixed-term contracts with a long-term perspective) for all academic staff at post-entry levels
(b) De facto protection: duration of contracts	0%	***non***: Less than 50% of academic staff at post-entry levels have permanent contracts of service (or fixed-term contracts with a long-term perspective)
	2%	***partial***: 50–66.6% of academic staff have permanent contracts of service (or fixed-term contracts with a long-term perspective)
	4%	***full***: 66.7% or more of academic staff have permanent contracts of service (or fixed-term contracts with a long-term perspective)
(c) Provision for contract termination in h.e. legislation	0%	***non***: No express legislative protection exists for academics when contract termination is contemplated on operational grounds (re-structuring, down-sizing, or economic difficulties) or, if legislative protection exists, it is seriously deficient
	1.5%	***partial***: Express legislative protection exists for academics when contract termination is contemplated on operational grounds, but it is deficient (e.g. priority criteria not be followed and/or procedural safeguards are not guaranteed)
	3%	***full***: Legislation exists expressly ensuring that academics' contracts cannot be terminated on operational grounds, or provides strict protection when such contract termination is contemplated
(d) Provision for contract termination in other legislation	0%	***non***: civil service/labour law provides very limited or negligible protection when the termination of academics' contracts is contemplated on operational grounds, e.g. by not requiring that alternatives to termination (such as transfer to comparable posts in the university) or priority criteria (such as length of service) are considered
	1.5%	***partial***: civil service/labour law provides limited or partial protection when the termination of academics' contracts is contemplated on operational grounds, e.g. by not requiring alternatives to termination to be considered, but where termination is unavoidable, priority criteria are followed
	3%	***full***: civil service/labour law provides comprehensive protection when the termination of academics' contracts is contemplated on operational grounds, e.g. by requiring a clear statement of the grounds for termination, considering alternatives to termination, and where termination is unavoidable, priority criteria are followed
(e) The provision for academic advancement	0%	***non:*** No legislation or collective agreements exist enabling advancement to higher academic posts, based on an assessment of competence
	1.5%	***between non and partial:*** Either: (a) sector-wide collective agreements/ government regulations/university statutes generally make provision for advancement to a higher position via an assessment of competence but the provisions concerned reveal deficits; or, (b) legislation provides for advancement to a higher position, based on an assessment of competence, but the provisions concerned reveal substantial deficits (e.g. they envisage that subsequent career positions must be applied for in competition with external applicants)
	3%	***partial compliance***: Either: (a) sector-wide collective agreements/government regulations/university statutes generally make provision for advancement to a higher position via an assessment of competence, or (b) legislation makes provision for advancement to higher posts via an assessment of competence, but the provisions have serious deficits (e.g. they only apply to advancement between specific academic posts)
	4.5%	***between partial and full:*** Legislation makes provision for advancement to higher positions, based on an assessment of academic excellence, but the provisions have certain defects (e.g. they apply to advancement between most, but not all, relevant academic posts)
	6%	***full:*** legislation makes comprehensive provision (e.g. via a tenure-track system) for advancement to higher positions, based on an assessment of academic excellence

are concluded with academic staff. However, where fixed-term contracts are concluded, Section 9(2) sets certain limits. Hence, the situation for legislative protection regarding the duration of service contracts must be considered partial compliance (=2%). Given that the law provides for the possibility, but not the certainty of a permanent post, it is unsurprising that the *de facto* realities reveal that although the positions of associate and full professor are frequently permanent positions, they are often also granted on a limited-term basis. Additionally, assistant professors are employed on a fixed-term contract basis. An analysis by Pechar (2015, 29f), revealed that in 2010, of the (then) 11,400 academic staff in Austrian universities, 2170 (19%) held professorial positions, leading him to conclude that 'since a "call" for a professorship requires a vacancy in the professorial status group, a large part of the "middle rank" of academics with habilitation has little chance to be promoted'. Such circumstances indicate that the *de facto* situation with respect to the duration of contract is non-compliance (0%).

The protection against the termination of academics' contracts on operational grounds in the Austrian Universities Act is relatively weak. The 2002 Universities Act (Section 113) provides that

> the termination or dismissal of a member of the scientific and artistic university staff shall be null and void if an official notification has been issued as a result of an opinion or method advocated by such staff member in the course of his/her research, artistic or teaching activities,

which does protect academic freedom with respect to teaching and research, but as there is no express protection for academic staff in the case of contract termination on operational grounds, the situation is at most one of partial compliance (1.5%). The protection against contract termination on operational grounds, offered under civil service and/or labour law, is also rather weak. Contracts of university academic staff employed after the Universities Act 2002 are regulated by the Employees Act (Federal Law Gazette No. 292/1921), under which permanent contracts may be terminated on operational grounds, and there is no duty to provide reasons for the termination of an employment contract. However, under Section 22 of the 2013 Collective Agreement for University Employees (Kollektivvertrag für die ArbeitnehmerInnen der Universitäten) academics with 20 years' service (and those aged over 45 with 15 years' service, or over 50 with 10 years' service) cannot have their contracts terminated on operational grounds. Additionally, where operational changes require university posts to be closed, the university must either try and find a post requiring similar skills, or offer re-training for the affected staff. In the light of (*inter alia*) the requirements of the UNESCO 1997 *Recommendation*, this falls short of minimum requirements, such that the situation must be considered that of non-compliance (=0%).

The final element in the tenure dimension of academic freedom concerns the possibility of career advancement, for which a five-point scale was used. There is no legislation providing the prospect of academic promotion based on an assessment of competence. However, under Section 27 of the 2013 Collective Agreement for University Employees, a university assistant may, within the first two years of employment, be offered a 'Qualifizierungsvereinbarung' (qualification agreement) with the title of 'Assistant Professor' [Assistenzprofessor] by the University, if the performance of the employee suggests that set goals can be reached. If the goals of the 'qualification agreement' are achieved, the

contract (initially limited to 6 years) is made permanent and the academic is given the title of 'Associate Professor' [Assoziierte/r Professor]. Via a further competitive procedure stipulated in the Universites Act, Associate Professors (and other 'qualified academics') may apply for a position as full professor. Hence, apart from a limited tenure-track facility, there is no automatic process for advancement, and the possibility for advancement to a tenured position is very small; hence, the situation is nearest to the category 'between non and partial', as described in Table 9(e) (=1.5%).

Summation of the values relating to the contributory elements that comprise the fourth dimension of academic freedom, tenure, shown in Table 9, gives Austria an aggregate score of 5% out of 20% for this dimension.

International agreements and the constitution

The final dimension of academic freedom encompasses protection under the Constitution and international treaties, of which both are allocated 10%. Constitutional protection is assessed via the following elements, in which the rights' provisions account for 6% and their robustness (e.g. limitation clauses) 4% as shown in Table 10.

Taking each of these in turn, Article 13 of the 1867 Basic Law specifies that 'everyone has the right within the limits of the law freely to express his opinion by word of mouth and in writing, print, or pictorial representation' (=2%). Article 17 states that 'Science and its teaching are free', 'Artistic creativity as well as the dissemination of art and its teaching shall be free'. Likewise, under the 1930 Federal Constitutional Law 'in the public universities there shall be free scientific research, teaching and artistic creativity' (Article 81c (1)) (=2%) and 'Universities are autonomous within the framework of the law and may adopt statutes' (also Article 81c (1)) (1%). There is no reference to academic self-governance (0%). As the constitutional context generally reflects a firm protection for these rights (the European Convention on Human Rights has, e.g. been accorded the same status as the constitution in Austria [Article II No. 7. Federal Constitutional Law of 4 March 1964]), the provisions would be considered robust (=4%).

International agreements were not included in the 2007 paper, but subsequent work (Karran 2009) recognised that the UNESCO *Recommendation* is not a standalone

Table 10. Constitutional protection for academic freedom: compliance levels and scores.

(a) Provision on freedom of speech	0%	***non***: there is no provision in the Constitution
	1%	***partial***: provision is either indirect or incomplete
	2%	***full***: there is full, explicit provision in the Constitution
(b) Provision on academic freedom	0%	***non***: there is no provision in the Constitution
	1%	***partial***: provision is either indirect or incomplete
	2%	***full***: there is full, explicit provision in the Constitution
(c) Reference to institutional autonomy	0%	***non***: there is no reference in the Constitution
	0.5%	***partial***: reference is made but is either implicit, or incomplete.
	1%	***full***: there is full, direct, explicit reference in the Constitution
(d) Reference to self-governance	0%	***non***: there is no reference in the Constitution
	0.5%	***partial***: reference is made but is either implicit, or incomplete.
	1%	***full***: there is full, direct, explicit reference in the Constitution
(e) Robustness of provisions	0%	***non***: the general constitutional context (notably limitation clauses) does not buttresses the above rights
	2.0%	***partial***: the general constitutional context (notably limitation clauses) fairly buttresses the above rights
	4.0%	***full***: the general constitutional context (notably limitation clauses) fully buttresses the above rights

document but is well embedded in other international regulations – as Beiter (2005, 278) points out

> in its preamble the Recommendation refers to article 26 of the Universal Declaration of Human Rights … article 13(2)(c) of the International Covenant on Economic, Social and Cultural Rights, to the Convention against Discrimination in Education, [and] to the UNESCO/International Labour Organisation Recommendation concerning the status of teachers.

At a European level, the European Convention on Human Rights is relevant. Article 10 specifies that 'Everyone has the right to freedom of expression' (ECHR 2010, 11), and a value of 4% is attributed to this element. Where the nation has ratified the ECHR without reservation, then full compliance exists, where there is no ratification (or ratification with reservation), then non-compliance exists. Scrutiny of the Conventions' parties reveals a state of full compliance, as Austria signed the Convention on 13 December 1957 and ratified it on 3 September 1958, without making a reservation to this Article.

At a global level, the International Covenant on Civil and Political Rights (ICCPR) was adopted in December 1966, Article 19 of which provides 'the right to hold opinions without interference' and 'the right to freedom of expression' (UN 1983a, 178). Both these rights can be seen to be necessary (though not sufficient) for academic freedom. Article 2 of the same Covenant requires that 'each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant' and that 'each State Party to the present Covenant undertakes to take the necessary steps, … to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant' (UN 1983a, 173f.). Assessing Article 2, Sepúlveda (2003, 136) concludes that 'the duties to "respect" and "ensure" … imply … the duty to take positive actions necessary to ensure those rights'. Hence, the ICCPR, like the 1st Amendment of the US Constitution on freedom of speech, protects academic freedom indirectly, while becoming a party to the Convenant by states who are not yet compliant, imposes on them the duty to introduce legislation to achieve compliance. The Optional Protocol to the ICCPR established an individual complaints mechanism for the ICCPR, under which parties agree to recognise the competence of the UN Human Rights Committee to consider complaints from individuals who claim that their rights under the Covenant have been violated. Values of 1.5% each are attributed to the ratification of the Covenant and its Protocol, and where the nation has ratified the Covenant/Protocol without reservation, then full compliance exists, where there is no ratification (or ratification with reservation), then non-compliance exists. Austria both ratified the Covenant and the Protocol without expressing reservations in respect of those rights relating to academic freedom. The extent of ratification of these international covenants, and the scores attributable to ratification and non-ratification, are detailed in Table 11.

The second international Covenant included is the International Covenant on Economic, Social and Cultural Rights (ICESCR) also adopted in 1966. Article 15(3) calls on nations to 'respect the freedom indispensable for scientific research and creative activity' (UN 1983b, 9). Moreover, in General Comment 3 (paragraph 10) the ICESCR states:

> a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. … If the Covenant were to be

Table 11. Constitutional protection for academic freedom: ratification levels and scores.

(a) ICCPR (free speech provision)	0%	***non-ratification***: failure to ratify, or ratification but with expressions of problematic reservations to provisions
	1.5%	***ratification***: ratification of Covenant without expression of reservations to provisions
(b) OP-ICCPR (complaints procedure before UN)	0%	***non-ratification***: failure to ratify, or ratification but with expressions of problematic reservations to provisions
	1.5%	***ratification***: ratification of Covenant without expression of reservations to provisions
(c) ICESCR (right to education provision)	0%	***non-ratification***: failure to ratify, or ratification but with expressions of problematic reservations to provisions
	1.5%	***ratification***: ratification of Covenant without expression of reservations to provisions
(d) OP-ICESCR (complaints procedure before UN)	0%	***non-ratification***: failure to ratify, or ratification but with expressions of problematic reservations to provisions
	1.5%	***ratification***: ratification of Covenant without expression of reservations to provisions
(e) ECHR (free speech provision)	0%	***non-ratification***: failure to ratify, or ratification but with expressions of problematic reservations to provisions
	4%	***ratification***: ratification of Covenant without expression of reservations to provisions

> read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its raison d'être (UN 2008, 9).

Academic freedom is considered a core obligation under the right to education (Article 13) – in General Comment 13: Right to Education, the ICESCR states:

> it is appropriate and necessary for the Committee to make some observations about academic freedom. … Academic freedom includes the liberty of individuals to express freely opinions about the institution or system in which they work, to fulfil their functions without discrimination or fear of repression by the State or any other actor, to participate in professional or representative academic bodies, and to enjoy all the internationally recognized human rights applicable to other individuals in the same jurisdiction. (UN 2008, 70)

The Committee adds, 'violations of article 13 include … the denial of academic freedom of staff and students' (UN 2008, 74). In terms of implementation, the ICESCR (article 2(1)) requires a state to

> take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures (UN 1983b, 5).

Hence, the ICESCR firstly recognises academic freedom as a core obligation, and secondly requires states parties to adopt legislative measures to recognise this right. As with the ICCPR, the ICESCR's Optional Protocol creates an individual complaints mechanism to consider complaints from individuals or groups who claim that their rights under the Covenant have been violated. As before, values of 1.5% each are attributed to the ratification of the Covenant and its Protocol, and where the nation has ratified the Covenant without reservation, then full compliance exists, where there is no ratification (or ratification with reservation), then non-compliance exists. Austria ratified the Covenant without expressing reservations in respect of those rights relating to academic freedom, but has not ratified the Protocol so far.

Summation of the values relating to the contributory elements that comprise the final dimension of academic freedom, shown in Tables 10 and 11, gives Austria an aggregate score of 17.5% out of 20% for this dimension.

Results and conclusions

The analysis outlined above for Austria was repeated for all 28 EU states, and scores calculated for each dimension, and then totalled. The nations are ranked in accordance with their total scores in Table 12. Various aspects of the results are noteworthy. Firstly, none of the nations come close to full compliance on all the scores – the highest aggregate score is 69% (Croatia); moreover, the mean score for all EU states is relatively low – just over 50%. This suggests that most EU states should legislate to provide better protection for academic freedom. Secondly, the variation between national scores is considerable – the range is from 34% to 69% and the standard deviation is 10.5. Thirdly, examination of the mean scores for the five different dimensions that were measured shows considerable variation. The mean score for protection under the constitution and international agreements averaged 15.6%, and that for academic

Table 12. Overview of results in main categories for individual countries.

Country	Total	Academic freedom in legislation	Institutional autonomy in legislation	Self-governance in legislation	Job security	Constitution and international agreements
Croatia	69	20	13	14	4.5	17.5
Spain	66.5	15	8.5	12	11	20
Bulgaria	65.5	15	9	14.5	9.5	17.5
Germany (Mean: Bavaria and North Rhine-Westphalia)	64.5	17.5	9.25	12.25	8	17.5
Austria	63.5	20	12	9	5	17.5
France	63.0	20	7	6.5	15.5	14.0
Portugal	61	10	9	11.5	10.5	20
Slovakia	60.5	20	8.5	12.5	1.5	18
Latvia	60	20	10	10.5	3	16.5
Lithuania	59.5	20	11	6	5	17.5
Italy	57.5	10	9	8	11.5	19.0
Greece	55.5	5	4.5	10.5	20	15.5
Finland	55	15	15	3	3	19
Poland	54.5	10	9.5	12.5	5	17.5
Romania	53.5	15	8	12.5	5.5	12.5
Cyprus	53	10	8	12.5	10	12.5
Ireland	52.5	15	12.5	3	10.5	11.5
Slovenia	52.5	5	8.5	11	10.5	17.5
Czech Republic	51.5	15	8	11	2	15.5
Belgium (Mean: Walloon and Flanders)	49.25	10	8.5	7.5	9.25	14
Luxemburg	47.5	15	9	6	3.5	14
Netherlands	44	10	9	5.5	3.5	12.5
Sweden	39.5	5	6.5	3	8.5	16.5
Denmark	38.5	5	9	6.5	5.5	12.5
Hungary	36	5	2.5	9	8	11.5
Malta	36	0	10.5	6	8.5	11
United Kingdom	35	5	13.5	0	5.5	11
Estonia	34	0	10.5	4.5	1.5	17.5
Mean (St Dev)	52.8 (10.5)	11.9 (6.3)	9.3 (2.6)	8.6 (3.9)	7.3 (4.3)	15.6 (2.9)

freedom in legislation was 11.9%. These two parameters relate closely to exhortative legislative protection. By contrast, the other three parameters are more concerned with the technical legal minutiae of academic freedom, as it operates within departments, and it is noticeable that these measures are relatively low – all average scores are below 10% out of 20%; moreover, the lowest average score is for academic tenure, evidence that there are very few EU nations in which job security is fully protected. Additionally, the largest standard deviations about the mean in these parameters are for self-governance and tenure, suggesting greater variations in these elements that in all others.

The previous study in 2007 showed some that nations which had not long emerged from totalitarian rule (the ex-USSR and Warsaw Pact nations and Spain), tended to score higher than the other EU nations. This new analysis demonstrates some symmetry with the 2007 study in which (for example) both Denmark and the UK languished near the bottom of the table. However, since the previous analysis, the membership of the EU increased with the inclusion of Bulgaria, Croatia, and Romania, and witnessed many changes in higher education legislation in the EU, often leading to the imposition of 'new public management' in universities. In Finland, for example, the 2009 Universities Act required universities to change their legal status, and become either independent corporations under public law (12 universities) or foundations under private law (2 universities). Furthermore, the decision-making processes were profoundly changed – the broadly based representative system of the 1990s (in which even students had some form of involvement) – was replaced by a more streamlined administrative process, in which universities' managers were assigned greater autonomy and wider responsibilities. The manner of appointing the Rector was also radically altered. Previously, Rectors were chosen by the Election Collegium, which drew members from a wide spectrum of university personnel, but the new act gave the right of appointment to the University Board. Additionally, although academic staff have representation on the Board, at least 40% of the University Board members (including the chairman) are now drawn from outside the university community. In fact, the legislation originally envisaged that every university's board would have been required to have at least half its members elected from outside the university (including the chair). However, Finland's Constitutional Committee, which scrutinises legislation before it is placed before parliament, determined that requiring universities to have a majority of external board members would be unconstitutional, on the grounds that it could undermine university autonomy, which is guaranteed under Section 123 of the Finnish constitution. These measures accompanied a radical re-structuring of the Finnish University system. Helsinki School of Economics, Helsinki University of Art and Design, and Helsinki University of Technology merged to form Aalto University; the University of Turku merged with Turku School of Economics; and the universities of Kuopio and Joensuu merged to form the University of Eastern Finland. Assessing these reforms, Piironen (2013, 142) concludes that they came: 'to manifest ideas of autonomy deviating from such traditional ideals as academic freedom and collegiality'. Similar reforms, with consequent deleterious impacts on academic freedom, have been enacted in countries such as Denmark (Milthers 2011), Greece (Zmas 2015), Poland (Kwiek 2014), and Spain (Cruz-Castro and Sanz-Menéndez 2015), and it is likely that the speed, scope, and extent of such changes within EU universities will accelerate over the next decade.

Intriguingly, this new analysis shows no discernible patterns between states that might be considered to have some symmetry owing to shared history and culture, such as (*inter alia*) the Nordic states, in the sample. However, a more in-depth, case-by-case scrutiny provides some explanation for what might be considered surprising results. The Nordic nations, together and individually, have established international reputations for promoting social democratic ideals, including civil rights, a supportive welfare state and equality of educational opportunities, leading Stokke and Törnquist (2013, 22) to note that 'The notion of a distinct "Scandinavian model" has had a remarkably stable presence in academic and political discourse'. Moreover, these societal values have also been manifest in the higher education sectors in these Nordic nations – for example, university studies up to doctoral level have been free of charge, and academic freedom has been protected in law.

However, recent years have seen a retreat from these long held values, as governments of the Nordic nations have contemplated introducing tuition fees, and made changes to h.e. laws. In Sweden, a decade ago, Bennich-Björkman (2007, 354) questioned whether academic freedom had survived in Sweden, and concluded that there were three ways to achieve

> the abolition, either deliberately or inadvertently, of a research university as a functioning and stimulating institution, … minimise the time available for research … minimise the resources, … minimise the number of posts with scope for research. All three methods are being practised in Sweden today.

Concerns over the dilution of academic freedom, following the Swedish Higher Education Act in 2010, prompted the creation of a watchdog organisation called Academic Rights Watch (ARW), an independent, non-profit association of researchers at different institutions whose aim is to defend academic freedom in Sweden by documenting cases on its website (http://academicrightswatch.se) where rights have been violated. In 2016, ARW documented 27 breaches of academic freedom, including the case of Paolo Macchiarini, a professor of regenerative medicine at Karolinska Institutet who was found guilty of misconduct by an independent investigator, but retained his post, as Rector Anders Hamsten decided that Macchiarini was not guilty. Hamsten was subsequently forced to resign, and in September 2016, the Swedish government moved to dismiss the entire board of the Institute.

Under concurrent h.e. reforms in Denmark, following the University Act 2003, universities ceased to be state organisations and became autonomous self-owned institutions ('selvejende institutioner'). Additionally, governing boards, with both the majority of members and the chairman externally appointed, replaced the elected university Senate, and set the university's priorities, agreed a development contract with the government, and hired the rector to ensure that the university's budget reflected their priorities. These changes restricted freedom of research for the individual academics, who could be directed by department heads to perform certain research activities and, while staff retained their right to freely conduct scientific research, this was within the bounds of the research-strategic framework laid down by the University Board and specified in the Achievement Contract drawn up with the Ministry. In essence, as Wright (2014, 300) points out:

> For the first time, the rector now spoke 'on behalf of' or even 'as' the university, as a coherent and centrally managed organization. This was a clear break with the idea of the university as a community of academics, administrators, and students.

These imposed changes were much resented by the university teaching and research staff. Consequently, in response Inge Stage, the President of the Dansk Magisterforening (DM – the Danish academic professional association) organised an online a petition calling for a new law to guarantee individual academic freedom and restore some form of collegial governance, which attracted 6502 signatures (more than a third of all academic staff in Denmark). Furthermore, DM made a submission to the joint ILO-UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART), which is responsible for assessing complaints against national governments in respect to non-compliance with the 1997 UNESCO *Recommendation Concerning the Status of Higher Education Personnel*, of which Denmark was a signatory state. Consequently, in 2009, the Danish government established an evaluation team comprising five international academic experts from outside Denmark to examine the 2003 University Act which concluded that

> the 2003 University Act. … gives the institutional leadership the formal power to tell individual staff members which academic tasks to perform. The article could be regarded as an intrusion into traditional values and rights of academic university staff. … we find that the question can be raised whether article 17.2 in all its details fits the Danish and European traditions with respect to academic freedom. (Bladh *et al*., 2009, 39)

As a result, a new university law was drafted in June 2011, Section 2 of which states explicitly: 'The university has academic freedom. The university must protect the university's and the individual's research freedom'. Despite this legislative change, the restrictions on academic freedom in Denmark would, in most other EU states, be considered draconian.

In contrast to Denmark and Sweden, Table 12 shows that the legal protection for academic freedom in Finland is still relatively strong. As has been previously discussed, the Finnish 2009 Universities Act changed the legal status of universities, altered the Rectoral appointment method, and increased the proportion of external appointees to the University Board. However, the academic community still controls 60% of the University Board members, which has enabled it to temper the impact of such changes to university governance. Hence, under the new legislation, the Rector may be an external appointment, but most institutions continue with the previous practice of appointing the Rector internally. In 2016, of the 10 multi-disciplinary universities in Finland, only 3 had externally appointed Rectors.

These legislative shifts have caused changes in university autonomy and management structures in the Scandinavian universities, leading to greater involvement by external personnel in university governance, and a consequent decline in the governing powers of the university community, with probable deleterious impacts on academic freedom, the differential effects of which are evident from Table 12. Indeed, an examination of organisational culture and institutional leadership in a sample of Nordic universities by Stensaker and Vabø (2013, 259) found that: 'increasing autonomy for universities mean[s] that institutional leadership is given greater autonomy in their management of academic, organisational and financial issues. More autonomy for leadership does not necessarily mean

more personal autonomy for academic staff'. The impact of these changes thereby questions as to whether a distinct Nordic model still operates; indeed, Nokkala and Bladh (2014, 6) argue that 'academic freedom is given different meanings and boundaries in legislation in Nordic countries', and the apparent divergence between these states led Kalpazidou Schmidt (2009, 286) to ponder: 'One could ask whether there is a Nordic model for higher education'.

Similarly, the low position of the UK in Table 12 warrants further investigation, more especially given that UK universities tend to score highly in the worldwide ranking of universities, as is frequently undertaken by (*inter alia*), the Times Higher. Unlike the UK, and without exception, all the other 27 EU states have written constitutions, all of which contain some form of protection for freedom of speech and/or expression (to which an appeal from a lower court could be made, in respect of academic freedom cases). Moreover, in addition to providing indirect protection for academic freedom, via protection for freedom of speech, the constitutions of 20 of the European Union nations also provide some form of direct protection for academic freedom. For example Article 20 of the Constitution of Spain states explicitly 'The following rights are recognised and protected: c) the right to academic freedom'. Similarly, Article 16.6 of the Greece constitution protects the academic tenure of professors, namely:

> Professors of university level institutions shall not be dismissed prior to the lawful termination of their term of service, except in the cases of the substantive conditions provided by article 88 paragraph 4 and following a decision by a council constituted in its majority of highest judicial functionaries, as specified by law.

The constitutions of other EU nations do not always refer to academic freedom as explicitly, but the majority nevertheless provides some guarantee for the substantive elements of academic freedom, the Constitution of Hungary, for example, ensures: 'the freedom of learning for the acquisition of the highest possible level of knowledge, and, within the framework laid down in an Act, the freedom of teaching'. In sum, the constitutional protection for academic freedom in the UK, either directly or indirectly, is non-existent (as there is no written constitution) and in marked distinction with the other EU states in which constitutional protection both for freedom of speech and academic freedom is the norm, rather than the exception.

Furthermore as well as providing protection for academic freedom within their constitutions (which is frequently couched in general terms), most of the EU states have specific h.e. laws that provide detailed information on how their universities are to be run – for example, the Finnish Universities Law of 2009 has 93 sections covering (*inter alia*) mission, institutional autonomy, the university community, legal capacity of universities, freedom of research, arts and teaching, degrees and the degree structure, languages of instruction, organs of a university, board of the public university, appointment composition, functions and terms of office of the university board, election, powers and duty of care of the rector of a university, composition, functions and powers of the collegiate body of a university, university regulations and rules, administrative procedure and confidentiality, employment relations of the personnel, duties, appointment and title of professor, liability under criminal law. Such laws usually contain an explicit reference to academic freedom. In Spain, for example, the Ley Orgánica 6/2001 states:

> The activity of the University, as well as its autonomy, are based on the principle of academic freedom, which is apparent in the freedom of university chairs, of research and study (article 2); Teaching is a right and a duty of University teachers who will exercise, with academic freedom, with no other limits than those established by the Constitution and the laws and those derived from the organisation of their University's teachings (article 33); freedom of research in the University field is recognised and guaranteed (article 39).

In contrast, the only legal protection for academic freedom in the UK higher education sector is provided not in a specific and comprehensive h.e. or universities act [like those in Finland (12,384 words), Ireland (16,274), or Spain (25,217)] but in a subordinate section of the 1988 Education Reform Act, entitled 'Miscellaneous and General', and which states:

There shall be a body of Commissioners known as the University Commissioners who shall exercise, … the functions assigned to them by those sections.

(1) In exercising those functions, the Commissioners shall have regard to the need –
   (a) 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;
   (b) to enable qualifying institutions to provide education, promote learning, and engage in research efficiently and economically; and
   (c) to apply the principles of justice and fairness.

Hence, in Spain the right to academic freedom is mentioned explicitly in the constitution, but additionally, the legislation gives discrete protection for the individual functions of teaching and research through separate provision, while also making generic statements, which further strengthen the legal protection for academic freedom. Similarly, Bulgaria and Slovakia offer specific protection for the different teaching and research activities in law, as well as some direct protection via their constitutions. Five nations offer discrete protection for academic freedom in teaching – for example, the Czech Higher Education Act guarantees 'freedom of teaching, in particular with regard to openness to different scientific and scholarly views, scientific and research methods and artistic movements'. Similarly, nine nations offer specific protection for research – for example, the 2011 Law of National Education in Romania states that: 'in higher education institutions the freedom of research is ensured in terms of setting the subjects, choosing the methods and procedures and capitalising results, in compliance with the law'. Twenty-four of the EU nations offer some protection for academic freedom under law; sometimes the legal protection is both terse and generic (as, e.g. in the Netherlands where the law merely states: 'the institutions' academic freedom is protected'), while other nations provide a more detailed account – the Universities Act in Ireland, for example, states that:

> A member of the academic staff of a university shall have the freedom, within the law, in his or her teaching, research and any other activities either in or outside the university, to question and test received wisdom, to put forward new ideas and to state controversial or unpopular opinions and shall not be disadvantaged, or subject to less favourable treatment by the university, for the exercise of that freedom.

Belgium and Croatia are unusual, in that they offer some protection in law, but each refers back to the protection for academic freedom in their Constitutions, as it is a superior legal instrument. Sweden is similarly distinct, in that it has no mention of academic freedom for teaching in either the Constitution or the law, but provides legal protection for research.

The UK legislation is aberrant when compared to the other EU nations. Firstly, the legal protection for academic freedom in the UK does not arise as a result of a specific law that relates to the higher education function in general, or universities in particular. In fact, the section of the 1988 Education Reform Act which relates to academic freedom appears in Part IV under the heading of 'Miscellaneous and General' of the Act, the rest of which deals primarily with schools and the National Curriculum (Part I), the incorporation of higher education institutions maintained by local education authorities (Part II), and the abolition of the Inner London Education Authority (Part III). Secondly, under the 1988 Education Reform Act, the legal protection for academic freedom takes the form of a right to a retrospective review for remedial redress by individuals. Hence, the University Commissioners created under the Act are not incessantly vigilant in providing ongoing oversight of the continuing health of academic freedom for all teaching and research staff employed in British universities; rather, they are only permitted to act when an individual academic claims that s/he has been made redundant on grounds other than 'just cause'.

Hence, in the UK, the Commissioners appointed under the 1988 Act neither enable nor guarantee freedom for all other (non-aggrieved) members of the academic profession, in their current and future scholarly activities of research and teaching. Being guaranteed the freedom to act unimpeded in the workplace as an academic in the here and now (as occurs under the Irish legislation) is clearly qualitatively different from being allowed to exercise a limited freedom constrained by the fear of possible redundancy, even if redress may subsequently be granted for a past abrogation of academic freedom. More importantly, today, even if an academic in the UK did believe that s/he had been made redundant without 'just cause', it would not be possible to request the Commissioners to intervene. Once established for three years following the 1988 ERA, the duties and powers of the Commissioners were confirmed annually thereafter by means of a statutory instrument; the last such was signed by Gillian Shepard, Secretary of State for Education, in March 1995, continuing the Commissioners' responsibilities until 1 April 1996 after which, as no further statutory instruments were signed, the Commissioners ceased to operate. Moreover, arguably, the demands of the UK government for research 'impact' has further encroached on academic freedom – Watson (2011, 698) makes the point that such demands have moved the position 'from government attempts to control the research *arena* (arguably the aim of RAE2008) to the attempt to control research *outputs*' (original author's emphasis).

The absence of constitutional and legal protection for academic freedom in the UK highlights the importance of the individual university charters in protecting academic freedom. Both Oxford and Cambridge regularly appear in the 'top ten' of most global university ranking tables. However, Oxford differs from most other 'top ten' universities in one significant regard – academic freedom is explicitly recognised in its Mission Statement, namely:

> the value we accord to the principle of academic freedom, enabling the pursuit of academic enquiry subject to the norms and standards of scholarly undertaking, without interference or penalty. This freedom to seek out truth and understanding, whether through theoretical or empirical means, will ensure that our strong core disciplines flourish. (University of Oxford 2013, 5)

Similarly, Cambridge (the other frequent UK 'top ten' entrant) describes its core values as 'freedom of thought and expression; freedom from discrimination', but most scholars in the field of academic freedom would regard these as analogous to libertas philosophandi, and therefore, broader than academic freedom. Shattock's review of UK institutional case studies (including Cambridge) led him to conclude that

> [t]here are some universities, probably mostly the most academically successful, which have developed a strong organizational culture that effectively marries academic and managerial structures to provide both effective decision-making machinery and a strongly self motivated academic community. Such a structure is likely to be able to resist the worst aspects of … managerialism and to be able to preserve a robust academic ethos. (Shattock 1999, 281)

Hence, it is likely that in some UK universities, academic freedom has both *de jure* protection, via the university's charter, but which is also buttressed by a strong *de facto* departmental ethos. Ongoing research will establish whether institutional instruments provide *de facto* protection for academic freedom for university staff (in the UK and the EU) undertaking research and teaching in their departments, or whether the prevailing departmental culture is more important by offering *de facto* protection.

The comprehensive research instrument detailed in this paper makes it possible for changes in the protection for academic freedom, following new legislation, to be monitored, and overall trends tracked. The instrument is based on 37 questions relating to international conventions, national constitutions, and h.e. legislation, so that collecting the data proved difficult and time-consuming. However, having gathered this baseline data, monitoring incremental changes to produce a progress report on a (say) five yearly basis should be relatively straightforward. In addition, the instrument could be used by relevant non-governmental organisations, like Scholars at Risk, to gather comparable data on academic freedom from other nations outside the EU. By this process, a more thorough appraisal of academic freedom could be achieved and the task of preparing 'a comprehensive report on the world situation with regard to academic freedom and to respect for the human rights of higher-education teaching personnel on the basis of the information supplied by Member States' (UNESCO 1997, 34) allotted by UNESCO's *General Conferenc*e to its Director-General, could be finally realised. Additionally, this work will form the foundation of further research by the authors which examines the *de facto* protection for academic freedom in Europe. In which connection, over 6500 academic staff in universities across the EU have responded to an online survey on academic freedom. Just over half (56%) had heard of the UNESCO *Recommendation*, while (55%) admitted to not knowing the position for the constitutional and legislative protection of academic freedom in their own nation. Such ignorance among those most fêted for their intellectual achievements is surprising and alarming. In the discussions about academic freedom, it is often said that the price of liberty is eternal vigilance. It is difficult to see how academics in EU states can vigilantly protect their particular freedom when they are so unaware as to its attributes; hence, some education as to these rights and the necessity to protect them is clearly

long overdue. Unfortunately, as Elton (1994, 9) has wryly observed 'it is one of the paradoxes of academia that while universities provide training and development for every other profession, there is a reluctance for academics to recognise the need for it for themselves'.

Notes

1. Available in German and English at: https://www.ris.bka.gv.at/Dokumente/Erv/ERV_1867_142/ERV_1867_142.pdf
2. Available in German and English at: https://www.ris.bka.gv.at/Dokumente/Erv/ERV_1930_1/ERV_1930_1.pdf
3. Available in English and German at: https://www.ris.bka.gv.at/Dokumente/Erv/ERV_2002_1_120/ERV_2002_1_120.pdf
4. Available in English and German at https://www.ris.bka.gv.at/Dokumente/Erv/ERV_2011_1_74/ERV_2011_1_74.html
5. Available at http://www.uni-klu.ac.at/persabt/downloads/KV_2012.03.pdf

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