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INTRODUCTION

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Over fifty years ago universities were elite institutions, which only a few people could manage to attend, although there had been a gradual opening up from the second half of the nineteenth century. Around the 1960s all this changed, university education was expanded and for most aspiring students, tuition was free (or rather, funded by the taxpayer) and grants were available, often on a means-tested basis, to help cover living costs. Whereas costs had previously been quite a small part of the public budget and charitable funding had helped maintain many institutions, the arrangement became increasingly burdensome. At the same time that the number of students grew so the number of staff and their research also increased. Such research also needed funding and in many countries, including New Zealand, it was not even factored into the budgetary provision for universities and therefore had to be subsidised from monies that were earmarked for teaching.

Thus universities changed from being a manageable part of the public budget to being a substantial cost that needed to compete vigorously with all the other demands on increasingly constrained public finances. As a result the modern university is rather different from its smaller and more protected predecessors and is having to operate in an increasingly business-focused environment. The new system is not only highly competitive, it is also increasingly driven by the idea of higher education funding as an 'investment' in the economic productivity of the nation. Academics need to show 'relevance' in order to get funding. University managers and vice chancellors increasingly view students as 'customers' towards whose

demands universities should adapt. Students are now frequently dependent on loans for their education, adding another debt to those which normally characterise early adult life, with finding a home, getting married and raising a family. These strains and others pose major problems for universities, with regard to standards, their independence, their financial viability and their ability to perform their statutory role as 'critic and conscience' of society. All this comes at a time when universities are expected to play an ever-more central role in enabling advanced societies to maintain and improve their standard of living and quality of life. A high standard and quality of life, it is argued, depends on having a knowledge based society that develops new ideas, innovates and is highly adaptable, as there is a very large emerging world that is prepared to gain by performing traditional tasks at lower cost.

The three articles in this issue of the New Zealand Journal of Research on Europe are a product of the latest of two research programmes that the University of Auckland and the Europe Institute in particular have participated in to address these dilemmas. The first, URGE (University Reform, Globalisation and Europeanisation), financed by the European Commission and the New Zealand Ministry of Research, Science and Technology (MoRST), ran from 2010 until 2013. It was a joint venture between the University of Auckland, Aarhus University in Denmark and the University of Bristol in the UK, in order to exchange knowledge and provide mutual lessons. It combined political economy approaches with ethnographic perspectives to look at the reforms taking place in different

universities, their impact on research and teaching practices and their wider implications for the meaning and the mission of the public university. The second programme, UNIKE (Universities in the Knowledge Economy), also funded by the EU, developed the work in three main respects: it widened the partnership, adding Ljubljana University in Slovenia, the École Normale Supérieure de Lyon in France, the University of Porto in Portugal, and Roehampton University in the UK. It provided an Initial Training Network to involve 12 doctoral students and 2 postdoctoral fellows in developing understanding of the area. And, lastly, it broadened the multidisciplinary nature of the research and its scope.

Two of the articles in this issue (Beiter et al., and Bajenova) emanate from a conference held at the University of Auckland by UNIKE in February 2015 and the third (Grant) is a reflection stimulated by one of them. The article by Tatyana Bajenova deals with the rise of 'think tanks' and the way in which they impinge on university research institutes. Think tanks are usually set up with the aim of advocating a particular point of view that informs aspects of the government's policy making process. Governments typically lack detailed knowledge about many policy areas and, rather ironically, often have to fall back for information on those they are regulating or on institutions those groups support. This is particularly true of EU level policy making where the European Commission is relatively understaffed compared to most governments. University research institutes can produce similar information but are typically not so driven by the imperatives of the policy making process. Indeed there

is a real danger that they will lose their independence if they are too focused on policy. An institution that produces recommendations that disagree clearly with their funder's objectives is not likely to get repeat business. While the funder is hoping to trade on the independence of the institution in promoting its conclusions, this does not work if the conclusions are adverse. As a result, think tanks and university research institutes are converging. The former wish to gain more credibility from a reputation for independent research, while the latter are inevitably drawn towards the money in order to run their activities. Bajenova emphasises how far American institutes have gone in this direction with major funding going towards institutions with a clear ideological point of view. She also notes how Europe is now developing in this regard.

In the other main paper, Klaus Beiter, Terence Karran and Kwadwo Appiagyei-Atua consider the extent to which academic freedom as a legal right has been eroded in Europe. They rank the 28 EU countries and four regions by five dimensions of the degree to which academic freedom has been embodied in law. Their principal finding is that there is remarkable variation across the EU with some countries showing relatively low legal rights. The problem, of course, is that the practical freedom may well differ from the legal freedom. Indeed, one might expect that those with the least legal freedom actually allow more freedom in practice and that the reverse would also be true for those who apparently have the greatest freedom. To some extent this is self-sustaining. Otherwise those with little freedom would rebel and those who exploit their freedom would find it contained. However,

beyond these country-to-country comparisons, the author's draw the wider conclusion that the legal protection of the right to academic freedom in Europe stands in poor state of health and is getting worse thanks to the way academic values are being eclipsed by economic and commercial imperatives. To those who would ask, 'why should that matter?' the authors provide a powerful message: academic freedom is essential for an open and democratic society. As they argue, a university system that is geared primarily to servicing short-term national economic policy goals and that ignores the pursuit of knowledge for its own sake will ultimately erode the foundations of a civilised society.

In the third paper, Barbara Grant explores how the rankings in Beiter et al. might be applied to New Zealand. Her overall conclusion is that New Zealand seems to come out round about the average in Europe, doing well in some respects and worse in others. However, she goes on to highlight a side not covered in the previous analysis, namely research funded by private sector clients who have the ability to use confidentiality clauses to prevent the publication of the results of the research. This can be particularly difficult for graduate students who might want to use the results to further their careers. It is worth reflecting on her concluding paragraph: 'Academic freedom is a precious and necessary condition of academic work. In time and place, its fortunes wax and wane. Yet the flame must be kept alive because, as many writers have pointed out, the very meaning of what makes universities distinctive is entangled with this shining idea.

Moreover, its survival largely depends on the actions of academics – us – in the present.'

Clearly these three articles reflect only a small part of the stimulating research that has taken part over the last six years in these projects. Other papers from the research programmes are to be published in S. Wright and C. Shore (eds), Death of the Public University? Troubling Times for Higher Education in the Global Knowledge Economy (Berghahn, forthcoming). It is to be hoped that the downward trend reducing academic freedom and the ability to express dissenting views will be arrested and reversed. Similarly, the ability to do 'blue skies' research where there is no obvious immediate application lies at the heart of substantial innovation: many, if not most, of the game-changing inventions that have transformed society have come about more by accident than by deliberate design. Moreover, trying to restrain research in the arts and humanities and elsewhere in order to promote areas of more immediate perceived economic benefit, such as science, technology, engineering, mathematics and, to a lesser extent, business, is a worrying trend. Unfortunately, and as these two programmes of research show, this seems to be the trajectory that many countries are now following as they struggle to meet the demands of the global knowledge economy. These challenges are far from fully addressed but the articles published here and elsewhere from the URGE and UNIKE projects at least provide a better evidence base for questioning the value to society of some of these recent changes. There are few academics who do not hope that their research and

contribution to knowledge will lead to improvements in the quality of life and do not believe that their efforts in teaching will advantage not just their pupils but society at large in the future. But there are many ways to do this that lie beyond the instrumental imperatives of generating new income streams for universities or knowledge that government policy makers deem as 'relevant'.

RETROGRESSION IN THE LEGAL PROTECTION OF THE RIGHT TO ACADEMIC FREEDOM IN EUROPE

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Abstract

This article assesses to what extent the right to academic freedom as construed in terms of international human rights law, specifically UNESCO's *Recommendation on the Status of Higher-Education Teaching Personnel* of 1997, is protected in the law of the 28 Member States of the European Union. It determines the elements of this right, to then operationalise these by way of indicators accorded numeric values in order to assess state compliance and rank states in terms of their performance. The article shows that there is retrogression in Europe insofar as the legal protection of the right to academic freedom is concerned. Institutional autonomy is being misconstrued, academic self-governance denied and job security eroded. These developments appear to be the result of deliberate policy decisions by EU Member States seeking to make higher education "the arm of national economic policy," so as to ensure higher education will contribute to national GDP.

1. Introduction

This article builds on earlier research where a preliminary comparative analysis of the right to academic freedom in Europe was undertaken based on parameters of measurement drawn from UNESCO's *Recommendation concerning the Status of Higher-Education Teaching Personnel* of 1997.[1] Since then, there have been significant changes in the legislation on higher education ("HE") in many European countries, enhancing levels of autonomy (or, what policy-makers consider to constitute autonomy) of HE institutions, and limiting the extent to which academic staff are involved in the management of institutions, reducing the scope of their participation in strategic decision-making, while increasing that of rectors, deans, heads of departments, and external "experts." Moreover, the law regulating conditions of employment for academic staff in HE is increasingly guided by notions of "flexibilisation," legitimising the conclusion of fixed-term service contracts (without long-term perspectives) also at post-entry levels of the academic career and, further, the termination of service contracts on operational grounds without restraint. It appears paradoxical therefore that national constitutions and HE laws continue to emphasise the importance of the right to academic freedom. These circumstances call for a

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[1] See Terence Karran, "Academic Freedom in Europe: A Preliminary Comparative Analysis", *Higher Education Policy* 20 (2007), pp. 289–313; Terence Karran, "Academic Freedom in Europe: Reviewing UNESCO's *Recommendation*", *British Journal of Educational Studies* 57 (2009), pp. 191–215.

renewed assessment of the state of health of the right to academic freedom in Europe in the light of UNESCO's Recommendation.

This article relies on the following five parameters of the right to academic freedom:

1. Ratification of relevant international agreements and constitutional protection;

2. Express protection of academic freedom in HE legislation;

3. Protection of institutional autonomy in HE legislation;

4. Protection of academic self-governance in HE legislation; and

5. Protection of job security (including "tenure") in relevant legislation.

The analysis also uses a set of specific human rights-based indicators, spread over the five main categories of assessment, to measure compliance by individual states. A numeric value has been accorded to each indicator. Adding up the scores of states for each of these values makes it possible to rank states according to five core aspects as well as their overall protection of the right to academic freedom.

Our article examines the *legal* protection of the right to academic freedom in Europe, i.e. its protection in the legislation of the 28 EU Member States.[2] The *factual* protection of the right – *inter alia* as a

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[2] For detailed accounts of the results, see Klaus D. Beiter, Terence Karran & Kwadwo Appiagyei-Atua, "'Measuring' the Erosion of Academic Freedom as an International Human Right: A Report on the Legal Protection of Academic Freedom in Europe", *Vanderbilt Journal of Transnational Law* 49 (2016), pp. 597–691 and, by the same authors, "Academic Freedom and Its Protection in the Law of

result of institutional, faculty and/or departmental regulations, policies and customs – will be analysed in subsequent publications, relying primarily on the results of an online survey on academic freedom, open for participation by academic staff in Europe since 2015 until further notice.[3]

2. The right to academic freedom: International human rights law and UNESCO's 1997 Recommendation

With regard to HE teaching personnel, UNESCO defines "academic freedom" as

the right [of such personnel], without constriction by prescribed doctrine, to freedom of teaching and discussion, freedom in carrying out research and disseminating and publishing the results thereof, freedom to express freely their opinion about the institution or system in which they work, freedom from institutional censorship and freedom to participate in professional or representative academic bodies. All higher-education teaching personnel should have the right to fulfil their functions without discrimination of any kind and without fear of repression by the state or any other source.[4]

Besides these teaching and research freedoms, "academic freedom" includes at least three other aspects: self-governance by the academic

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European States: Measuring an International Human Right", *European Journal of Comparative Law and Governance* 3 (2016), pp. 254–345.

[3] The survey is accessible at
https://www.surveymonkey.com/s/AcademicFreedomSurvey.

[4] UNESCO *Recommendation concerning the Status of Higher-Education Teaching Personnel* (1997), para. 27 [hereinafter (the) (UNESCO) Recommendation].

community, employment security (including "tenure") and the autonomy of HE institutions. The various rights thus entailed by "academic freedom" must, however, be interpreted in the light of special duties and responsibilities for staff and students, and the fact that a proper balance between the level of autonomy enjoyed by HE institutions and their systems of accountability should be ensured. All these elements together make up what may be termed "the right to academic freedom."[5]

Over twenty years ago Manfred Nowak argued that international law has largely neglected the topic of academic freedom and institutional autonomy.[6] This remains true today to the extent that international "hard" law (i.e. treaties legally binding on states parties thereto) is concerned. The right to academic freedom, as such, is not protected in the two U.N. human rights covenants – the 1966 *International Covenant on Civil and Political Rights* ("ICCPR") and the 1966 *International Covenant on Economic, Social and Cultural Rights* ("ICESCR") – or in any other binding instrument of international law at the global or regional level. Certain provisions of

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[5] For analyses of the right to academic freedom and its constituent elements, see, e.g., Terence Karran, "Academic Freedom in Europe: Time for a Magna Charta?", *Higher Education Policy* 22 (2009), pp. 163–89; André Prüm & Rusen Ergec, "La liberté académique", *Revue du droit public et de la science politique en France et à l'étranger* No. 1 (2010), pp. 3–28; Jogchum Vrielink et al., *Academic Freedom as a Fundamental Right* (League of European Research Universities, Advice Paper No. 6, Dec. 2010). See also U.N., Committee on Economic, Social and Cultural Rights, General Comment No. 13, The Right to Education (Art. 13 ICESCR), U.N. Doc. E/C.12/1999/10, paras. 38–40.

[6] Manfred Nowak, "The Right to Education". In: Asbjørn Eide et al. (eds.), *Economic, Social and Cultural Rights: A Textbook*. Dordrecht/Boston/London: Martinus Nijhoff Publishers, 1995, pp. 209–10.

the various human rights treaties may, however, be relied on to protect certain aspects of the right to academic freedom.[7] Focusing specifically on the U.N. human rights covenants, three Covenant provisions provide protection for the right to academic freedom more comprehensively: Article 19 ICCPR on the right to freedom of opinion and expression, Article 15 ICESCR on cultural rights – notably giving expression, in Paragraph 3, to the right to respect for "the freedom indispensable for scientific research" – and Article 13 ICESCR on the right to education.[8]

In 1997, UNESCO adopted the *Recommendation concerning the Status of Higher-Education Teaching Personnel*. With its goal of improving the professional, material and social position of HE teaching personnel, it also aimed to enhance the quality of the HE system.[9] Although the Recommendation is not "an international instrument on academic freedom," guaranteeing academic freedom in HE is a fundamental concern of the document. Various provisions of the Recommendation address aspects of academic freedom. As these constitute the most current expression of agreed international

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[7] See Robert Quinn & Jesse Levine, "Intellectual-HRDs and Claims for Academic Freedom under Human Rights Law", *International Journal of Human Rights* 18 (2014), pp. 902–12.

[8] For a detailed account of the doctrinal place of the right to academic freedom under the UN human rights covenants, see Klaus D. Beiter, Terence Karran & Kwadwo Appiagyei-Atua, "Yearning to Belong: Finding a 'Home' for the Right to Academic Freedom in the U.N. Human Rights Covenants", *Intercultural Human Rights Law Review* 11 (2016), pp. 107–90.

[9] See Klaus D. Beiter, *The Protection of the Right to Education by International Law: Including a Systematic Analysis of Article 13 of the International Covenant on Economic, Social and Cultural Rights*. Leiden/Boston: Martinus Nijhoff Publishers, 2006, p. 280.

standards on the topic, they will be used as the basis for assessing compliance with the right to academic freedom in Europe in the discussion that follows.

UNESCO's Recommendations are not legally binding. However, since they have been adopted by the General Conference of UNESCO, they must be considered to reflect an international consensus on the specific subject matter dealt with. Recommendations "have a normative character in their intent and effects and the States concerned regard them as political or moral commitments."[10] Supervision of the Recommendation's implementation by UNESCO Member States is entrusted to a Joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel ("CEART"), a body composed of twelve independent experts – six appointed by UNESCO, six by the ILO.

3. Developing a standard scorecard "to measure" the right to academic freedom in Europe

3.1. The "legal" protection of the right to academic freedom: The requirement of legislation

The Human Rights Committee, the body supervising implementation of the ICCPR, stressed that "unless Covenant rights are already protected by … domestic laws or practices, States Parties are required on ratification to make such changes to domestic laws

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[10] Yve Daudet & Kishore Singh, *The Right to Education: An Analysis of UNESCO's Standard-Setting Instruments*. Paris: UNESCO, 2001, p. 45.

and practices as are necessary to ensure their conformity with the Covenant."[11] Likewise, the Committee on Economic, Social and Cultural Rights, the body supervising implementation of the ICESCR, entertains the view that, in realising rights under the ICESCR, "in many instances legislation is highly desirable and in some cases may even be indispensable."[12] Although the Covenants do not *unequivocally* make the adoption of legislation mandatory, these Committee statements suggest that – to secure the effective realisation of human rights and to respect fundamental principles of democracy – all salient elements in the definition of the various human rights, the general framework authorising measures aimed at fulfilling them and possible limitations of those rights be contained in legislation adopted by national parliaments. Subordinate legislation as adopted by executive/administrative organs of state may then "add flesh to the bones" and operationalise the norms contained in primary legislation, but cannot substitute a "stable" legislative framework where it is mandatory. This article will assess whether states have complied with the requirement of adopting legislation protecting the different aspects of the right to academic freedom, applying the stated standards in respect of "legislation."

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[11] U.N., Human Rights Committee, General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 13.

[12] U.N., Committee on Economic, Social and Cultural Rights, General Comment No. 3, The Nature of States Parties' Obligations (Art. 2(1) ICESCR), U.N. Doc. E/1991/23, Annex III, 86 (1991), para. 3.

3.2. The provisions on academic freedom in UNESCO's *Recommendation concerning the Status of Higher-Education Teaching Personnel* of 1997

The relevant provisions of UNESCO's Recommendation may, for present purposes, be divided into four groups:

1. Provisions on individual rights and freedoms in Paragraphs 25 to 30, including "the principle of academic freedom" (para. 27);

2. Provisions on institutional autonomy in Paragraphs 17 to 21;

3. Provisions on self-governance and collegiality in Paragraphs 31 and 32; and

4. Provisions on security of employment, including "tenure or its functional equivalent, where applicable," in Paragraphs 45 and 46.

Together these elements may be stated to make up "the right to academic freedom." A few words should be said with regard to each of the aspects protected, starting with "the principle of *academic freedom*." Scholars have been described as "dangerous" minds.[13] Challenging orthodox ideas and beliefs and creating new knowledge means that, "because of the nature of their work, academics are more naturally led in to conflict with governments and other seats of authority."[14] For this reason, advances in HE depend not only on infrastructure and resources, but need to be underpinned by academic

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[13] Robert Quinn, "Defending 'Dangerous' Minds: Reflections on the Work of the Scholars at Risk Network", *Items & Issues* 5 (2004), pp. 1–5.

[14] Karran (2009), *supra* note 1, at p. 191.

freedom (para. 5). HE teaching personnel thus "have a right to carry out research work without any interference, or any suppression, … subject to … recognised professional principles of intellectual rigour, scientific inquiry and research ethics." They "should also have the right to publish and communicate the conclusions of the research of which they are authors or co-authors" (para. 29). They further "have the right to teach without any interference, subject to accepted professional principles," "should not be forced to instruct against their own best knowledge and conscience," and "should play a significant role in determining the curriculum" (para. 28). Academic freedom is subject to important duties and responsibilities, as described in Paragraphs 33 to 36.

   UNESCO Member States are obliged "to protect higher education institutions from threats to their autonomy coming from any source" (para. 19). Threats need not, therefore, necessarily emanate from the state, but they may also, for example, originate with private actors such as private companies commissioning research. *Institutional autonomy* is "that degree of self-governance necessary for effective decision-making by institutions of higher education regarding their academic work, standards, management and related activities consistent with systems of public accountability, especially in respect of funding provided by the state, and respect for academic freedom and human rights" (para. 17). There is no automatic link between institutional autonomy and individual academic freedom. A highly autonomous institution may offer its members only a limited degree

of academic freedom[15] – thus the UNESCO Recommendation's stress that institutional autonomy must be understood to mean autonomy "consistent with … respect for academic freedom." The Recommendation understands autonomy as "the institutional form of academic freedom" (para. 18). Autonomy should further "not be used by higher education institutions as a pretext to limit the rights of higher-education teaching personnel provided for in [the] Recommendation" (para. 20). As indicated, autonomy is to go hand in hand with principles of public accountability, as described in Paragraphs 22 to 24.

HE institutions must organise themselves in a way as will guarantee that decisions taken by persons/organs will be "in the best interest of science and scholarship," notably by promoting academic freedom. This implicates a form of organisation in terms of which academics can *sufficiently participate* in the taking of these decisions. Clearly, by virtue of their training and competence, academics are best qualified to ensure that decisions taken are "in the best interest of science and scholarship" and support academic freedom.[16] UNESCO's Recommendation contains provisions on self-governance and collegiality. *Self-governance* entails that HE teaching personnel should have the right "without discrimination of any kind,

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[15] Pavel Zgaga, "Reconsidering University Autonomy and Governance: From Academic Freedom to Institutional Autonomy". In: Hans G. Schuetze et al. (eds.), *University Governance and Reform: Policy, Fads, and Experience in International Perspective*. New York: Palgrave Macmillan, 2012, p. 19.

[16] For this line of reasoning, see the *Hamburgisches Hochschulgesetz* case, Judgement of 20 July 2010, Fed. Const. Ct., Fed. Rep. of Germany, BVerfGE 127, 87, paras. 88–95.

according to their abilities, to take part in the governing bodies and to criticise the functioning of higher education institutions, including their own, while respecting the right of other sections of the academic community to participate," and the right further "to elect a majority of representatives to academic bodies within the higher education institution" (para. 31). The closely related principles of collegiality that are to apply in terms of the Recommendation "include academic freedom, shared responsibility, the policy of participation of all concerned in internal decision-making structures and practices, and the development of consultative mechanisms." It is pointed out that "[c]ollegial decision-making should encompass decisions regarding the administration and determination of policies of higher education, curricula, research, extension work, the allocation of resources and other related activities, in order to improve academic excellence and quality for the benefit of society at large" (para. 32). The Recommendation further stresses that "[s]elf-governance, collegiality and appropriate academic leadership are essential components of meaningful autonomy for institutions of higher education" (para. 21).

Finally, UNESCO's Recommendation emphasises that HE teaching personnel should enjoy *security of employment, including "tenure or its functional equivalent, where applicable."* In the Recommendation's perception, tenure (or its equivalent) "constitutes one of the major procedural safeguards of academic freedom and against arbitrary decisions" (para. 45). Tenure protects academic freedom by ensuring that academics can engage in a free search for the truth without having to fear losing their jobs, for example, because

of the views expressed.[17] Tenure and academic freedom are closely linked to scholars' responsibility for promoting the interests of society as a whole through their teaching and research.[18] Paragraph 46 of UNESCO's Recommendation envisages tenure to be granted "after a reasonable period of probation" – "following rigorous evaluation" – "to those who meet stated objective criteria in teaching … [and] research to the satisfaction of an academic body." It entails "continuing employment" and potential dismissal only "on professional grounds and in accordance with due process." The Recommendation allows release "for *bona fide* financial reasons, provided that all the financial accounts are open to public inspection, that the institution has taken all reasonable alternative steps to prevent termination of employment, and that there are legal safeguards against bias in any termination of employment procedure." Moreover, tenure "should be safeguarded as far as possible even when changes in the organisation of or within a higher education institution or system are made."

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[17] See Conrad Russell, *Academic Freedom*. London/New York: Routledge, 1993, p. 23 ("The point is not that academics may not be dismissed for their opinions: it is that they need freedom from fear that they might be so dismissed. Without it, they cannot be counted on to do their work well.").

[18] The justification for safeguarding academic freedom and tenure is actually two-fold: firstly, ensuring that scholars can engage in a free search for the truth for the benefit of society as a whole and, secondly, ensuring that scholars through their academic endeavours can promote the values of intellectual independence. See Ronald Dworkin, "We Need a New Interpretation of Academic Freedom". In: Louis Menand (ed.), *The Future of Academic Freedom*. Chicago: University of Chicago Press, 1996, pp. 185–89.

3.3. The scorecard and *modus operandi*

The four parameters – individual academic freedom, institutional autonomy, self-governance and tenure – will be accorded equal weight in the standard scorecard used "to measure" the right to academic freedom – 20% each. The final 20% to arrive at an overall percentage score for each country is accorded to the parameter "ratification of international agreements and constitutional protection." Altogether, 37 specific indicators measuring state compliance, concretising the main parameters, have been identified. These are *human rights* indicators – indicators essentially operationalising the requirements of the right to academic freedom as protected under international human rights law. The indicators chosen will thus purposively not measure whether HE reforms in the countries concerned comply with requirements of economic or managerial efficiency, as such criteria are irrelevant in – and, in any event, subordinate to – a human rights approach as binding on all the states considered in this assessment. A numeric value has been assigned to each indicator, mirroring its relative weight as adjudged in terms of international human rights law. When adding up the scores of states in respect of each of these values, it is possible to rank states for each of the five parameters, but also overall. With a few exceptions (Indicators under A.1., and Indicators B., D.2.3. and E.3.), a three-point scale is applied in respect of each indicator, measuring

"full compliance" (full marks), "qualified compliance" (half the marks), or "non-compliance" (no marks).[19]

Some detail on the scorecard will now be provided. For purposes of illustration, we refer to the example of the scorecard with the results for Austria, reproduced in the table below. The *first column (A)* reflects whether the states at issue accept obligations of "superior normative force" (in the sense of obligations not "merely" originating under ordinary legislation) relevant to the right to academic freedom, i.e. whether states have ratified relevant international agreements and whether their constitutions provide appropriate protection. Under *column B*, there is only one indicator, this enquiring whether HE legislation contains *express provisions on academic freedom* (primarily in the sense of individual freedom to teach and carry out research). Do these comply with notably the Recommendation's criteria on academic freedom and do they show that academic freedom should serve as a guiding principle for activity within HE? *Column C* covers indicators on *institutional autonomy*. The indicators chosen here enquire whether there is a satisfactory, problematic or seriously deficient/no provision in HE legislation expressly protecting institutional autonomy, how each of organisational, financial, staffing and academic autonomy is realised in the law by reference to one or two legitimate key indicators in each instance (each aspect of autonomy weighted equally), how wide or narrow the extent of governmental powers generally are and, finally, as to the

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[19] Thus, Karran's earlier method is followed in this respect. See Karran (2009), *supra* note 1, at pp. 197–98.

extent to which institutional independence is protected against private interests.

Column D covers indicators on *self-governance*. The first ascertains whether there is a satisfactory, problematic or seriously deficient/no provision in HE legislation expressly protecting self-governance. This is followed by indicators examining the state of self-governance at the level of the institution, and then another set of indicators measuring this at the faculty/departmental level. In each group, there is an indicator assessing whether academic staff are able to elect a majority of representatives to bodies responsible for decisions on academic matters at the respective level, i.e. the senate (or its equivalent), and collegial bodies at faculty/departmental level. In each group, there are further indicators on the respective executive officers directing the institution, or faculties/departments, i.e. the rector, and deans/heads of departments, ascertaining: 1. whether these officers come from within the institution or faculty/department, and hold a PhD/are professors, 2. whether academic staff can exercise "control" over who is chosen as the rector or dean/head of department, and 3. whether they can exercise "control" over the dismissal of the rector or dean/head of department by virtue of a vote of no-confidence. The provisions of the UNESCO Recommendation are closest to the *primus inter pares* model, in terms of which academic staff are to decide on "their leaders" (rectors, deans, heads of departments) themselves, choosing them from among themselves, for a certain period of time, after which they become ordinary

members of staff again,[20] and, moreover, may express a lack of confidence in their ability to lead, where appropriate. In the group of indicators on self-governance at the institutional level, there is finally an indicator enquiring whether academic staff are adequately represented on the body/bodies taking strategic decisions (strategic planning, general teaching/research policy, overall institutional development, preparing the budget, adopting the HE institution's statutes, etc.). Strategic decision-making would customarily be the task of the rector (rectorate) and the senate (or its equivalent) and/or – notably and increasingly nowadays – a separate board to which academic staff, external experts and other stake-holders are elected/appointed.[21] Even if not necessarily to the same extent as for "academic" decision-making, academic staff should have a right to take part in strategic decision-making.[22]

Finally, *Column E* covers indicators on *security of employment, including "tenure" (or its equivalent).* Indicators concern three topics: duration of contract of service, termination of contract of service on operational grounds, and prospect of advancement based on objective assessment of competence. Regarding *the first topic*, there is, for example, an indicator assessing whether the legal

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[20] In this vein, see Karran (2007), *supra* note 1, at pp. 303–04, with regard to the rector.

[21] On the typical governance bodies encountered in (European) HE institutions, see Eurydice – The Information Network on Education in Europe, *Higher Education Governance in Europe: Policies, Structures, Funding and Academic Staff*, 2008, pp. 33–42.

[22] For an indication of the scope of collegial decision-making, see UNESCO Recommendation, para. 32.

framework of the states concerned envisages permanent contracts for academic staff, alternatively, commencement on a tenure-track (i.e. during a first phase (usually that following the award of a doctoral degree), a probationary period or fixed-term contracts with long-term prospects). Regarding *the second topic*, there is notably an indicator ascertaining whether there is an adequate, problematic or seriously deficient/no provision in HE legislation protecting (not solely, but specifically permanently employed) academic staff against dismissals based on grounds of managerial efficiency. Dismissals on grounds of serious misconduct, a flagrant violation of scholarly duties, or two or more consecutive negative appraisals of work quality will be permissible, if due process rules are observed.[23] Dismissals on operational grounds (i.e. restructuring, down-sizing, reorganisation or economic difficulties), however, should ideally not take place. They will only be justifiable exceptionally and provided all alternatives have been considered, appropriate priority criteria been observed, a formalised procedure been followed, and procedural safeguards been respected. *Finally*, as regards *the topic* of a prospect of advancement based on an objective assessment of competence: As academic freedom is to be protected by restricting dismissal, it should also not be infringed by preventing advancement in the academic career where it should take place. There should be procedures in place (also capable of being initiated by academics) in terms of which promotion is granted where defined scholarly criteria have been met as objectively

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[23] See UNESCO Recommendation, paras. 47(e), 48–51.

assessed, without the need for the academic having to newly apply for a higher position within his/her institution on a competitive basis. It will thus be assessed whether legislation makes adequate provision (e.g. through a tenure-track system) for such advancement.

The assessment undertaken here considers only public institutions of HE and, from among these, only universities.[24] The analysis entailed an examination of 30 European HE systems. States with a federal structure in the field of HE required a particular approach. In the case of Belgium, the HE systems of Flanders and Wallonia were considered separately. In the case of Germany with a different HE system in each of the 16 *Länder*, it has been decided to study the situation in the two most populous *Länder*, Bavaria and North Rhine-Westphalia, where one third of Germany's population live. Regarding Spain, certain powers in the field of HE regulation rest with the autonomous regions. As for the U.K., the situation essentially in England has been studied (more than 80% of the U.K.'s population living here), giving some consideration to elements of the Scottish system. The actual legislation of EU states as in force at the beginning of 2014 (including the HE Act of North Rhine-Westphalia of September 2014, however) constituted the primary source of information for purposes of the assessment.[25]

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[24] The assessment does not consider student academic freedom. Neither does it address artistic freedom.

[25] Citations from laws used here are largely own renderings of texts in the light of all sources available.

Country	A. The Ratification of International Agreements and Constitutional Protection (20%)	B. The Express Protection of Academic Freedom in HE Legislation (20%)
Austria 63,5%	1. The Ratification of International Agreements (10) 8,5 1.1. Global Level (6) 1.1.1. *International Covenant on Civil and Political Rights* (Art. 19, Right to Freedom of Expression) [0–1,5] 1,5 1.1.2. *Optional Protocol to the International Covenant on Civil and Political Rights* (International Petition Procedure) [0–1,5] 1,5 1.1.3. *International Covenant on Economic, Social and Cultural Rights* (Art. 13, Right to Education) [0–1,5] 1,5 1.1.4. *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights* (International Petition Procedure) [0–1,5] 0 1.2. Regional Level (4) *European Convention on Human Rights* (Art. 10, Right to Freedom of Expression) [0–4] 4 2. Constitutional Protection (10) 9 2.1. Provision on Right to Freedom of Expression [0–1–2] 2 2.2. Provision on Right to Academic Freedom [0–1–2] 2 2.3. Reference to Institutional Autonomy [0–0,5–1] 1 2.4. Reference to Academic Self-Governance [0–0,5–1] 0 2.5. Robustness of Provisions [0–2–4] 4 Total: 17,5	[0–2,5–5–7,5–10 (x2)] 10 – 0 – No Reference to Academic Freedom at All (Non-Compliance) – 2,5 – Provision(s) Seriously Falling Short of Defined Standards (Between Partial and Non-Compliance) – 5 – Mere Reference to Academic Freedom, or Provisions Revealing Various Deficits (Partial Compliance) – 7,5 – Some or Other Deficit in Otherwise Commendable Provisions (Between Full and Partial Compliance) – 10 – Academic Freedom Serves as Guiding Principle for Activity within HE (Full Compliance) Total: 10x2=20

C. The Protection of Institutional Autonomy in HE Legislation (20%)	D. The Protection of Self-Governance in HE Legislation (20%)	E. The Protection of Job Security (and Tenure") in Relevant Legislation (20%)

1. Provision on Institutional Autonomy [0–2–4] 2
2. Autonomy in Detail (8) 6
2.1. Organisational (2)
  2.1.1. Autonomy to Determine Rector [0–0,5–1] 1
  2.1.2. Autonomy to Determine Internal Structures [0–0,5–1] 1
2.2. Financial (2)
  2.2.1. State Grant as Block Grant [0–0,5–1] 1
  2.2.2. Express Competence to Perform Commissioned Research [0–0,5–1] 1
2.3. Staffing (2)
Right to Define Academic Positions in HE Institutions and their Requirements, and to Recruit and Promote Academic Staff [0–1–2] 1
2.4. Academic (2)
  2.4.1. Capacity to Determine Selection Criteria for Bachelor Students and to Select the Latter [0–0,5–1] 0
  2.4.2. Whether or Not Bachelor Programmes Need to be Accredited [0–0,5–1] 1
3. Extent of Governmental Powers [0–2–4] 2
4. Institutional Independence *vis-à-vis* Private Interests [0–2–4] 2
Total: 12
	1. Provision on Academic Self-Governance [0–1–2] 1
	2. Academic Self-Governance at Institutional Level (12) 7
	2.1. Senate (or its Equivalent) – Composition [0–1,5–3] 3
	2.2. Rector (3)
	2.2.1. Academic Position or Qualification of Rector [0–0,5–1] 0
	  2.2.2. Determining the Rector [0–0,5–1] 0,5
	  2.2.3. Dismissing the Rector [0–0,5–1] 0,5
	2.3. Participation in Strategic Decision-Making (through Senate or its Equivalent, or Otherwise) [0–1,5–3–4,5–6] 3
	3. Academic Self-Governance at Faculty and Departmental Level (6) 1
	3.1. Collegial Bodies (3)
	  3.1.1. Existence of Collegial Bodies [0–0,5–1] 0
	  3.1.2. Composition of Collegial Bodies [0–1–2] 0
	3.2. Dean/Head of Department (3)
	  3.2.1. Academic Position or Qualification of Dean/Head of Department [0–0,5–1] 0,5
	  3.2.2. Determining the Dean/Head of Department [0–0,5–1] 0,5
	  3.2.3. Dismissing the Dean/Head of Department [0–0,5–1] 0
	Total: 9
		1. Duration of Contract of Service (8) 2
		1.1. Regulatory Framework [0–2–4] 2
		1.2. Situation in Practice [0–2–4] 0
		2. Termination of Contract of Service on Operational Grounds (6) 1,5
		2.1. Provision on Termination on Operational Grounds in HE Legislation [0–1,5–3] 1,5
		2.2. Protection in the Case of Termination on Operational Grounds in Terms of Civil Service or Labour Legislation [0–1,5–3] 0
		3. Prospect of Advancement Based on Objective Assessment of Competence [0–1,5–3–4,5–6] 1,5
		Total: 5

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4. The legal protection of the right to academic freedom in Europe: The results of the assessment

The following six headings provide a brief overview of state performance with regard to each of the five columns of the scorecard and overall. Each heading provides concise information on trends identified, some examples and a country ranking in the form of a table.

4.1. The ratification of international agreements and constitutional protection

All 28 EU Member States have ratified the ICCPR (Art. 19 protecting the right to freedom of expression) and the ICESCR (Art. 13 protecting the right to education) of 1966. The U.K. is the only Member State not to have ratified the Optional Protocol to the ICCPR of 1966. Claims under Article 19 on the right to freedom of expression alleging that the U.K. has violated academic freedom can thus not be brought before the Human Rights Committee. In view of the recentness of the adoption of the Optional Protocol to the ICESCR in 2008, only eight states so far (Belgium, Finland, France, Italy, Luxemburg, Portugal, Slovakia and Spain) have ratified it. The Optional Protocol to the ICESCR entered into force on 5 May 2013.[26] Malta has made a problematic reservation with regard to Article 22 of the ICCPR on the right to freedom of association, stipulating that it "reserves the right not to apply article 22 to the extent that existing

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[26] Status of ratification as at 19 Mar. 2015 as reflected in the online databases of the U.N. Treaty Collection at:
https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en.

legislative measures may not be fully compatible with this article."
All EU Member States are further bound by the relevant provisions
of the *European Convention on Human Rights*, as amended and
supplemented.[27]

The constitutions of all EU Member States protect the right to
freedom of expression. Express provisions are found in the (written)
constitutions of 27 states. In the U.K., this right should be considered
part of the U.K.'s unwritten constitution.[28] Whereas the provisions of
the Greek, Irish and Romanian Constitutions are problematic ("partial
compliance"), that of the Hungarian Constitution is seriously
deficient ("non-compliance"). Article 14(3) of the Greek
Constitution, for example, allows the seizure of newspapers and other
publications in cases of "an offence against the Christian or any other
known religion," or "an insult against the person of the President of
the Republic." The Hungarian Constitution substantially constrains
political campaigning in non-public media, and provides that freedom
of speech may not violate "the dignity of the Hungarian nation," in
Article IX(3) and (5), respectively.

Express provisions on the right to academic freedom – in the form
of a right to freedom of science[29] – may be found in the constitutions

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[27] Status of ratification as at 21 Mar. 2015 as reflected on the Council of Europe's
official Treaty Office website at http://www.coe.int/en/web/conventions.

[28] See Eric Barendt, "Freedom of Expression in the United Kingdom under the
Human Rights Act 1998", *Indiana Law Journal* 84 (2009), pp. 852–55.

[29] Although there are differences between the right to freedom of science and the right
to academic freedom (see Beiter et al., *supra* note 8), the approach here has been
not to differentiate between the two. The Constitution of Spain of 1978 protects
both freedom of science (Art. 20(1)(b)) and academic freedom ("*la libertad de
cátedra*") (Art. 20(1)(c)).

of 18 countries.[30] These protect the right either as part of provisions (also) addressing the right to freedom of expression (Germany and Spain), the right to education/educational rights (Austria, Finland, Greece, Italy and Sweden), rights related to science, arts, culture, universities and research institutions (Bulgaria, Croatia, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia), the right to freedom of thought, conscience and religion (Czech Republic), or both the right to education/educational rights and rights related to science, arts and culture (Portugal). The provisions contained in the Czech, Greek and Hungarian Constitutions may be considered to be problematic ("partial compliance"). Article 16(8) of the Greek Constitution, for example, prohibits the establishment of private universities, thereby also preventing opportunities for diversified notions of academic freedom to flourish in different contexts.[31]

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[30] In the U.K., "there is no *constitutional* guarantee of academic or scientific freedom." See Eric Barendt, *Academic Freedom and the Law: A Comparative Study*. Oxford/Portland, Oregon: Hart Publishing, 2010, pp. 74–75.

[31] Art. 13(4) ICESCR protects "the liberty of individuals and bodies to establish and direct educational institutions."

Table 1 – Country Ranking – Ratification of International Agreements and Constitutional Protection

Country	Percentage & Score /20 in brackets
1. Portugal, Spain	**100** (20)
2. Finland, Italy	**95** (19)
3. Slovakia	**90** (18)
4. Austria, Bulgaria, Croatia, Estonia, Germany, Lithuania, Poland, Slovenia	**87,5** (17,5)
5. Latvia, Sweden	**82,5** (16,5)
Average	*78,04 (15,61)*
6. Czech Republic, Greece	**77,5** (15,5)
7. Belgium, France, Luxemburg	**70** (14)
8. Cyprus, Denmark, Netherlands, Romania	**62,5** (12,5)
9. Hungary, Ireland	**57,5** (11,5)
10. Malta, United Kingdom	**55** (11)

4.2. The express protection of academic freedom in HE legislation

If constitutional provisions on the right to academic freedom legitimately may be rather concise, then – in accordance with what has been stated regarding the requirement of "legislation" – all salient

aspects of that right need to be concretised and operationalised by way of parliamentary legislation. Further detail can be regulated in subordinate legislation. A state's Act on Higher Education should thus make it clear that academic freedom entails a right to carry out research, a right to teach and a right to study without undue restrictions. Ideally, each of these elements should then be defined. The *Higher Education Act* of 2006 of Bavaria (Germany), for example, provides in Article 3 *inter alia*:

> (2) 1. Freedom of research … shall cover in particular the topic of research, the methodological approach applied and the evaluation and dissemination of research findings. …

> (3) 1. … [F]reedom of teaching … shall, within the framework of the teaching duties allocated, cover in particular the holding of classes, including the way they are structured in terms of content conveyed and methods applied, as well as the right to express scholarly … views on doctrinal issues. …

> (4) 1. Without prejudice to study and examination regulations, freedom of study shall cover in particular the free choice of classes, the right, within a study course, to freely choose one's areas of focus, as well as the formulation and expression of scholarly … views. …

Furthermore, legislation should reflect that academic freedom serves as a guiding principle for activity within HE, as would be evidenced by "academic freedom" forming part of a general part of the HE Act on "general principles" and/or it being referred to in various contexts throughout HE legislation. Austria's *Universities Act* of 2002, for example, in Section 2, entitled "Guiding Principles," refers to freedom of the sciences and their teaching, diversity of

scientific theories, methods and opinions, and freedom of study, as essential principles to be observed by universities. References to academic freedom then recur in various sections of the Act: Target agreements concluded with academic staff must respect freedom of science and "leave sufficient room" to individual members of the academic staff in their research and teaching (§ 20(5)). Students are entitled to freedom of study in accordance with the provisions of the law (§ 59(1)). Academic staff may not be required to participate in scholarly work if this conflicts with their conscience (§ 105). The dismissal of a member of the academic staff is null and void if this has occurred because that member supported a certain opinion or method in his/her research or teaching (§ 113).

The assessment revealed that the HE legislation of Austria, Croatia, France, North Rhine-Westphalia (Germany), Latvia, Lithuania and Slovakia contains express provisions on academic freedom largely in compliance with generally agreed criteria on academic freedom. The provisions show that academic freedom serves as a guiding principle for activity within HE ("full compliance"). A second group of HE systems were considered to have performed less than wholly satisfactory ("between full and partial compliance"), namely those of Bulgaria, the Czech Republic, Finland, Bavaria (Germany), Ireland, Luxemburg, Romania and Spain. Within this group, some or other deficit in the otherwise commendable legislative provisions could be identified in each case. A third group of HE systems (held to be in "partial compliance"), namely those of Flanders (Belgium), Wallonia (Belgium), Cyprus, the Netherlands and Poland, merely refer to the

principle of academic freedom in their HE legislation. Article 1.6. (Chapter 1, Title 1) of the Dutch *Law on Provisions concerning Higher Education and Scientific Research* of 1992, for example, solely states that "[a]t the institutions, academic freedom shall be respected." The legislation in a fourth group of HE systems, those of Denmark, Greece, Hungary, Slovenia, Sweden and the U.K., does address academic freedom, but in a way less satisfactory than that in the previous group ("between partial and non-compliance"). There may, therefore, be a mere reference to academic freedom, simultaneously flawed in some respect or another, or there may be more structured provisions which, however, seriously fall short of the standards defined in UNESCO's Recommendation. The U.K.'s *Education Reform Act* of 1988, for instance, in Section 202(2)(a), stipulates 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." The Act recognises this freedom, however, only whilst simultaneously, and in the context of, abolishing academic tenure. In terms of Sections 202 to 204, university commissioners are to be appointed to ensure that dismissals notably for reasons of redundancy (which the Act legitimises) do not violate academic freedom. Finally, there is a fifth group of HE systems (Estonia and Malta), whose HE legislation contains no reference to academic freedom whatsoever ("non-compliance").

Table 2 – Country Ranking – Express Protection of Academic Freedom in HE Legislation

Country	Percentage & Score /20 in brackets
1. Austria, Croatia, France, North Rhine-Westphalia (Germany), Latvia, Lithuania, Slovakia	**100** (20)
2. Germany	**87,5** (17,5)
3. Bulgaria, Czech Republic, Finland, Bavaria (Germany), Ireland, Luxemburg, Romania, Spain	**75** (15)
Average	*59,38 (11,88)*
4. Belgium, Cyprus, Flanders (Belgium), Italy, Netherlands, Poland, Portugal, Wallonia (Belgium)	**50** (10)
5. Denmark, Greece, Hungary, Slovenia, Sweden, United Kingdom	**25** (5)
6. Estonia, Malta	**0** (0)

4.3. The protection of institutional autonomy in HE legislation

HE legislation should expressly provide for HE institutions to be autonomous, detailing the various constituent elements of meaningful autonomy (organisational, financial, staffing and academic), to then weave the parameters of these into the fabric of the legislative

framework as a whole. Thirty HE systems having been assessed, the HE Acts of 9 contain an express and adequate provision on autonomy, 20 an express, but in certain respects problematic or incomplete provision, and one a seriously deficient provision. Article 2 of the Spanish *Organic Law on Universities* of 2001, for example, contains a provision on university autonomy by and large satisfying criteria to be considered "adequate." Paragraph 1 specifies that universities are endowed with legal personality and carry out their functions autonomously. Paragraph 2 goes on to mention various aspects covered by autonomy, broadly encompassing all four elements of autonomy. Paragraph 3 underlines that university autonomy is based on academic freedom. Paragraph 4, finally, points out that universities are accountable to society for the use of their means and resources. Externally, university autonomy should be buttressed by guaranteeing the sanctity of university premises, a principle long since recognised by human rights bodies.[32] Article 55(1) of Croatia's *Act on Science and Higher Education* of 2013 thus emphasises that "[t]he premises of the university shall be inviolable."

Concerning the assessment of institutional autonomy in detail (C.2.) in terms of compliance with certain key requirements on organisational, financial, staffing and academic autonomy (i.e., requirements, compliance with which may be considered to be highly indicative of a more general compliance with institutional autonomy), the results for overall performance regarding the stated key indicators

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[32] Regarding the Committee on Economic, Social and Cultural Rights, see Beiter, *supra* note 9, at pp. 599–600.

reveal Austria, Estonia, Finland, Ireland, Malta and the U.K. to be the top performers. Wallonia (Belgium), Cyprus, the Czech Republic, Bavaria (Germany), Greece, Hungary, Romania, Slovakia and Spain are found at the bottom of the table, with all other HE systems somewhere in-between.[33]

Generally addressing the extent of government powers regarding HE institutions, a reading of a state's HE legislation should reflect wide competences for HE institutions and a minimal measure of involvement of the state in regulating their activity. The state should merely supervise whether legal requirements have been complied with, but not review decisions on their merits. HE institutions should be in a position to enact most regulations and take most decisions without these requiring prior approval or subsequent confirmation by the state. In a handful of the HE systems examined, HE legislation reflects a very high degree of proximity between state and universities. In terms of the Danish (Consolidation) *Act on Universities* of 2012, for example, the responsible minister is granted wide-ranging competences to regulate matters or to lay down general or specific rules on a variety of topics. Most of the HE systems examined may be considered to be in "partial compliance," about one fifth in "full compliance," in respect of indicator C.3.

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[33] See also Thomas Estermann et al., *University Autonomy in Europe II: The Scorecard* (Final Report, European University Association, Nov. 2011), pp. 20–52, for an assessment of compliance by European states in the light of various technical indicators on institutional autonomy, including those chosen under C.2.

Finally, the independence of HE institutions *vis-à-vis* private interests should enjoy a notable measure of protection in HE legislation. There should be a clear statement emphasising that private funding may not compromise the independence of teaching and research in HE institutions, linking this to an obligation of HE institutions to reveal the sources and scope of private funding. It seems only one HE system roughly complies with this requirement. The recent *Act on the Future of Higher Education* of 2014 of North Rhine-Westphalia (Germany), in Section 71 on "Third party-funded research," provides that a member of the academic staff may undertake such research, "provided this does not prejudice the performance of other tasks of the HE institution, his or her freedom in science, research, teaching and study as well as the rights and duties of other persons" (§ 71(2)). In Section 71a, entitled "Transparency regarding third party-funded research," the HE Act then calls upon "[t]he rector [to inform] the public in an adequate manner about completed research projects in terms of [Section] 71(1)" (§ 71a(1)). In sum, one HE system may be held to be in "full compliance," five in "partial compliance," and all the others in "non-compliance," in respect of indicator C.4.[34]

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[34] See Eurydice, *supra* note 21, at p. 85, on accountability measures for private funds in HE in Europe.

Table 3 – Country Ranking – Protection of Institutional Autonomy in HE Legislation

Country	Percentage & Score /20 in brackets
1. Finland	**75** (15)
2. United Kingdom	**67,5** (13,5)
3. Croatia, North Rhine-Westphalia (Germany)	**65** (13)
4. Ireland	**62,5** (12,5)
5. Austria	**60** (12)
6. Lithuania	**55** (11)
7. Estonia, Flanders (Belgium), Malta	**52,5** (10,5)
8. Latvia	**50** (10)
9. Poland	**47,5** (9,5)
Average	***46,29** (9,26)*
10. Germany	**46,25** (9,25)
11. Bulgaria, Denmark, Italy, Luxemburg, Netherlands, Portugal	**45** (9)
12. Belgium, Slovakia, Slovenia, Spain	**42,5** (8,5)
13. Cyprus, Czech Republic, Romania	**40** (8)
14. France	**35** (7)

15. Sweden, Wallonia (Belgium)	**32,5** (6,5)
16. Bavaria (Germany)	**27,5** (5,5)
17. Greece	**22,5** (4,5)
18. Hungary	**12,5** (2,5)

4.4. The protection of academic self-governance in HE legislation

Also the core elements of the right of academic self-governance should be clearly articulated in HE legislation, and then be given concrete shape in the various provisions on the institutional/faculty/departmental governing and representative organs of HE institutions. Although it is in the interest of enhanced institutional autonomy to leave the regulation of many aspects in this context to institutions of HE themselves, essential features of the right to self-governance, such as those requiring academic staff to be able to elect a majority of representatives to the senate or requiring them to be entitled to exercise "control" over who is chosen as the rector, need to be guaranteed at the level of primary legislation.

Thirty HE systems having been assessed, the HE Acts of only 3 contain an express and adequate provision on self-governance, 12 an express, but in certain respects problematic or incomplete, and 15 no express provision. An example of an express and adequate provision on self-governance would perhaps be that in Section 26 of the Latvian *Law on Institutions of Higher Education* of 1995, referring to "the right to participate in the governance of an institution of higher

education and decisions of self-governance, and the formulation of internal laws and regulations of that institution," "to take part in the taking of decisions related to the interests of staff, to participate in the meetings of collegial governing bodies of an institution of higher education, and to be given the opportunity to be heard," and "to participate in elections of self-governance of an institution of higher education and to be elected therein."

A majority – ideally between 60 and 70% – of the members of the senate (or its equivalent) should be representatives of academic staff. Students should, however, also be adequately represented. Article 12(1) of the *University of Cyprus Law* 1989 to 2013, for example, contains provisions of such a nature as will ensure that there will always be at least 80% representatives of academic staff on the senate.

Rectors should be scholars coming from within the HE institution they are to serve, the academic staff of that institution should be able to exercise "control" over who is chosen as the rector (for instance, by holding a majority of votes), rector and staff should govern "co-operatively," and the academic staff should also be able to exercise "control" over the rector's dismissal by means of a vote of no-confidence. Article 20(2) of the Spanish *Organic Law on Universities* of 2001, for example, states that "[t]he rector shall be elected … from among officials of the body of university professors active in it." The assessment has shown that rectors increasingly may come from outside the institution, and often it is not expressly stated that they should be academics. Regarding the particular manner rectors are

chosen, the models employed are highly varied. As under Articles 6 and 11 of the Wallonian *Loi sur l'organisation de l'enseignement universitaire par l'Etat* of 1953 (Belgium), academic staff may be entitled to directly elect the head of the institution (the vote of academic staff weighing 75%). As under Section 10(2) of Slovakia's *Act on Higher Education Institutions* of 2002, academic staff may be entitled to take part in the rector's election indirectly through the senate (or its equivalent). The general trend, however, is "to do away with" direct or indirect participation of academic staff, and to have the rector appointed by a "third body," to wit, HE institution boards, many introduced in the wake of "new university management" policies *en vogue* since the 1990s. Customarily, all or the majority of the members of these boards are external, representing a variety of – including government and corporate – interests. The bodies sometimes merely perform a supervisory function, but in many cases they play a decisive role in strategic decision-making.[35] In terms of the Swedish *Higher Education Act* of 1992 and the accompanying *Ordinance* of 1993, the government is to appoint a rector based on the proposal of the board of governors, the latter making the proposal following consultations with academic and other staff, and students. The board roughly comprises 50% external members, appointed by the government, and 25% representatives of academic staff and students, respectively.[36] What has been stated regarding the particular

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[35] See Eurydice, *supra* note 21, at pp. 33–42, or Estermann et al., *supra* note 33, at pp. 20–29, attesting to these developments, but commenting on them neutrally.
[36] Swedish *Higher Education Act* of 1992, ch. 2, § 4; Swedish *Higher Education Ordinance* of 1993, ch. 2, §§ 1, 7a, 7b, 8, 11.

manner rectors are chosen may also be observed in as far as their dismissal is concerned. Some HE systems leave the powers in this respect to academic staff. In Estonia, the university council (being the equivalent of a senate) may thus, by virtue of Section 14(3)(18) of the *Universities Act* of 1995, adopt a vote of no-confidence in the rector. Nevertheless, also in this respect the trend is for those systems in which the rector is chosen by a board to grant the latter also the competence to dismiss the rector. Thus, in Denmark or Lithuania, the board appoints/elects the rector and dismisses him or her.

In some of the HE systems assessed, the rector and the senate (or its equivalent) retain responsibility for strategic decision-making. This is so, e.g., in Bulgaria, the Czech Republic, Hungary, Latvia or Romania. As has been pointed out, however, increasingly, provision is made for separate boards, composed entirely or to a large extent of external members, with important decision-making powers in strategic matters. They are usually competent to appoint and dismiss rectors, often coming from outside the HE institution. The rectors (or sometimes rectorates) may be granted far-reaching executive powers. Together, rector and board decide on issues such as internal structure, the heads of units, teaching and research strategy, budgets and administrative set-up. It may well be asked to what extent the principles of self-governance and collegiality permit "managerial" governance structures being introduced in HE institutions. Strengthening the rector's (rectorate's) powers, or providing for a board making available external expertise and involved in strategic decision-making, would probably be permissible provided these

measures are adequately counterbalanced by securing effective participatory and control rights for academic staff, to ensure the system of governance does not become "detached" from the academic staff whom it should serve.[37] It is submitted that academic staff should thus retain the power to elect the rector from among their midst, and, where appropriate, express a lack of confidence in him or her. Academic staff should further ideally have at least 50% representation on the board.[38] An arrangement in terms of which there are principally external members on the board, and academic staff are in a position to determine most of these, would perhaps still pass muster, but only at the level of "partial compliance" (see, e.g., Austria[39]). In Portugal, the general council (replacing general assembly and senate) has a majority of representatives of academic staff, and at least 30% external members.[40] In post-1992 English universities, at least half of the 12 (13) to 24 (25) members of the governing body must be "independent." Up to two members may be teachers at the institution nominated by the academic board. There are

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[37] To this effect, see the *Hamburgisches Hochschulgesetz* case, *supra* note 16, paras. 88–95.

[38] See Lewis Elton, "Collegiality and Complexity: Humboldt's Relevance to British Universities Today", *Higher Education Quarterly* 62 (2008), p. 232 (stressing the need for "a democratic form of leadership, distributed throughout an organisation, very different from the current form of top-down leadership" in HE), and p. 233 (emphasising that the vice-chancellor should be the "university's first servant"). See also Michael Shattock, "Re-balancing Modern Concepts of University Governance", *Higher Education Quarterly* 56 (2002), p. 240 (arguing in support of "moving back to a more evenly balanced approach to governance – the 'shared governance' concept").

[39] Austrian *Universities Act* of 2002, § 21(6) (50% of the board members "determined" by academic staff, 50% by the government).

[40] Portuguese *Law on the Legal Status of Institutions of Higher Education* of 2007, Art. 81.

further one to nine co-opted members among the members who could potentially be teachers at the institution.[41]

The above enquiry has been replicated at the level of the units of HE institutions (faculties and departments). A number of the HE systems assessed (Austria, Flanders (Belgium), Wallonia (Belgium), Estonia, Finland, Hungary, Ireland, Latvia, Lithuania, the Netherlands, Portugal, Sweden and the U.K.) fail to regulate the right of self-governance at the unit level whatsoever, or they do so in a clearly insufficient way.

Table 4 – Country Ranking – Protection of Academic Self-Governance in HE Legislation

Country	Percentage & Score /20 in brackets
1. Bulgaria	**72,5** (14,5)
2. Croatia	**70** (14)
3. Cyprus, North Rhine-Westphalia (Germany), Poland, Romania, Slovakia	**62,5** (12,5)
4. Germany	**61,25** (12,25)
5. Bavaria (Germany), Spain	**60** (12)
6. Portugal	**57,5** (11,5)
7. Czech Republic, Slovenia	**55** (11)

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[41] *Education Reform Act* of 1988, sched. 7A, para. 3 (composition of governing body).

8.	Greece, Latvia	**52,5** (10,5)
9.	Austria, Hungary	**45** (9)
Average		*42,99 (8,6)*
10.	Wallonia (Belgium), Italy	**40** (8)
11.	Belgium	**37,5** (7,5)
12.	Flanders (Belgium)	**35** (7)
13.	Denmark, France	**32,5** (6,5)
14.	Lithuania, Luxemburg, Malta	**30** (6)
15.	Netherlands	**27,5** (5,5)
16.	Estonia	**22,5** (4,5)
17.	Finland, Ireland, Sweden	**15** (3)
18.	United Kingdom	**0** (0)

4.5. The protection of job security (including "tenure") in relevant legislation

The legal framework governing the duration of contracts of service of academic staff in HE at post-entry levels should envisage permanent contracts/commencement on a tenure-track. HE systems whose laws are in compliance with this requirement include, amongst others, Flanders (Belgium), Bulgaria or France. Article V.28 of the Flemish *Codification of the Decretal Provisions concerning Higher Education* of 2013 (Belgium) thus provides for full-time members of the "independent academic staff" to be appointed, further stating that

"[t]he university administration may, in the case of a first appointment as a member of the independent academic staff, appoint a person on a fixed-term basis … for a period not exceeding three years with the prospect of a permanent appointment without new vacancy, if the university administration assesses the performance of the person concerned positively." The legal framework of some of the HE systems assessed – for example that in place in Austria or the Czech Republic – leaves it to HE institutions themselves to decide whether or not to offer permanent contracts.[42] In these cases, the use of fixed-term contracts may be subject to fairly strict limitations as to legitimate cases of use, maximum number of successive contracts and their maximum cumulated duration, as is the case in Austria,[43] but it may also be subject to rather lax requirements in this regard, as is the case in the Czech Republic.[44] Whereas cases such as that of Austria should be held to constitute instances of "partial compliance," those in the nature of the Czech example should be considered cases of "non-compliance." Clearly also "in non-compliance" are HE systems, whose legal framework expressly envisages fixed-term contracts for academic staff at post-entry levels, even those with senior positions (associate or full professors), there being little or no prospect of permanent contracts being concluded. The Estonian *Universities Act* of 1995, in Section 39(1), thus states that "[t]he positions of regular

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[42] In Austria, in terms of the *Collective Agreement for Employees of Universities* of 2013, permanent contracts are to be concluded with professors and associate professor. Such security of employment should, however, already be available under parliamentary legislation and not depend on volatile collective bargaining.
[43] Austrian *Universities Act* of 2002, § 109(1), (2).
[44] Czech *Labour Code* of 2006, § 39.

teaching and research staff at a university shall be filled for up to five years by way of public competition ….” It is further stipulated, in Section 39[1](1) that “[t]he successive conclusion of fixed-term employment contracts with teaching or research staff shall not cause the employment relationship to become one for an unlimited term.” In fact, “[a]n employment contract for an unlimited term shall [only] be concluded with a person who has been employed in the same university and has worked as a professor for at least eleven years, following evaluation under conditions and procedures established by the council of the university” (§ 39[1](2))!

   None of the HE Acts examined containing a full-fledged safeguard clause in this regard, the HE legislation of roughly a third of the HE systems assessed either contains provisions purporting to prohibit dismissals of academic staff on operational grounds (restructuring, down-sizing, reorganisation or economic difficulties) or laying down some protective standards for cases where such dismissals take place. Ireland and Portugal *expressis verbis* require academic staff to enjoy “tenure.” Section 25(6) of the Irish *Universities Act* of 1997 insists that “[a] university … shall provide for the tenure of officers.”[45] Article 50 of the Portuguese *Law on the Legal Status of Institutions of Higher Education* of 2007 states that, “[s]o as to guarantee their scientific and pedagogical autonomy, higher education institutions must have a permanent staff of teachers and researchers benefiting from an enhanced level of employment stability (tenure).” In a

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[45] See the Irish *Universities Act* of 1997, § 3, for a definition of the term “officer.”

number of HE systems, all or at any rate senior members of the academic staff are civil/public servants/public sector workers, i.e. not "ordinary" employees in terms of private law. This status may entail their dismissal on operational grounds being excluded (even where HE legislation does not expressly affirm such protection). Such status entailing prohibition of dismissal exists in Flanders (Belgium), Wallonia (Belgium), Croatia, Cyprus, Bavaria (Germany), North Rhine-Westphalia (Germany), Greece, Ireland, Italy, Portugal and Spain. In the case of France, Hungary, the Netherlands and Slovenia, academic staff who are civil servants may (at least in theory) be dismissed on operational grounds.[46]

Adequate provision for advancement of academic staff to a higher position based on an objective assessment of competence should be made. Some of the HE systems assessed do so through a tenure-track system.[47] A tenure-track system of this nature entailing promotion from researcher to associate professor is thus envisaged in Article 24(5) of the Italian *Law of 30 December 2010, No. 240, on Rules on the Organisation of Universities, Academic Staff and Recruitment, as well as Governance to Enhance the Quality and Efficiency of the University System*. Other HE systems create

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[46] See Christoph Demmke & Timo Moilanen, *The Future of Public Employment in Central Public Administration: Restructuring in Times of Government Transformation and the Impact on Status Development* (Study Commissioned by the Chancellery of the Prime Minister of the Republic of Poland, Nov. 2012), p. 49.

[47] For an overview of tenure-track systems (most of them not based on general legislation) in some European countries, see Hans-Jochen Schiewer et al., *Tenure and Tenure Track at LERU Universities: Models for Attractive Research Careers in Europe* (League of European Research Universities, Advice Paper No. 17, Sept. 2014).

entitlements relating to promotion otherwise than through a tenure-track system. Article 18(3) of the Greek *Law on Structure, Functioning, Quality Assurance of Studies and Internationalisation of Higher Education Institutions* of 2011 lays down that "assistant and associate professors have the right to request a vacancy at the next level after a stay at the rank they hold after six and four years, respectively .... If assistant and associate professors are not promoted to the next level, they have the right to request a re-announcement of the position after a lapse of at least three years following the decision not to be promoted." At the opposite end of the scale are HE systems such as that of Lithuania, Article 65(4) of its *Law on Higher Education and Research* of 2009 providing that "[p]ersons shall gain access to a higher position in the teaching or research staff by way of an open competition [only]." Altogether, HE systems fail to adequately deal with the issue of advancement. Only the Greek arrangements have been considered to be in "full compliance," those of 16 other HE systems in "non-compliance."

Table 5 – Country Ranking – Protection of Job Security (including "Tenure") in Relevant Legislation

Country	Percentage & Score /20 in brackets
1. Greece	**100** (20)
2. France	**77,5** (15,5)
3. Italy	**57,5** (11,5)
4. Spain	**55** (11)
5. Ireland, Portugal, Slovenia	**52,5** (10,5)
6. Flanders (Belgium), Cyprus	**50** (10)
7. Bulgaria	**47,5** (9,5)
8. Belgium	**46,25** (9,25)
9. Wallonia (Belgium), Malta, Sweden	**42,5** (8,5)
10. Bavaria (Germany), North Rhine-Westphalia (Germany), Germany, Hungary	**40** (8)
Average	*37,28 (7,46)*
11. Netherlands	**35** (7)
12. Denmark, Romania, United Kingdom	**27,5** (5,5)
13. Austria, Lithuania, Poland	**25** (5)
14. Croatia	**22,5** (4,5)
15. Luxemburg	**17,5** (3,5)

16.	Finland, Latvia	**15**	(3)
17.	Czech Republic	**10**	(2)
18.	Estonia, Slovakia	**7,5**	(1,5)

4.6. Overall results

The following table shows the overall country ranking for the legal protection of the right to academic freedom in Europe.

Table 6 – Overall Country Ranking: Legal Protection of the Right to Academic Freedom in Europe

Country	Total (%) & Grade (A-F)
1. North Rhine-Westphalia (Germany)	**71** **B**
2. Croatia	**69** **C**
3. Spain	**66,5** **C**
4. Bulgaria	**65,5** **C**
5. Germany	**64,5** **C**
6. Austria	**63,5** **C**
7. France	**63** **C**
8. Portugal	**61** **C**
9. Slovakia	**60,5** **C**
10. Latvia	**60** **C**

11.	Lithuania	**59,5** **D**
12.	Bavaria (Germany)	**58** **D**
13.	Italy	**57,5** **D**
14.	Greece	**55,5** **D**
15.	Finland	**55** **D**
16.	Poland	**54,5** **D**
17.	Romania	**53,5** **D**
18.	Cyprus	**53** **D**
Average		*52,79* *D*
19.	Ireland, Slovenia	**52,5** **D**
20.	Czech Republic, Flanders (Belgium)	**51,5** **D**
21.	Belgium	**49,25** **E**
22.	Luxemburg	**47,5** **E**
23.	Wallonia (Belgium)	**47** **E**
24.	Netherlands	**44** **E**
25.	Sweden	**39,5** **F**
26.	Denmark	**38,5** **F**
27.	Hungary, Malta	**36** **F**

28. United Kingdom	35 F
29. Estonia	34 F

5. Analysis and observations: The state of health of the legal protection of the right to academic freedom in Europe

The assessment has shown that by and large the 28 EU Member States formally ascribe to the value of academic freedom. In general, they have ratified relevant international agreements providing protection to the right to academic freedom and give recognition to the right (or related rights) at the constitutional level. Table 1 reflects countries to have scored an average of 78% in this category. Also at the level of HE legislation, academic freedom enjoys express recognition in most HE systems, Table 2 showing that an average of 59% compliance was achieved in this category. There are, however, some HE systems – those of Denmark, Estonia, Greece, Hungary, Malta, Slovenia, Sweden and the U.K. – whose HE legislation does not or not adequately refer to academic freedom. Whereas all HE systems, in a more or less satisfactory manner, expressly provide for the autonomy of institutions of HE in their HE legislation, rights of self-governance of academic staff and tenure in the sense of employment stability are accorded express recognition in 15 and 8 HE systems, respectively, with a rating of "full compliance" having been awarded in only three cases/one case, respectively.

Analysing the way aspects of the right to academic freedom have been concretised in the HE and other legislation of the states concerned, it will be noted that performance levels are far less satisfactory than those identified in view of that right's formal protection. The average score for institutional autonomy lies at 46% (Table 3), that for academic self-governance below that at 43% (Table 4) and that for job security (including "tenure") at a mere 37% (Table 5). Many a commentator would perhaps disagree and consider institutional autonomy to enjoy a higher level of legal protection than borne out here. However, as stressed earlier, institutional autonomy in the context of this study means institutional autonomy as limited by academic freedom and human rights. HE institutions in many of the HE systems assessed do possess wide competences to include external members in their governing bodies, to levy and decide on the amount of study fees (study fees generally contradicting Article 13(2)(c) ICESCR), to dismiss academic staff for reasons of "redundancy" and to freely engage in collaborative activities with private industry to acquire funding subject to only limited public control. Such unbridled powers, however, are not concomitant with institutional autonomy – rather, they expose a misinterpretation of the concept! Table 3 shows Finland and the U.K. to be the top performers in the category "institutional autonomy." At the bottom of the table is Hungary, Hungarian HE legislation reflecting a paternalistic role of the state in regulating HE.

The autonomy of an institution of HE cannot be divorced from the guarantee of academic self-governance. HE institutions, which

possess wide powers, but in which the academic community does not retain the competence to sufficiently participate in decisions that bear on science and scholarship are certainly not in accordance with the UNESCO Recommendation's standards. The assessment has revealed that the HE legislation of European states inadequately protects the right of "sufficient participation," which is increasingly being eroded by promoting an "alternative model." At the institutional level, states achieve an average score of just 49,4%, and, at faculty/departmental level (where a large-scale failure to regulate aspects of self-governance whatsoever by way of legislation may be observed), merely 35% for their implementation of the right to self-governance. Legislative changes adopted in the past five to ten or more years have accordingly entailed the powers of senates (or their equivalents) being restricted to purely academic matters, or worse, senates (or their equivalents) being replaced by "committees of academics," often presided over by non-elected managers, the introduction of institutional boards with strategic decision-making powers, composed of various stake-holders, many external and representing government and corporate interests (academic staff, in the worst case, not being represented and having no control over candidates appointed), and the strengthening of the executive powers of rectors and deans/departmental heads, who frequently come from outside the institution, academic staff not being able to adequately participate in their election or dismissal. Generally, governance structures in HE institutions increasingly exclude academics, recruiting instead a new "caste" of personnel with administrative, but

little or no subject-specific academic expertise, responsible for "managing" HE institutions and their affairs.[48] Bulgaria and Croatia perform best in the category of "self-governance." The U.K., a top performer on "institutional autonomy," fares worst on "self-governance."

Institutional autonomy is also limited by the requirements of security of employment, including "tenure" (or its equivalent). HE institutions in Europe, however, in "managing" their affairs, have come to view their academic staff as strategic capital. If staff are not "useful" in accordance with "strategic objectives" anymore, they forfeit their right to remain with the HE institution concerned. The assessment shows that states achieve an average score of just 47,3% and merely 43,8% for the assurance of secure employment by means of continuing contracts of service and protection against dismissal on operational grounds, respectively. While the premise in academia used to be that "the university does not employ academics, it facilitates their work," this notion appears to be absent in HE institutions today. As Boden and Epstein point out, "[a] facilitator provides resources and eases one's path towards one's goals. But an employer regards employees as resources – along with other inputs –

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[48] See Thomas Docherty, "Thomas Docherty on Academic Freedom", *Times Higher Education* (4 Dec. 2014), https://www.timeshighereducation.co.uk/features/thomas-docherty-on-academic-freedom/2017268.article ("Managerial fundamentalism has taken hold in universities, with scholars viewed as resources that must be controlled"). See also Paul Taylor, "Humboldt's Rift: Managerialism in Education and Complicit Intellectuals", *European Political Science* 3 (2003), pp. 75–84.

to be managed to achieve organisational objectives."[49] The "HE institution as facilitator" notion underlies the UNESCO Recommendation and its conception of the right to academic freedom. States in Southern and Western Europe (Greece, France, Italy, Spain and Portugal) are among the "top" performers in the category "security of employment," only seven states altogether, however, achieving a score above 50%.

Finally, turning to Table 6, showing the overall country ranking on the legal protection of the right to academic freedom, it is difficult to identify clear trends. One HE system – North Rhine-Westphalia (Germany) – scored 71%, eight between 60 and 69,9%, twelve between 50 and 59,9%, three between 40 and 49,9%, and six between 30 and 39,9%. HE systems that used to be steeped in the Humboldtian tradition with its emphasis on freedom of study, freedom of teaching, freedom of research and further the unity of research and teaching – those of Austria, Bavaria (Germany) and North Rhine-Westphalia (Germany) – still seem to benefit from this in terms of their position in the overall ranking. The HE systems of Southern and Western European states – Cyprus, France, Greece, Italy, Portugal and Spain – also appear in the upper half of the table. The HE systems of the Benelux states – Flanders (Belgium), Wallonia (Belgium), Luxemburg and the Netherlands – feature in the lower half of the

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[49] Rebecca Boden & Debbie Epstein, "A Flat Earth Society? Imagining Academic Freedom", *The Sociological Review* 59 (2011), p. 481 (citing Matt Waring, "Labouring in the Augean Stables? HRM and the Reconstitution of the Academic Worker", *International Journal of Management Concepts and Philosophy* 3 (2009), pp. 257–74).

table. So do those of Scandinavian countries, i.e. Denmark, Finland and Sweden. The HE systems of Anglophone Europe – Ireland, Malta and the U.K. – are also found in this part of the table. The picture is rather diffuse for the Baltic states, as it is for countries of Eastern Europe. The HE systems of Latvia and Lithuania lie on positions ten and eleven, respectively, but that of Estonia on place 28. Croatia lands on the second place and Slovenia on the 19th; Bulgaria on the fourth place and Romania on the 17th; Slovakia on the ninth place and the Czech Republic on the 20th; Poland on the 16th place and Hungary on the 27th.

The overall average lies at a disappointing 52,8% – and demonstrates that the state of the legal protection of the right to academic freedom in Europe is one of "ill-health." What is of even greater concern, however, is that protection levels have declined compared to the situation that existed prior to these HE legislative changes over the last decade or so. The concept of institutional autonomy is increasingly being misconstrued as autonomy not subject to the requirements of academic freedom, self-governance and security of employment, including "tenure." Self-governance at all levels in HE institutions has been eroded. This is also the case for employment security and academic staff "tenure." Although the various changes may in some instances be the result of "suboptimal legislative draftsmanship skills" (this might perhaps be so for Estonia, for example), they usually appear to be part of a deliberate reform agenda for the HE sector implemented by EU Member States.

6. Violations of the right to academic freedom and the right to education

The academic community has traditionally been a particularly vulnerable target of direct state repression in many parts of the world.[50] In Europe today, however, the threat to academic freedom appears to come from different sources (HE institutions themselves, research funding bodies, private or corporate actors, etc.), the state having become a (seemingly innocent) actor in the background. The state has assigned to HE institutions fairly wide-reaching powers. In practice, this has resulted in HE institutions themselves having become direct violators of academic freedom because they find themselves in an environment where they often cannot but violate such freedom. HE today follows a neoliberal logic. Whereas HE used to be regarded as a public good, paid for by the state, available free of charge to students, and based on the idea that "knowledge for its own sake" is a worthwhile pursuit, HE now seems to have become "the arm of national economic policy" – it is seen as both the "problem" (failing to produce a skilled workforce and marketable academic output), and the "solution" (upgrading personal skills and creating a source of earnings).[51] The new philosophy appears to be that the

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[50] On the state of academic freedom in different parts of the world, see generally Philip G. Altbach, "Academic Freedom in a Global Context: 21st Century Challenges", in *The NEA 2007 Almanac of Higher Education* (National Education Association, 2007), pp. 49–56.

[51] See Jill Blackmore, "Globalisation: A Useful Concept for Feminists Rethinking Theories and Strategies in Education". In: Nicholas C. Burbules & Carlos A. Torres (eds.), *Globalisation and Education: Critical Perspectives*. London/New York: Routledge, 2000, p. 134. See also Thaddeus Metz, "A Dilemma Regarding Academic Freedom and Public Accountability in Higher Education", *Journal of*

commercialisation of HE is to go hand in hand with reductions in government spending and "new public management" methods in HE. Governments evidently consider that HE institutions will use public money responsibly and produce "measurable" outcomes only if they have to acquire a substantial part of funding through state and non-state sources themselves (by levying study fees, by "selling" academic "merchandise" and "services" (e.g. marketing intellectual property rights or carrying out commissioned research), and by requiring academic staff to apply for external research funding on a competitive basis and to produce state income-generating publications). "New public management" methods entail academic staff being expected to account for public money "at every inch of the road" (routine budget plans and reports, internal and external audits, staff appraisals, student evaluations, national research assessment exercises, etc.).[52] Where such a new model is introduced – substituting trust in the competence of academics to be good teachers and researchers, and responsible recipients of finance – this places further pressure on HE institutions. Reacting to these pressures – by engaging "managers" of various sorts "to control" academics/teaching/research, by excluding academic staff from meaningful participation in decision-making, by compelling them to "deliver" under highly arbitrary "target/performance agreements" and burdening them with administrative tasks (preparing budget

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Philosophy of Education 44 (2010), pp. 529–49, on the notion that academic freedom covers pursuing "knowledge for its own sake."
[52] Ironically, therefore – although neoliberalism customarily advocates "deregulation" – it has entailed a rise of standards and audits in HE in practice.

plans, seeking funding, etc.) – these institutions will themselves become direct violators of academic freedom.

These "developments" – which foreshadow the decline of European universities as entities of genuine public and social significance – have their basis in legislation designed and implemented by the state, i.e. they are the consequence of deliberate policy decisions by EU states, aimed at ensuring HE will contribute more substantially to national GDP. State legislation, however, which requires HE institutions to operate as competitors on a free market in such a way that – in their quest of ensuring their financial survival – they violate the right to academic freedom, also violates another – the overarching – right to education under Article 13 of the ICESCR! Article 13 ICESCR should not be understood as merely protecting "a right to receive education," but rather as providing the normative basis for a full-fledged, rights-based education system, covering study, teaching, research and the administration of these, including at the HE level, encompassing also the rights, including academic freedom, of teaching/research staff.[53] International human rights law envisages general taxation as the principal model for financing education/teaching/research.[54] To the extent that states – relying on

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[53] See, e.g., Beiter, *supra* note 9, at pp. 460–62, in support of such a wide reading of Art. 13 ICESCR.

[54] A former U.N. Special Rapporteur on the right to education has pointed out that "[i]nternational human rights law assumes that states are both willing and able to generate resources needed for education through general taxation." See Katarina Tomaševski, *Free and Compulsory Education for All Children: The Gap Between Promise and Performance*. Gothenburg: Novum Grafiska AB, 2001, p. 21.

the maximum of their available resources[55] – are in a position to finance HE in such a manner that academic staff can properly attend to teaching and undertaking research, they must do so! Hence, state legislation in Europe that brings undue financial pressure to bear on HE institutions violates both the right to academic freedom and the right to education in Article 13 ICESCR.

Nobel Literature laureate John Coetzee remarked that "allowing the transient needs of the economy to define the goals of higher education is a misguided and short-sighted policy: indispensable to a democratic society – indeed, to a vigorous national economy – is a critically literate citizenry competent to explore and interrogate the assumptions behind the paradigms of national and economic life reigning at any given moment."[56] A higher education system whose main purpose is to be "the arm of national economic policy," which does not value the pursuit of "knowledge for its own sake," and that undermines the spirit of academic freedom can never further the full development of the human personality of students. Such a system constitutes an assault on the dignity of academics and their profession and, worse still, ultimately erodes the very foundations of a civilised society.

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[55] Art. 2(1) ICESCR obliges states parties "to take steps … to the maximum of [their] available resources, with a view to achieving progressively the full realisation of [economic, social and cultural rights] in the … Covenant …."

[56] John M. Coetzee, "Foreword". In: John Higgins (ed.), *Academic Freedom in a Democratic South Africa: Essays and Interviews on Higher Education and the Humanities*. London: Bucknell University Press, 2014, pp. xi, xii.

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ROOM FOR IMPROVEMENT: SCORING AOTEAROA NEW ZEALAND
A RESPONSE TO BEITER, KARRAN AND APPIAGYEI-ATUA'S RETROGRESSION IN THE LEGAL PROTECTION OF THE RIGHT TO ACADEMIC FREEDOM IN EUROPE

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Academic freedom in Europe, while still formally valued, appears to be suffering some erosion, though not in consistently patterned ways. The overall result of Klaus Beiter, Terence Karran and Kwadwo Appiagyei-Atua's research is a ranked list of the European Union states. However, due in part at least to the large and complex data set upon which the rankings rest, it is hard to produce a coherent explanation for why the rankings have the order they have. The research itself is painstaking and ambitious; it represents an important attempt to chart the fortunes of academic freedom at a historic moment in which real dangers lurk. (Although there has probably never been a period when they have not!) The framework derived from UNESCO's 1997 *Recommendation on the status of higher-education teaching personnel* is a useful one, because it reaches beyond the narrow definition of academic freedom as freedoms of teaching and research into wider contexts of institutional autonomy, self-government and tenure – all of which provide the ground of security and responsibility that make academic freedom most fully meaningful and realisable.

Reading Beiter and colleagues' paper piqued my interest in the situation vis-à-vis academic freedom here in Aotearoa New Zealand (NZ): how would we score on the standard measures used in this study (and, indeed, how easy are they to use)? In this commentary, I follow that interest. My effort may perhaps lack the rigour of theirs as I found elements within some indicators difficult to figure out from the level of detail provided in the paper and, also, I was wanting of a fellow researcher to make an independent assessment that could

inform mine. Moreover, given that NZ is not a member of the EU or any comparable regional union, some analytical elements were not relevant. However, I have been as transparent as possible for the score I have given on each of the five indicators, providing local details to this end.

On the first indicator, the ratification of international agreements and constitutional protection: NZ has signed and ratified the UN's 1966 *International Covenant on Civil and Political Rights* as well as the *First Optional Protocol to the International Covenant on Civil and Political Rights*, which establishes an individual complaint mechanism for the *Covenant*. NZ has also signed and ratified the 1966 *International Covenant on Economic, Social and Cultural Rights* but not the more recent (2008) *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, which likewise establishes complaint and inquiry mechanisms for the *Covenant*. Like the UK, NZ does not have a formal written constitution but it does have a Bill of Rights (1990), which includes rights to freedom of thought, conscience and religion (§13), and of expression (§14), that are "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". However, there is no mention in the Bill of any more specific rights relevant to academics and/or academic institutions such as academic freedom, academic self-governance or institutional autonomy. With an overall score of 11.5/20,[1] NZ does not offer a picture of a state that "accept[s]

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[1] In the absence of a regional-level convention, I have allocated 4/4 for this dimension to avoid unduly disadvantaging the score relative to others in Beiter et al.

obligations of 'superior normative force'", which is the standard Beiter and colleagues hold up.

On the second indicator, the express protection of academic freedom in HE legislation, NZ has a stronger showing. The *1989 Education Act* expressly protects academic freedom for all tertiary institutions,[2] under §161:

(1) It is declared to be the intention of Parliament in enacting the provisions of this Act relating to institutions that academic freedom and the autonomy of institutions are to be preserved and enhanced.

(2) For the purposes of this section, *academic freedom*, in relation to an institution, means –

    (a) the freedom of academic staff and students, within the law, to question and test received wisdom, to put forward new ideas and to state controversial or unpopular opinions:

    (b) the freedom of academic staff and students to engage in research:

    (c) the freedom of the institution and its staff to regulate the subject matter of courses taught at the institution:

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[2] In NZ, we commonly talk about 'tertiary education', which refers to a broad post-compulsory education sector that includes eight (publicly funded) universities, 18 polytechs, three wānanga, over 600 private training establishments (PTEs) and 12 industry training organisations (ITOs).

(d) the freedom of the institution and its staff to teach and assess students in the manner they consider best promotes learning:

(e) the freedom of the institution through its chief executive to appoint its own staff.

Section 161 was a late addition, inserted almost 12 months after the Act was passed into law in response to high levels of criticism, from universities in particular, at the infringements of institutional autonomy arising from changes brought in by the Act. Many aspects of the Act were modeled on the UK Thatcher Government's *1988 Education Reform Act* – the language around academic freedom, for example, is an almost verbatim version of the UK text.[3]

In addition to this protection, the Act *requires* that universities alone accept a defining role as critic and conscience of society. Under a section entitled *Establishment of institutions*, the Act specifies "that universities have all the following characteristics":

i. they are primarily concerned with more advanced learning, the principal aim being to develop intellectual independence:

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[3] There is a painful irony in the fact that a Labour (left-wing) government in NZ should follow the same path as the right-wing Tory government of Margaret Thatcher. As has been commented on elsewhere (J. Kelsey, *The New Zealand experiment: A world model for structural adjustment?* Wellington: Bridget Williams Books, 1997; B. Jesson, *Only their purpose is mad: The money men take over NZ.* Palmerston North: Dunmore Press, 1999), the Fourth Labour Government was the Trojan horse for a thorough-going penetration of neo-liberal principles throughout all aspects of NZ's public sector. At the time, the right-wing Opposition Spokesman for Education regularly suggested that a kind of fascism motivated the Labour Government's desire to pass the legislation and the Universities of Auckland and Canterbury initiated legal proceedings against the Government because of the perceived attack on university autonomy.

   ii.   their research and teaching are closely interdependent and most of their teaching is done by people who are active in advancing knowledge:

   iii.   they meet international standards of research and teaching:

   iv.   they are a repository of knowledge and expertise:

   v.   they accept a role as critic and conscience of society. (Act, §162[4])

The critic and conscience function may be unique to NZ legislation, although it is suggestive of the role of public intellectual. The function contrasts with the more general grounds of academic freedom in that it specifies an active – and critical – role for the university, and its member academics, in and towards the wider society. The clause offers protection under the law to both the institution of the university (which has a legal personality) and its members in the carrying out of this function, although to date there are no legal precedents and there is, as there is for academic freedom, an inherent ambiguity about whether or not an academic must enact the role only on the basis of relevant academic expertise or whether there is a broader basis for it (as the term 'conscience' seems to imply). For the strength of these intentions, but the accompanying absence of a wider sense that academic freedom is a guiding principle of higher education (in terms of protecting academic tenure, for example), NZ gets 15/20.

On the third indicator, the protection of institutional autonomy in HE legislation: despite its protestation that "the intention of Parliament in enacting the provisions of this Act relating to

institutions that academic freedom and the autonomy of institutions are to be preserved and enhanced" (Act, §161[1]), and despite significant resistance from universities, the *1989 Education Act* indeed removed several safeguards of institutional autonomy from government interference: it abolished the University Grants Committee, long an intermediary funding body between the universities and the government; it enforced the creation of university charters, which required ministerial approval (now replaced by three-year 'Investment Plans'); it installed CEOs/Vice-Chancellors as the employers of university staff (Act, §198[1]); and it gave the Minister of Education the power to approve the members of university councils and for the number of academics on those councils to be limited.

The Act established a Tertiary Education Commission, which was given powers to implement the tertiary education strategy, prepared by the Ministry of Education (most recently co-authored with the Ministry of Business, Innovation and Employment, whose Minister also holds the portfolio of Minister of Tertiary Education, Skills and Employment). The strategy "sets out the Government's long-term strategic direction for tertiary education; and the Government's current and medium-term priorities" (Act, §159AA[1 & 2]). In order to receive funding, universities must frame what they do, as expressed in mandatory Investment Plans, in relation to that "strategic direction" and those "priorities", which means government has a powerful vehicle for steering universities. Moreover, the tertiary strategy is also a vehicle for expressing party ideologies and so has been replaced

with unseemly frequency (given the size and complexity of the systems it is trying to steer).

There is some autonomy to determine the Vice-Chancellor, although this autonomy does not lie in the hands of the academic community: the decision is made by Council (Act, §180[1a]), which includes a significant number of ministerial appointees. At the same time, universities have autonomy to determine internal structures, an autonomy that has become a kind of sandbox in which institutional managers love to play. Restructuring is ubiquitous and, for those on the ground, exhausting and morale-destroying. Still its autonomy and perhaps one must appreciate that!

Importantly, NZ universities maintain autonomy over defining academic positions, over recruiting and promoting academic staff. However, as Nick Lewis and Cris Shore point out (this volume), the apparent subservience of NZ universities to government ideology is reflected in recent developments around hiring, in which traditional practices that reflected disciplinary autonomy are being replaced by institution-wide hiring freezes accompanied by commercially driven strategic – or "exceptional" – hires. The processes used for the latter often cut across the public service employment standards that apply for "normal academic recruitment" and can produce divisive and resented appointments.

NZ universities also maintain autonomy over the selection criteria for bachelors degrees and, under the Act, over determining all university degree and sub-degree accreditation through the

Committee on University Academic Programmes, a sub-committee of the New Zealand Vice-Chancellors' Committee (also known as Universities NZ). I confess this is not an exhaustive assessment of the autonomy of NZ universities according to Beiter and colleagues' standard, mainly because elements of this standard were unclear to me. Provisional score for a mixed bag: 11.5/20.

On the fourth indicator, the protection of academic self-governance in HE legislation: NZ's legislation provides no such protection. Indeed the limit on the number of academics on university councils set in the *1989 Act* has recently been increased, as was foreshadowed by the National Government's Tertiary White Paper in 1998, subsequently shelved by the change of government in late 1999.[4] The revived proposal once again faced much opposition – ultimately unsuccessful – from Universities NZ: from early 2016, the size of university councils has reduced from 12-20 to 8-12, with a larger proportion of positions reserved for ministerial appointments, and the requirement for representative membership (for example, of students, staff and unions as had previously been the case) definitively removed. At the University of Auckland, for example, there is now only one elected academic staff member on council, along with one each of an elected administrative staff and student member (although

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[4] M. Olssen, *The neo-liberal appropriation of tertiary education policy in New Zealand: Accountability, research and academic freedom.* Wellington: NZARE, 2002.

we might congratulate the University in that it is not required to have any such members).

Within NZ universities, senates are still common. Taking the case of the University of Auckland, membership of the Senate is by right for all full professors and divisional leaders, and there are places for just over 20 elected academic members and up to six elected student members. Alongside the University-wide committee structure that reliably includes elected academic members, Faculties typically have parallel committees, membership of which is more likely to be on the basis of position. For example, as the Chair of my School's Postgraduate Committee, I sit on the Faculty Postgraduate Committee, the chair of which sits on the University's Board of Graduate Studies. This cascading representation is a common structure in NZ universities. Limited rights to self-governance also materialise in union-negotiated academic collective agreements via phrases such as "academic staff have the right and are required to participate in the formulation of academic policy through their schools, institutes and faculties".[5] Lastly, while Vice-Chancellors are typically doctoral-holding academics, they are not usually appointed from within the institution's academic community, and that community has limited, if any, input into their appointment or its extension, and no power to remove her/him. Score: 11.5/20.

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[5] *Victoria University of Wellington Academic Staff Collective Agreement 01 July 2014–30 June 2016*, p. 23

On the fifth indicator, the protection of job security (including "tenure") in relevant legislation: again the Act does not provide any such protection. Indeed NZ has never provided tenure to academics, although there was a long period in which security of employment was taken for granted. Not so now – in the past ten years or so, we have seen many redundancies in the sector, mostly justified by arguments based on falling student numbers and/or the redirection of student interests away from particular fields, or (less often) overall budget pressures. So the un-ideal "dismissals on operational grounds" that Beiter and colleagues describe do take place, often enough that there is now a climate of insecurity in universities. At the same time, we have a national union of university and other tertiary sector staff, which negotiates site-based academic (and professional staff) collective agreements, including provisions for terms of appointment. This provides a, perhaps weak, form of regulatory framework but, in practice, NZ's academic workforce is nowhere near as casualised as our much larger neighbor, Australia's. This may, in part, be a rational and pragmatic response to the difficulty NZ universities have in attracting and holding academic staff, largely because of lower wages and high costs of living alongside limited access to research funding.

The norm for academic appointments is a 'permanent' (or 'continuing') position via, in some but not all universities, a probationary period of three or four years. Where a staff member is appointed to a fixed-term position, some site-based collective contracts require they must be provided with a reason for such an appointment (although this could be as vague as to provide for

"flexibility in staffing to meet changing student numbers, research funding, etc" [UoA Academic Staff Collective Agreement, 18 Dec 2015–30 June 2016]).[6] Promotion criteria are covered in the collective agreements, such that Beiter and colleagues' "prospect of advancement based on objective assessment of competencies" criterion is well catered to both in policy and, drawing on my experience as a long-serving academic at the University of Auckland, in practice. Overall score: 10/20.

So what of NZ's scorecard overall and what company would we keep in the ranks of EU states? A total of 59.5 puts us at the top of the D-grade group, on a par with Lithuania. Given the overall picture of the EU, it's a reasonably good showing (although, as per the methodological reservations noted in the opening paragraph, I would be more confident of this score if I'd had another independent scorer). But there's undoubtedly room for improvement, especially around matters of self-government and tenure. Are we, though, in a period of retrogression that Beiter and colleagues describe of the EU?

To answer that question here in NZ, we might look to history. In a chapter entitled *Academic freedom: The college in the depression, 1930-5*, Keith Sinclair outlines some of the struggles over academic freedom in the history of the University of Auckland (formerly the Auckland University College). They were considerable and impassioned. The College council, its management, members of the

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[6] Common university management practice is to award the same terms and conditions contained in the collective agreement to non-unionised staff (and thus, you might argue, undermine the benefits of belonging to the union).

professorial board and even students were embroiled in actions to prevent students and academic staff from presenting unpopular views – not only in favour of communism and socialism but also in support of more liberal sexual mores – within and without the College. Academics lost their jobs; students were denied opportunities. One such attack on academic freedom of speech "brought the College to international notice".[7] There was pressure from Government on all four university colleges to "suppress or punish radical statements"[8] by their members and, in Sinclair's view, only one college, Otago, effectively resisted this pressure. The turbulence described of the period feels foreign to me, as an academic over the past 30 years. So, when thinking retrogression, we might also think what period we are considering. In a thoughtfully turned lecture at the University of Cape Town in the dying years of apartheid, Edward Saïd makes this crucial point:

> So whereas it is universally true that contemporary societies treat the academy with seriousness and respect, each community of academics, intellectuals, and students must wrestle with the problem of what academic freedom in that society at that time actually is and should be.[9]

In thoughts offered to an audience far from his base in the US, one in the midst of radical and unpredictable social upheaval, Saïd reminds us that academic freedom is a complex issue requiring

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[7] K. Sinclair, *A history of the University of Auckland 1883-1983*. Auckland: Auckland University Press & Oxford University Press, 1983, p. 145.

[8] Ibid, p. 150.

[9] E. W. Saïd, Identity, authority and freedom: The potentate and the traveler. T.B. Davie Academic Freedom Lecture, University of Cape Town, May 22, 1991, p. 6.

situational attention and sensitivity of judgment, especially when we are looking into the academic backyards of other states.

So what of our own backyards? Academic freedom pertains not only to wider social issues – the outrageous advocacy of communism and "companionate marriage"[10] of NZ's 1930s – but also to the places in which we dwell as academics and it is there that we might think about exercising this freedom. There is no doubt that the reforms embedded in the 1989 Education Act compromised the autonomy of NZ's universities in ways ongoing that impinge on the possibilities for academic freedom.[11] More generally, modern western universities are buffeted by chilly winds that appear to threaten our survival, at least as places of education, of learning, valued beyond the vocationally useful or the fiscally profitable. Yet, concerted voices of protest are largely absent, not only here in NZ, but elsewhere as well.[12] Exercising academic freedom to speak up against the depredations of neoliberal ideology in higher education is difficult. In writing about the challenge of speaking up against endlessly proliferating forms of academic management speak that produce "unanalyzable nonsense"[13], such as "good practice"[14], Marilyn

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[10] Sinclair, p. 150.

[11] Olssen.

[12] See, for example, B. Davies, "Death to critique and dissent? The policies and practices of new managerialism and of 'evidence-based practice'" *Gender and Education, 15*(1), 91–103 and S. Ryan, "Academic zombies: A failure of resistance or a means of survival?" *Australian Universities Review, 54*(2), 3–11.

[13] Marilyn Strathern, "Bullet-proofing: A tale from the United Kingdom," in A. Riles (Ed.), *Documents: Artifacts of modern knowledge* (Ann Arbor: University of Michigan Press, 2006), p.196.

[14] Ibid, p. 181.

Strathern says:

> Part of the problem is how to complain, how to criticize good practice and still appear moral, credible, and public spirited, and thus offer a critique that is edifying.[15]

As an academic with a commitment to making tiny acts of resistance towards the madness of modern higher education, I find myself daily facing the dilemma Strathern describes. Courage is required, and a kind of moderate steadiness. Even more, we need *hope* of a kind that Isabelle Stengers[16] writes about, premised on an understanding that "life is always lurking in the interstices, in what usually escapes description because our words refer to stabilised identities and functioning"[17]. For Stengers, hope is more likely to be realised in what people are able to do together – where we are "stronger, more free than [we] would be alone": [18] what a reviving imaginative contrast to the stereotype of the lone-wolf academic speaking up for what he or she sees as the truth!

In closing, I want to draw attention to one set of present dangers for academic freedom not explicitly canvassed in the analysis offered by Beiter and colleagues. More than from any other one quarter right now, dangers lie in the increasing dependence of public universities on private sources for research (and other) funding. Stories emerge of suppression clauses in research contracts taken up by academics,

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[15] Ibid, p. 199.
[16] Isabelle Stengers and M. Zournazi, "A 'cosmo-politics': Risk, hope, change," in M. Zournazi (Ed.), *Hope: New philosophies for change* (Annandale: Pluto Press, 2002), pp. 244–272.
[17] Ibid, p. 245.
[18] Ibid, p. 257.

including in government contracts: see, for example, the critical work of Kypros Kypri,[19] who gives evidence of suppression clauses being invoked in relation to intellectual property, publication and termination for convenience. There are also stories of research findings being suppressed after the fact because funders – or affected organisations with often undisclosed 'relationships' with universities (or university managers) – do not want the findings made public: a recent (but not unique) case involving the University of Queensland was reported in *The Conversation* a few months ago.[20]

Academic freedom is a precious and necessary condition of academic work. In time and place, its fortunes wax and wane. Yet the flame must be kept alive because, as many writers have pointed out, the very meaning of what makes universities distinctive is entangled with this shining idea. Moreover, its survival largely depends on the actions of academics – us – in the present.

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[19] Kypros Kypri, "Suppression clauses in university health research: Case study of an Australian government contract negotiation," *Medical Journal of Australia, 203*(2), pp. 72–74.

[20] The Conversation: https://theconversation.com/the-public-should-be-concerned-when-academics-must-battle-bureaucrats-for-academic-freedom-54039 (accessed 13 July 2016).

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THINK TANKS AND UNIVERSITIES IN THE KNOWLEDGE-BASED ECONOMY: CROSSING, BLURRING AND SHIFTING BOUNDARIES

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Abstract

Taking into account the current trend of blurring boundaries between diverse knowledge providers, competing for personnel and funding, think tanks (TTs) need to defend their "label" as research-based organizations emphasizing their "organizational distinctiveness". Using as an analytical framework the approach elaborated by T. Medvetz in combination with the concept of the organizational identity and the concept of boundaries, the paper looks at the issue of self-identification by TT representatives, analysing how their position towards the academic world is reflected in the building of their organizational identity and strategy. Based on the analysis of materials from TT websites and data obtained from semi-structured interviews with representatives of the stand-alone and university-based TTs in Brussels, France, Slovenia and the United Kingdom, this paper presents how TT staff members build their identity on the perceived similarities and differences between their organizations and universities and shows how a blurring nature of a TT itself and its staff contributes to its continuity as an organization. The paper concludes by discussing the embodiment of the TT identity through its strategy involving formal and informal inter-institutional cooperation with universities.

Introduction

A university has until recently been considered the main centre of knowledge production.[1] The processes of internationalization and globalization, as well as development of information technologies, have significantly changed the environment for knowledge production and dissemination, with the emergence of new types of knowledge providers and communication platforms. At present, the general public and policy-makers can quickly collect necessary information from an abundance of structures giving policy recommendations free of charge and accessible via the Internet.[2] At the same time, the rapid scattering and immense expansion of knowledge make difficult the consumption of data by policy-makers, who are searching for the most relevant expertise in conditions of the "plenitude of information".[3]

"Think tank" is a "brand name" for structures, capable of editing and confirming information convincingly[4]. However, if fifty years ago, the assertion that the role of linking social science with the power was implemented by independent think tanks was feasible, nowadays,

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[1] Ruth Finnegan, "Introduction: looking beyond the walls". In: Ruth Finnegan (ed.), *Participating in the knowledge society: researchers beyond the university walls*. Basingstoke: Palgrave-Macmillan, 2005, pp. 1–19; James G. McGann, "Think tanks and the transnationalization of foreign policy", *The role of think tanks in U.S. foreign policy. U.S. foreign policy agenda. An Electronic Journal of the U.S. Department of State* 7: 3 (2002), pp. 13-19.

[2] Diane Stone, *Knowledge actors and transnational governance. Private-public Policy nexus in the global agora*. Palgrave Macmillan, 2013.

[3] Keohane and Nye, 1998, p. 89, quoted in Diane Stone, "Think tanks beyond nation-states". In: Diane Stone and Andrew Denham (eds.), *Think Tank traditions: Policy Research and the Policy of Ideas*, Manchester: Manchester University Press, 2004a, p. 45.

[4] Diane Stone, 2004a, op. cit., p. 45.

a diversity of bodies conducts policy analysis, monitoring and evaluation. This term is used to denominate international organizations, internal research units of multi-national companies, consulting firms, governmental and non-governmental research organizations, research structures affiliated to interest groups or university-based research centres.[5]

Think tanks compete with universities for financing and for the attention of the policy-makers. As universities need to show their social and economic appropriateness to governments, they create university-based research institutes conducting policy-relevant research, preparing publications and organizing conferences, i.e. they are trying to construct a bridge between the academic and policy worlds.[6]

Since interest groups have tried to gain greater policy expertise to improve their position in the policy-making community and think tanks have followed interest groups to master more lobbying strategies, the organizational dissimilarities between think tanks and interest groups have become increasingly blurred.[7]

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[5] Andrew Rich, *Think tanks, public policy, and the politics of expertise*. Cambridge University Press, 2004; Diane Stone, 2013, op. cit.

[6] Diane Stone, 2013, op. cit.

[7] Donald E. Abelson, Christine M. Carberry, "Following Suit or Falling Behind? A Comparative Analysis of Think Tanks in Canada and the United States", *Canadian Journal of Political Science* XXXI: 3 (1998), pp. 525-555; Donald E. Abelson, "Think tanks and U.S. foreign policy: an historical view", *U.S. foreign policy agenda. An Electronic Journal of the U.S. Department of State* 7: 3 (2002), pp. 9-12; Andrew Rich, Kent Weaver, "Think Tanks in the Political System of the United States. *Think Tanks in Policy Making – Do They Matter?* Briefing Paper Special Issue. Shanghai: Friedrich-Ebert-Stiftung Shanghai Office, 2011, pp. 16-25.

Because of the absence of the complete agreement about the type of organizations able to demand the label "think tank" some think tank managers worry about what other structures could be included within the same category. Organizations that formerly would not have been considered as think tanks, at present often strive to obtain this label in order to have a complimentary credibility.[8] This trend shows the efficacy of the label in both public opinion and in policy world, as well as its utility for addressing international funds and philanthropic foundations.[9] Due to this more competitive situation of the "cacophony of advice and analysis", issues concerning power and influence in this sphere emerge.[10] According to Ulrich, the influence of EU think tanks on the EU policy-making process is gained from three interconnected sources: expertise-based authority, independence and legitimacy.[11] Think tanks are acknowledged as "independent centres for expert, scientific and authoritative advice" thanks to the academic diplomas and professional experience in university of think tank experts, giving credibility in policy debates and raising the authority of their research products.[12]

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[8] Andrew Denham, Mark Garnett, *British think-tanks and the climate of opinion*. London: UCL Press, 1998; Thomas Medvetz, "Think Tanks as an Emergent Field", *The social science research council,* 2008, http://www.ssrc.org/publications/view/A2A2BA10-B135-DE11-AFAC-001CC477EC70/, retrieved on June 22, 2016; Andrew Rich, op. cit.; Diane Stone, 2013, op. cit.

[9] Diane Stone, 2013, op. cit.

[10] Ibid, p. 68.

[11] Heidi Ullrich, "European Union Think Tanks: generating ideas, analysis and debate". In: Diane Stone and Andrew Denham (eds.), *Thinks tanks traditions. Policy Research and the Policy of Ideas*, Manchester: Manchester University Press, 2004, pp. 51-68.

[12] Diane Stone, 2013, op. cit., pp. 82-83.

Taking into account the rivalry between diverse knowledge providers for personnel and funding sources think tanks need to defend their "label" as research-based organizations emphasizing their distinguishing features.[13] However, in the conditions of the blurring of boundaries between think tanks and other structures performing the function of policy analysis, claiming their "organizational distinctiveness" has become less convincing.[14]

With a view to building their legitimacy in the opinion of policy-makers think tanks produce strategies of self-materialization and formulate manifold identities, thereby contributing to the delineation of "the boundary between the policy-relevant expert and the non-expert advocate". Being not only an organizational demonstration of this social boundary, but also arbitrators of it, think tanks elaborate tales, practices and standards with regard to their own roles between academic and policy worlds along with their assertion of independence and cognitive autonomy.[15]

The importance of self-conception and organizational identity consists in its capability to form and to be formed by "strategic choice and action". Because organizations inevitably operate through their employees, their opinions, sentiments and conduct mirror and become set into the organizational framework.[16]

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[13] Ibid.
[14] Boucher, 2004, p. 97 cited in Diane Stone, 2013, op. cit.
[15] Diane Stone, 2013, op. cit., p. 83.
[16] Blake E. Ashforth, Fred A. Mael, "Organizational Identity and Strategy as a Context for the Individual", *Advances in Strategic Management* 13 (1996), p. 20.

Using this perspective, the article looks at the issue of self-identification by think tank representatives in four European countries, analysing how their position towards the academic world is reflected in the building of their organizational identity and strategy.

This article is organized as follows. After reviewing the literature and describing the methods and the analytical framework of the study, I present how think tank representatives build their organizational identity on the perceived similarities and differences between their organizations and universities. The subsequent part shows how a blurring of the nature of a think tank itself and its staff contributes to its continuity as an organization. The paper concludes by discussing the embodiment of the think tank identity through its strategy involving formal and informal inter-institutional cooperation with universities.

Literature review

European think tanks have only recently begun to capture a more comprehensive attention by scholars. This is something unexpected taking into account that European think tanks are becoming more plentiful, more prevalent and more powerful[17] with more than 600 think tanks extended over 20 countries in Western Europe, many of

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[17] Bureau of European Policy Advisers (BEPA), "European Commission. European think tanks and the EU". Antonio Missiroli and Isabelle Ioannides (eds.), *Berlaymont Paper* 2 (2012); Heidi Ullrich, op. cit.

which were created long ago. The quantity of think tanks in the Brussels EU Quarter has risen sharply over the last ten years.[18]

Despite the increase in prominence and number of think tanks worldwide,[19] there is still disagreement over the precise definition of what a think tank is[20] which resulted in the elaboration of rival classifications of these institutions.[21]

Ulrich includes university-based EU research institutes, actively furthering EU policy programmes, in the framework of the wide definition of EU think tanks.[22] Nevertheless, Stone considers that the discrepancies between these structures are sufficient that a distinct categorization should be made.[23]

In order to distinguish think tanks from universities, some essential aspects are usually examined. Firstly, the personnel of think tanks should not teach students as do the majority of full-time academics.[24] Secondly, the spectrum of issues studied in think tanks is more concentrated on policy than research in universities which is often

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[18] Dieter Plehwe, "Paying the piper – think tanks and lobbying". In: Alliance for Lobbying Transparency and Ethics Regulation in the EU (ALTER-EU), *Bursting Brussels Bubble the EU: the battle to expose corporate lobbying at the heart of the EU*, Brussels, 2010, pp. 53-67.

[19] Diane Stone, "Introduction: think tanks, policy advice and governance". In: Diane Stone and Andrew Denham (eds.), *Think Tank Traditions: Policy Research and the Policy of Ideas*, Manchester: Manchester University Press, 2004b, pp. 1-16.

[20] Andrew Denham, Mark Garnett, op. cit.; Diane Stone, 2013, op. cit.

[21] Stephen Boucher, "Europe and its think tanks: a promise to be fulfilled", *Studies and Research* 35 (2004); James McGann, 2002, op. cit.; R. Kent Weaver, "The changing world of think tanks". *PS: Political Science and Politics*, 1989, pp. 563–578.

[22] Heidi Ulrich, op. cit.

[23] Diane Stone, 2004b, op. cit.

[24] Andrew Denham, Mark Garnett, op. cit.; Diane Stone, 2004b, op. cit.

motivated by arguments of a theoretical and methodological character only remotely connected to real policy difficulties.[25]

Weaver considers that research products of these two kinds of structures differ generally in content and form due to their distinct motives and channels of knowledge dissemination.[26] While universities have often been represented as being occupied with the unselfish aspiration to knowledge, think tanks are explicitly striving for policy influence.[27] Think tanks try to attract attention to their research from the corresponding policy-makers, looking for access to them in order to have action upon political decisions.[28] Unlike experts in think tanks, university researchers are less inclined to get in touch with policy-makers.[29] The usual publication channels for academics such as peer-reviewed journals and university publishing houses are commonly more involved in furthering disciplinary discussion than policy debates.[30]

These factors lead to a production of research products in think tanks which are more adapted for a wide use[31] than those from

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[25] Richard N. Haass, "Think tanks and U.S. foreign policy: a policy-maker's perspective", *U.S. foreign policy agenda. An Electronic Journal of the U.S. Department of State* 7: 3 (2002), pp. 5-9; Waltraut Ritter, "Are Think Tanks an Indicator for Societal Progress?" 3rd OECD Forum on Statistics, Knowledge and Policy. Session 2.2.d: The Role of Think Tanks, 2009, http://www.oecd.org/site/progresskorea/43596145.pdf, retrieved on June 22, 2016.

[26] R. Kent Weaver, art. cit.

[27] Diane Stone, "Think global, act local or think local, act global? Knowledge production in the global agora". *Reshaping Globalization: Multilateral Dialogues and New Policy Initiatives*, Budapest: Central European University Conference, 2001; Donald E. Abelson, Christine M. Carberry, art. cit.

[28] Andrew Rich, op. cit.

[29] R. Kent Weaver, art. cit.

[30] Andrew Rich, op. cit.

[31] Andrew Denham, Mark Garnett, op. cit.

universities. Their form also differs, such as books and brochures instead of scientific articles.[32]

In spite of this long-dated consideration of the think-tank expert and the academic public intellectual as two separate categories, the growing popularization by the media and confidence in the expertise of think tanks combine to uphold the concept of indistinctiveness between these two groups, which is common in both popular papers and academic literature on think tanks.[33]

The sociology of intellectuals regards think tanks as a more effective means of attracting attention for research in comparison with universities, as well as their researchers as possessing the same validity and soundness as academic intellectuals. At present, many think tanks continue to be connected to universities either directly (institutional affiliation to the universities) or indirectly (common dependence on private funding). Factors used to explain the growing interchangeability between academic scholars and think tank experts include the research inclination of many think tanks and participation in intellectual exchange with partners from governmental and nongovernmental sectors, as well as the structure and high level of their professional personnel.[34]

A complementary factor extending the lack of distinction between think tank experts and academic researchers is a frequent exchange of

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[32] R. Kent Weaver, art. cit.

[33] Barbara A. Misztal, "Public Intellectuals and Think Tanks: A Free Market in Ideas?" *International Journal of Politics, Culture and Society* 25 (2012), pp.127–141.

[34] Barbara A. Misztal, art. cit.

personnel between universities and think tanks.[35] This phenomenon of the "revolving door" between people from government, think-tanks, legal offices, academia or the media, became customary not only in the USA, but also in the UK.[36] There is also multitude of cases of simultaneous affiliation between universities and think tanks.[37]

The growing role and expansion of neoliberal economics is also considered as one of the factors which blur the boundaries between the policy expert and the academic scholar. Due to fiscal severity some universities turn into for-profit enterprises, concentrating more on their economic effectiveness, budgets and on nurturing private contributions. In these new conditions of knowledge production the nature of research is transformed, undermining the research priorities and independence.[38] Moreover, the blurring of boundaries between the think-tank expert and the academic scholar is also explained by internal conflicts within their corresponding roles.[39]

According to a "three against one" model[40] policy analysts use particularly four aspects of their activity to describe their own mission: the academic scholar, the policy assistant, the entrepreneur, and the media specialist. Nevertheless, what may initially seem quadrilateral striving for academic, political, entrepreneurial, and

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[35] Ibid.
[36] Diane Stone, 2004b, op. cit.
[37] Barbara A. Misztal, art. cit.
[38] Ibid.
[39] Thomas Medvetz, "'Public Policy is Like Having a Vaudeville Act': Languages of Duty and Difference among Think Tank-Affiliated Policy Experts", *Qual Sociol* 33 (2010), pp. 549–562; Thomas Medvetz, *Think tanks in America*. Chicago: University of Chicago Press, 2012a.
[40] Ibid.

media impact, appears to have a dual frame. The objectives related to three of the four roles: political influence, financing, and media visibility could be simpler to agree with each other than they can be adjusted with the aspiration of academic devotion. Political influence is frequently favourable to the publicity of a policy analyst, which may beneficially contribute to his or her ability to raise funds. The purpose of academic rigour, conversely, more frequently requires keeping some distance from economic considerations, independence from political supervision, and comparative apathy towards media visibility. Therefore, overlaying the quadrangular frame of the policy analyst's mission could be presented as a principal contrast between intellectual credibility and temporary authority. Obviously, a majority of think tank members cannot really meet both requirements; however, they try to keep a delicate balance between both of them. Due to the "three against one" model, the position of think tank member toward the academic field is inclined to be dual.[41]

Thus, owing to the extent of coincidence of think tanks and other institutions in the society, the determination of the clear boundaries between them is problematic.[42] According to Rich, the outlining of incontestable differences between think tanks and other types of organizations is neither completely possible nor desired due to the often formless and intersecting character of organizational boundaries.[43] Medvetz argues that an attempt to determine the

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[41] Thomas Medvetz, 2010, art. cit.
[42] Diane Stone, 2004b, op. cit.
[43] Andrew Rich, op. cit.

boundaries between think tanks and other organizations only provokes a perpetual discussion concerning a question of which institutions it is possible to consider as genuine think tanks.[44] Hart, recognizing the fruitlessness of establishing external boundaries of think tanks, believes that it would be more effective to apply a very wide definition: producers of policy-oriented ideas; and to distinguish a certain number of separate types in the general totality of institutions enveloping this.[45]

However, the concept of boundaries is one of the most fruitful conceptual tools in social sciences, because concentrating on it may contribute to producing new theoretical understandings about principal relational processes existing across a broad spectrum of organizations, such as boundary-work and boundary crossing. Social scientists have widely used the concept of boundaries in fields such as identity formation, as well as the social construction of occupations, knowledge and science. A principal topic of these scientific works is the use of symbolic resources for establishment, preservation or challenging institutionalized disparities establishing differentiations between "'us' and 'them', the in or out".[46] These studies have concentrated on true effects of so called 'symbolic

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[44] Thomas Medvetz, 2008, art. cit.
[45] Paul 't Hart, "Think Tank Transformations: From 'Knowledge for Policy' to transnational idea brokerage", *GovNet conference*, Canberra, 28-30 November 2006.
[46] Michele Lamont, Virag Molnar, "The Study of Boundaries in the Social Sciences", *Annual Review of Sociology* 28 (2002), pp. 167-195.

boundaries'[47] on creating and upholding respective social boundaries.[48]

Heracleous[49] emphasizes the expediency of further empirical research on boundaries taking into account perceptions of representatives of the "market" themselves concerning organizations which could be considered inside and outside (or at the borders) of a particular field (think tank activity in our case), which criteria they use for this differentiation, as well as which shifting models of the individual and organizational positions, roles or boundaries can exist.

In subsequent parts of this article I will elaborate on positions which think tank representatives employ towards universities in the building of their organizational identity and strategy, as a type of organizations which is one of the most frequent reference points used when describing think tanks by not only scholars but by think tank representatives themselves.

Methods and analytical framework

This study is based on the analysis of materials from think tank websites, such as mission statements and organizational histories, as well as on the data obtained from 33 in-depth, semi-structured interviews with managers and staff members of the stand-alone and university-based think tanks and related organizations in Brussels, France, Slovenia and the United Kingdom conducted between June

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[47] Lamont, 2001 cited in Loizos Heracleous, "Boundaries in the study of organization", *Human Relations* 57: 1 (2004), pp. 95-103.
[48] Loizos Heracleous, art. cit., p. 95.
[49] Ibid.

and November 2014.[50] Interviews lasting from 45 to 90 minutes each were conducted in English or French. Although the analysis takes into account all the conducted interviews, this paper directly employs data taken from 11 cases, relevant to this study. Their characteristics are given below.

The think tank representatives studied include the head of a university-based research centre, the head of a think tank's branch, three research directors, two heads of departments dealing with education issues, the director of programme, the head of communications and two senior research fellows. Two of the eleven think tank representatives are women. Four people have a degree in political science, other disciplines are law, economics, sociology, sociology of education, European affairs and international relations, as well as security studies. The majority of respondents have doctoral degree (6), three think tank representatives have Master's degree and two others have Bachelor's degree. Concerning experience in academia one interviewee was previously an Assistant in University Department, seven interviewed persons were lecturers in different universities, and one served in secondary education during the time of interviews. Eight interviewed persons have political experience in various roles, ranging from former Minister to party activist, five of

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[50] These interviews represent the first stage of data collection in the framework of the author's doctoral research project "Think tanks and academic entrepreneurs in the knowledge production". This study respects the principles of research ethics (Christel Hopf, "Research Ethics and Qualitative Research". In: Uwe Flick, Ernst von Kardoff, Ines Steinke (eds.), *A companion to qualitative research*. London: Sage, 2004, pp.334-339), such as voluntary participation, anonymity and confidentiality of research participants.

them were involved in advisory role on the national or European level, and one was engaged in European and international representation. Five interviewed persons are based in London, two in Paris, two in Brussels and two in Ljubljana. They represent three think tanks on European affairs and one think tank's branch in Brussels, one having Europe and three ones having education as one of their research areas, two university-based think tanks (one specialized on higher education).

As an analytical framework for analysis of self-identification of think tank members I use the approach elaborated by Medvetz[51] in combination with the concept of the organizational identity and the concept of boundaries.

Thomas Medvetz's approach is based on the theory of Pierre Bourdieu and its recent developments by Gil Eyal and Loic Wacquant. In order to explain the position of the equivocal structures as think tanks, Medvetz proposes formulating their conceptualization on the basis of their structural blurriness. Think tanks are structures divided by the counteractive logics of academic, political, economic and media spheres. A prerequisite for a think tank's existence as an organization consists in an everlasting counterpoising process of alienation and joining. While the first part of this counterpoising process distinguishes the think tank from every of its "patron" fields,

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[51] Thomas Medvetz, 2010, art. cit.; Thomas Medvetz, "Murky power: ''think tanks'' as boundary organizations", *Rethinking Power in Organizations, Institutions, and Markets. Research in the Sociology of Organizations* 34 (2012b), pp. 113–133; Thomas Medvetz, 2012a, op. cit.

the second part restores its dependence on the same fields for the physical and symbolic advantages granted by them. However, a think tank cannot just turn into a university, an advocacy group, a company, or a media organization, because this would void its distinctiveness as a think tank and expose itself to the particular criteria of belonging to those worlds. Consequently to be acknowledged as a think tank, an organization must accumulate a composite blend of different forms of capital in Bourdieu's terms from various worlds: scientific authority and academic degrees, ability in particular political forms of rhetoric, funding and fundraising skills, and access to the mass media. A victory in this "game" is gained not only as result of accumulating large amounts of capital, but by creating a correct combination.[52]

Think tanks appear to prosper not as members of a specific field but in the "spaces between fields".[53] This concept is regarded helpful by Medvetz for apprehension of the particularity of think tanks as organizations consisting in their ability to assert their role as a mediator between fields. Medvetz portrays think tanks as "members of an interstitial field" or a "semi-structured network of organizations" that intersects, connects and partly coincides with the more deep-rooted academic, political, business and media fields.[54]

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[52] Thomas Medvetz, 2012a, op. cit., p. 24.
[53] Gil Eyal, "Spaces between Fields". In: Philip S. Gorski (ed.), *Pierre Bourdieu and Historical Analysis.* Durham: Duke University Press, 2013, pp.158-182.
[54] Thomas Medvetz, 2012a, op. cit., p. 25.

An organizational identity represents relatively permanent and self-defining essential features which distinguishes an organization from other organizations.[55] Albert and Whetten[56] determined three criteria of an organizational identity: centrality, distinctiveness and continuity. Organizational identity relates to a collection of the central or essential characteristics that signify the kernel of the organization. A central character of an organization's identity is greatly related to its mission. However, as there are many methods of accomplishing a mission in question, there is broad freedom to render concrete opinions, values and norms to describe the organization.[57]

The concept of distinctiveness relates to comparison with other structures. Interorganizational comparisons give the possibility of forming and formulating unique identity. An organization in question is compared to similar organizations generally with similar missions, because this allows making a careful differentiation and thereby more comprehensively evaluating comparative dissimilarities. Therefore, while centrality outlines the essential features of the organization, distinctiveness outlines the boundaries of the organization.[58]

The concept of boundaries helps to comprehend the differentiation of professions from one another. The concept of "professions" initially appeared as a delimitation issue, i.e., an issue of boundaries between different activities. Individuals can distinguish themselves

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[55] Blake E. Ashforth, Fred A. Mael, art. cit.
[56] Albert and Whetten, 1985, cited in Blake E. Ashforth, Fred A. Mael, art. cit.
[57] Blake E. Ashforth, Fred A. Mael, art. cit.
[58] Ibid.

from others by using criteria of community and a feeling of common affiliation with their subgroup. For an appearance of objectified joint identity this process of self-identification should be acknowledged by strangers. The strategies employed by professionals to define and institutionalize the boundaries of the profession against strangers form the entity of the "professionalization project".[59]

The continuity criterion of identity signifies a fundamental property, that the organization possesses an adequate importance, assistance and capacity to justify the confidence of the people.[60]

Organizational identities are not formed haphazardly. The quest for organization's identity is driven by the requirements and predilections of members of the organization, particularly the owners and chief executives. The identity represents an all-sufficient inwardly compatible system of central beliefs, values and norms that inspire and justify the activity of the organization. Moreover, an organizational identity serves as a source for strategic planning. Organizational identity deals with its defining characteristics while strategy deals with the ways for its implementation. Even if identity does not govern strategy, self-conception and strategic choice are mutually connected. An organization may realize and portray an identity through strategy and may deduce, change, or assert an identity from strategy. Strategies are used for illustration of identities

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[59] Michele Lamont, Virag Molnar, art. cit., pp. 177-178.
[60] Blake E. Ashforth, Fred A. Mael, art. cit.

and contribute to their "social validation", whereas identities are used for legitimating strategic choices.[61]

This study identifies four positions of think tanks towards academic world, perceived by think tank representatives as contributing to the building of think tank' organizational identity and strategy:

"Crossing boundaries" between think tanks and universities is based on the affirming of similarities between these two types of institutions manifested in appointment of academic researchers (or people with PhD degrees), application of similar research standards and providing training services (i.e. playing the role of the academic scholar). We can see here the central character of think tank identity, because their mission statements frequently mention implementation of academic research and education of the general public.

"Distinctiveness of think tanks" is based on the emphasizing positive differences of think tanks in comparison to universities such as media visibility, policy relevance and entrepreneurship skills which become apparent in the accomplishment of the functions of media specialist, policy aid and entrepreneur, thereby insisting on their distinctiveness as organizations.

"Blurring boundaries" encompasses the blurring character of boundaries within a think tank itself, dealing with a hybrid nature of this type of organization and its staff, which tries to reconcile its different roles in one strategy. The "bridge metaphor" can be seen as a continuity criterion of think tank identity, because it is grounded in

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[61] Ibid, p.34.

the historical examples of think tanks as mediators between the academic and policy worlds.

   "Shifting boundaries" consists in encouraging formal and informal inter-institutional cooperation between think tanks and universities, underscoring the complementary character of their activity instead of the competitive one. This position could be seen as a strategy illustrating and realizing the organizational identity of think tanks.

   In the following sections I examine these positions in detail.

Crossing boundaries between think tanks and universities: academic excellence, intellectual independence and degree-granting capacity

   Policy analysts build their hybrid self-representation symbolically on the basis of producing research. Usually this position starts with an assertion of similarity with universities.[62] Euro-think tanks aim at encouraging the production of concepts mainly by means of academic research. In order to create added value, heads of think tanks commonly strive to engage researchers with good academic qualifications or researchers blending academic excellence with rich policy-making experience.[63]

   Think tank representatives usually mention the university researchers in describing their own activity. Indeed, many think tanks call their expert staff members "scholars" and sometimes think tank

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[62] Thomas Medvetz, 2010, art. cit.
[63] Stephen Boucher, op. cit.

experts occupy positions with university style titles, as "research fellows",[64] regardless of their diplomas and academic certificates,[65] and affirm that their essential role is to inform and educate the general public.[66] In this regard, the policy analyst aspires to elaborate knowledge based on thorough empirical findings so it can be published in books and articles. In this model the think tank researcher should be a person of keen intellect, possessing strong analytical skills, advanced academic background, and independence from one-sided view, as well as from political and economic engagements.[67]

This academic style generally spreads from the individual to the institution: if the policy expert is similar to a scholar, in this case the think tank is represented as a "university without students".[68] It is the first category of classification of think tanks according to Weaver,[69] which portrays them as big organizations with significant number of employees, composed of researchers with PhD degrees, funded by philanthropic foundations and producing lengthy studies, corresponding to academic standards of neutrality and rigor.[70]

One of the American think tanks corresponding to this model is the Brookings Institution. The tradition at Brookings is described as a situation in a university when there are no students and the academics

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[64] Andrew Denham, Mark Garnett, op. cit.
[65] Thomas Medvetz, 2012a, op. cit.
[66] Andrew Rich, op. cit.
[67] Thomas Medvetz, 2010, art. cit.
[68] Ibid.
[69] R. Kent Weaver, art. cit.
[70] Andrew Denham, Mark Garnett, op. cit.; Andrew Rich, Kent Weaver, op. cit.

are attempting furiously to make up for research activity. Due to the great abyss in funding between American and European think tanks, it is difficult to find a similar organization in Europe,[71] at the same time many of the earlier generations of European think tanks considered this model as "ideal",[72] this tendency is still displayed up to now.

This idea is also reflected in think tank missions. For example, one of the goals of the Brussels-based think tank, Centre for European Policy Studies (CEPS), is "[t]o achieve high standards of academic excellence and maintain unqualified independence".[73] The purpose of the Institute for Public Policy Research (IPPR), a British think tank "is to conduct and promote research into, and the education of the public in, the economic, social and political sciences […]".[74]

Other think tanks clearly liken themselves to universities or portray their knowledge production as an academic one. Although education is not a central occupation of the think tanks, some of them initiate units and departments providing trainings and educational seminars, as well as organise scientific events. Finally, a few think tanks are capable of granting degrees,[75] establishing joint Master and doctoral

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[71] BEPA, op. cit., p. 13.
[72] Andrew Denham, Mark Garnett, op. cit.
[73] CEPS, 2016. About CEPS, http://www.ceps.eu/content/about-ceps, retrieved on June 22, 2016.
[74] IPPR, 2016. About IPPR. http://www.ippr.org/about/, retrieved on June 22, 2016.
[75] Thomas Medvetz, 2010, art. cit.; Diane Stone, 2013, op. cit.

programmes. For example, the Institut für Europäische Politik (IEP) in Germany offers an Online Master Program.[76]

Think tank experts make comparisons with the academic sphere in personal interviews when they speak about knowledge production, typical research projects or their staff. For example, think tank representatives emphasize the proximity of their activity with university departments, manifesting in the similar ways of conducting research projects, in particular it concerns the long-term projects funded by the European Commission.[77]

The research director of one British think tank indirectly assimilate think tanks with academic institutions affirming their core values, which guide their activities, such as their independence: "we do not have links with political parties or funding from political parties" and enlightenment function of his organization: "our purpose is to bring educational benefit" which "involves [them] in conducting research, writing reports, holding events".[78]

The think tank research directors who previously worked or simultaneously work in academia underscore the similar research practices and standards in think tanks and universities, such as "rigorous methodology, research design, use of qualitative and quantitative data and techniques". They regard the level of these requirements as an asset of the academic world, which they try to

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[76] IEP, 2016. Online Master EUCAIS. http://iep-berlin.de/en/training/study-programmes/the-european-union-and-central-asia-in-the-international-system-eucais/, retrieved on June 22, 2016.
[77] Interviews, London, September 2014; Brussels, October 2014.
[78] Interview, London, September 2014.

preserve in a think tank. From this perspective good academic training of staff members is seen as very useful.[79]

Despite the affirmed kinship with universities with regard to their research function, policy analysts still direct considerable criticism at university scholars. One of the elements of this criticism is meaningless or ritual demonstration of methodological ability in academic social science.[80] According to think tank members, in order to ensure convincingness of its research publication, a university "goes through so many rigorous checks, processes and procedures". They claim that the research in a think tank is not less robust, but they "move much more quickly".[81]

The second element of the critique of scholars by policy analysts is that the discursive turn in the human and social sciences fosters exorbitant abstraction and relativistic reflection.[82] In order to distinguish themselves, think tank representatives emphasize that they do not do "abstract" research or "research for its own sake" as distinct from academic writing which is "very remote from practice".[83]

Recognizing the high quality of research produced in universities, think tank representatives, however, consider that university findings are remotely connected to real problems, in contrast to the research products of think tanks, which are from their point of view are also

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[79] Interviews, Paris, June 2014; London, September 2014.
[80] Thomas Medvetz, 2010, art. cit.
[81] Interview, London, September 2014.
[82] Thomas Medvetz, 2010, art. cit.
[83] Interviews, Brussels, October 2014; London, September 2014.

evidence-based, but propose concrete solutions in order to influence policy-making and political process.

Nevertheless, academic researchers are not always interested in the type of ideas produced by think tanks. In spite of the recognition of a certain utility of the knowledge created by think tanks for specific purposes, academic scholars consider that the ideological orientation of think tanks as well as their inclination to applied instead of fundamental research, and their concern mostly with problems of public policy instead of scientific, technical or cultural questions, if they do not directly affect policy, does not allow them to make a significant knowledge contribution.[84] Although think tank experts take part in the search for knowledge, but as distinct from academic scholars, their work is generally arranged around particular practical projects and publicized in a form which is comprehensible to the general public and policy makers. The data produced by think tanks could be collected by scientific methods but is intrinsically guided by a pragmatic political agenda and their reports can be comparatively partial.[85]

Many policy analysts, certainly, are well aware of the reproach from their opposite numbers that they are unsuccessful scholars and that their research is insufficiently rigorous, and that their criticism of academia originates more from self-protection than from a fair

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[84] Posner, 2001, quoted in Barbara A. Misztal, art. cit.
[85] Charles F. Gattone, *The social scientist as public intellectual: Critical reflections in a changing world*. Lanham, Md.: Rowman & Littlefield Publishers, Inc, 2006.

assessment of academic research.[86] Think tank representatives even admit not always fulfilling sufficiently certain academic requirements in their own work.[87]

In answer to the opposing critique, some think tank representatives acknowledge the positive sides of previous experience in academic institutions, such as organization competencies, as well as network relations with experts, which could be mobilized in think tank activity, however, they indicate the additional skills they should have develop for their work at the think tank, such as editorial and dissemination skills, as well as foreign languages skills.[88]

We can see here, that when describing their central mission of conducting research and policy analysis, think tank representatives actively portray their resemblance with universities be it their research practices or staff. In response to the possible critics from the part of academics concerning their insufficient rigor, they indicate their advantages over them such as faster operation, practical orientation of their research, as well as additional skills of their staff. Moreover, policy experts understate their similarity to academics when talking about other sides of their activity, trying to emphasize their distinctiveness.

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[86] Thomas Medvetz, 2010, art. cit.
[87] Interview, Paris, June 2014.
[88] Interview, Paris, June 2014.

Distinctiveness of think tanks in comparison to universities: policy relevance, entrepreneurship and media presence

Policy-relevance

A second aspect of their professional role represents the policy experts as political assistants who should be acquainted with the principles, procedures and norms existing in national and European politics, with the functioning of legislative and executive authorities and with the wording of policy discussions. Therefore, the important features of a policy expert comprise the capacities to foresee burning policy issues before their emergence and produce helpful papers in sufficient time to respond to these developments.[89] In this regard, think tanks are looking for people who have both good understanding of policy and political environment but also have some feeling of politics.[90] Therefore, previous political experience is regarded as a useful advantage for senior positions in a think tank, even if it is not a formal requirement, taken into account that their main target audience is policy-makers.[91]

On this point, their academic degrees seem to be less important. In difference from the universities, PhD degree is not a prerequisite for working in the majority of think tanks, although their employees sometimes do have this qualification. A formal requirement is to be

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[89] Thomas Medvetz, 2010, art. cit.; Diane Stone, 2013, op. cit.
[90] Interviews, London, September 2014.
[91] Interviews, Paris, June 2014; London, September 2014.

educated to Master's level, "bringing high level research skills"[92]. However, among our respondents there are Research Director and Head of Department with a Bachelor's degree.

Furthermore, some think tank representatives highlight their proximity to policy-making in terms of the temporality of policy research[93], even as it moves them from the extended periods of academic research. In order to be efficient think tanks should understand the worth of time. Thus, one of the often emphasized disparities between universities and think tanks is that academic scholars do not feel time frame.[94] Even claiming to maintain such academic standards, as rigor and methodological robustness, think tank representatives stress the "huge difference of the time" in these types of activities: "the typical research project is 5-7 years in length in the university, in a think tank it could be 5-7 months".[95]

This difference in the duration of the projects is related to another element of distinction portrayed between academic research and policy analysis, consisting in their different wordings and target audiences. Many policy experts accentuate that their research products are more relevant for policy-makers. The criterion for a sound policy brief consists in its expediency for the policymaking process and less in its academic rigor.[96] The affirmation of the abilities of think-tank experts could be accompanied by the opinion

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[92] Interview, London, September 2014.
[93] Thomas Medvetz, 2010, art. cit.
[94] Rich, 2004, op. cit.
[95] Interview, London, September 2014.
[96] Thomas Medvetz, 2010, art. cit.

underlining the obstacles encountered by the academic scholars to possess an expertise in the political issues, which brings them to providing idealist and inapplicable policy recommendations.[97]

For instance, a think tank research director and former political science lecturer explains the essential difference of a policy brief in comparison to an academic article by its operational character and effort to produce effective proposals which can constitute a tool of assistance for public decision-making and of enlightenment: "The objectives of public action and this utility are not always in the centre of academic work".[98]

A policy analyst must speak the language of political polemics. The fault to avoid is to be "too academic".[99] Think tank report should contain "crucial" policy recommendations: "It is not just an academic paper, a clear policy".[100]

In line with this role, a successful policy expert positions himself as an efficient actor in the policymaking process. Improving access to political networks and remaining in the centre of everyday policy situations are necessities for the policy expert.[101]

A representative of Brussels-based think tank explains the need of this ability by the applied character of their research, i.e. their aim to provide policy recommendations for decision-makers. Therefore, their researchers need to be able to interact effectively with policy-

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[97] Posner, 2001 and Galbraith, 1972, cited in Barbara A. Misztal, art. cit.
[98] Interview, Paris, June 2014 (translated from French by the author).
[99] Thomas Medvetz, 2010, art. cit.
[100] Interview, London, September 2014.
[101] Thomas Medvetz, 2010, art. cit.

makers on almost-daily basis, not only by sending publications to them but also by meeting them and by engaging in debates with them.[102]

According to a research director of a British think tank, a younger researcher in his think tank would be dealing with people of very senior level in European institutions, therefore they should have a good degree of confidence but also comfortability to get over with other people.[103]

Thus, according to Medvetz, inability to produce reports with evident importance for political polemics can isolate a policy expert and undermine his or her capacity to captivate attention of journalists and to raise funds[104]. In this regard, think tank representatives try to keep away from the academic world, emphasizing the operational character and timeliness of their recommendations, their knowledge of political environment and political access.

Entrepreneurship skills

A third aspect of their professional role represents the policy expert as an entrepreneur in a "marketplace of ideas". The essential purpose is to sell think tank research products to three kinds of consumers: lawmakers, including turning think tank ideas into policy; donors, funding think tank activity; and media, referring to think tank studies and their authors. In line with this role, an effective policy expert should have the characteristics of a successful marketer: "human

[102] Interview, Brussels, October 2014.
[103] Interview, London, September 2014.
[104] Thomas Medvetz, 2010, art. cit.

skills", an inclination for self-promotion, and ability for re-packaging ideas to increase their attraction.[105] Thus, think tanks are interested in broad skills because think tank experts "need not only to be good at research" but also "need to be good at gaining funding".[106]

Policy experts plainly mention the ideas of salesmanship and trading bargains to describe their organization and the characteristics indispensable to stand out in it.[107] The concept of salesmanship has been shaped in the broadly used phrase "policy entrepreneur" by the early 1980s[108].

According to a British think tank representative, the core skill, which is not similar to those in academic institutions, they spend a lot of their time focusing on "raising money" and preparing grant applications. Assuming that fundraising is one of the important skills in universities as well, this interviewee notes their primary focus on research councils at domestic and EU level, whereas think tanks can search for support from private sector organizations and charity foundations.[109]

The commercial role generally spreads from the individual to the institution: like enterprises competing for market share, think tanks rival with one another in an overflowing "marketplace of ideas".[110]

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[105] Thomas Medvetz, 2010, art. cit.
[106] Interview, London, September 2014.
[107] Thomas Medvetz, 2010, art. cit.
[108] John W. Kingdon, James A. Thurber, *Agendas, alternatives, and public policies*. New York: Longman classics in political science, 2003.
[109] Interview, London, September 2014.
[110] Thomas Medvetz, 2010, art. cit.

A representative of a Brussels-based think tank relates this skill to the necessity to maintain their independence, which means for them "to look for money from as many different actors as possible". That is why, one of the skills of people working in a think tank is considered being able to identify projects that they can apply for, to look for tenders they can compete in and to prepare application materials.[111]

Recognizing that fact that fundraising skills are necessary for both university and think tank researchers, think tank representatives point to different funding sources, as well as different motivation, because diversification of sponsors is seen as a guarantee for think tank independence.

Media presence

A fourth role of think tank members, which is more recent and less prominent than the first three roles, underscores the similarity between policy experts and media specialists.[112] For a head of the communications of a Brussels-based think tank, one of the important differences between think tanks and universities represents a "public relations dimension" of this job, which is becoming typical in academia as well "it is not that university researchers are locked in their rooms in the university", but from his point of you university researchers are probably not engaged in this activity as much as some of his colleagues.[113]

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[111] Interview, Brussels, October 2014.
[112] Thomas Medvetz, 2010, art. cit.
[113] Interview, Brussels, October 2014.

Bringing a lot of the same skills, but looking for different target audiences consequently lead to the application of different communication tools in think tanks which allowing them to have a bigger public impact than that of university researchers. Think tanks try to privilege media presence as one of the main dissemination channels of their research findings instead of publishing in peer-reviewed journals as for academic scholars. Think tanks elaborate a media-communication strategy, prepare press releases in order to have media coverage (broadcast and print) of their research, as well as establish their own journals.[114]

In this regard, a policy expert should demonstrate a skill for writing in clear language and be ready to create brief, concise studies like press releases or newspaper articles. In addition to writing skills, ease and rhetoric on television and Internet are highly regarded advantages for think tank members as well.[115]

The application of a media role mirrors one of the main trends among think tanks since the 1970s. Formerly being bashful, many think tanks now hire communication specialists and maintain media outreach departments.[116] It is a common practice for think tank papers to be cited in the authoritative press (Le Monde Diplomatique, The Economist) or for think tank representatives to participate in a discussion of questions of vital importance in news programmes. Adapting quickly to the possibilities given by technological progress

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[114] Interviews, London, September 2014.
[115] Thomas Medvetz, 2010, art. cit.
[116] R. Kent Weaver, art. cit.

in telecommunications, the most think tanks elaborate refined websites and social media strategies.[117]

A website is a key promotional "vehicle" for think tanks, through which they publicize their research. In order to attract audience to their work they increasingly use digital social media, infographics and video. An ability to condense complex work in to more "digestible chunks" is seen as particularly valuable: they turn a 50 pages report into a little video or an interesting graphics, which draws people to reading the whole of their work.[118]

Most of our respondents have personal accounts in different social media platforms (Twitter, Facebook and LinkedIn), as well as participating frequently in debates and giving interviews on different national television channels and contributing to a wide spectrum of national and European newspapers, journals and websites.

Well-timed research, the political access, perceived credibility and active promotion of their research products represent factors extending the influence of the knowledge produced by think-tanks. All these characteristics are considered as contributing to a higher policy relevance of think tanks in comparison to universities.[119]

According to the literature on social identity, there are some essential aspects related to the organizational distinctiveness. Organizations try to contrast themselves with direct opponents which represent a possible danger due to their obvious likeness. In order to

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[117] Diane Stone, 2013, op. cit.
[118] Interviews, London, September 2014.
[119] Rich, 2004, op. cit.

raise the level of attractiveness of their identity, the groups and organizations try to employ positive differences in comparison with other structures[120]. We have seen this when think tank representatives compared their organizations with universities. The nonrandom choice of criteria for comparison is aimed to increase the dissimilarities and to reduce the resemblances. A group can also depreciate the significance of those aspects which everyone knows are weak at this group.[121] In our case, such characteristics of think tanks as policy relevance, entrepreneurial skills and media presence are highly praised, whereas the role of methodical rigor and theoretical aspect of the knowledge production are underestimated.

At first glance, this self-conception seems to come to a thorough tactic of distinction. In order to prove that a think tank does not constitute a university, it should just outline its dissimilarities from these structures. Nevertheless, on closer examination it is possible to see, that every apparent action of dissociation is based on a conformable strategy of joining. Even confronting think tanks and universities, think tank representatives indicate similarities between them (similar practices and methods). Therefore, the interrelation between a think tank and a university could be represented not as a complete distinction, but as a controlled similarity.[122]

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[120] Blake E. Ashforth, Fred A. Mael, art. cit.
[121] Ibid.
[122] Thomas Medvetz, 2012a, op. cit.

Blurring boundaries within a think tank: think tanks as mediators between fields

According to Medvetz, the separation of roles on which policy analysts build their self-perceptions is a useful but possibly delusory analytical method. This is because not many think tank representatives are satisfied to choose only one of the above mentioned roles. Instead, they partake in a professional tradition based on the purpose of learning and playing all four[123].

The significance of blending incompatible modes is an omnipresent topic in the speech of the majority of policy analysts. The think tank representatives use different bright metaphors in order to portray the liminal feeling which can arise because of the complexity of playing manifold roles and adjusting oneself to different social fields:

"J'ai une double casquette".[124]

"I wear two hats".[125]

"Je suis un couteau-suisse".[126]

According to many think tank members the necessity to be many-sided in order to work in a think tank, is represented as a difference from an academic scholar. However, taking into account a small number of people combining all these skills, almost all of our respondents speak about diversity and mixture of their staff in

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[123] Thomas Medvetz, 2010, art. cit.

[124] French analogue of the expression "I wear two hats" (to have a dual responsibility) from Interview, Paris, June 2014 (translated from French by the author).

[125] Interview, London, September 2014.

[126] "I am a Swiss army knife" from Interview, Brussels, October 2014 (translated from French by the author).

different senses as one of the main criteria of recruitment in order to multiply different forms of expertise.

Taken into account their asymmetrical structure of engagement with the four professional roles, and the internal dispute related to it, the question arises as to why policy analysts do not abandon the academic role and not comprise just the political, entrepreneurial, and media ones. The claim of an academic role gives notice of being set apart from political and economic pressures, supplies policy analysts with a necessary source of credibility, as well as represents a symbolic distinction from lobby and advocacy groups[127]. For example, research director of a British think tank, acknowledges that the "depth and length" of research in think tanks is not of the same level as in academia, however, it is more significant than that in campaign organizations.[128]

Thus, whereas the academic constituent of the policy analyst's mission may be hard to adjust with the other roles, it is nevertheless crucial to the overall strategy.[129]

The use of a language of academic production by policy experts is not unexpected. Although the concept of the interchangeability between think tank experts and academic scholars is related to the actual point in the development of think tanks, its explanation is founded on historical grounds. The earliest think tanks were created

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[127] Thomas Medvetz, 2010, art. cit.
[128] Interview, London, September 2014.
[129] Thomas Medvetz, 2010, art. cit.

with the definite objective of bridging the division between academic and political fields, between the thoughts and practical application.[130]

According to one general opinion of the public role of think tanks, they serve as a "conveyor belt" between the field of knowledge production and the field of policy making. Another frequent metaphor portrays think tanks as "bridges"[131]. According to the definition of the United Nations Development Programme (UNDP) think tanks are described as a "bridge between knowledge and power".[132] The UNDP definition captures the belief that think tanks are an interlocutor between knowledge and power, science and the state. The discourse of "bridging", "linking" or "connecting" the policy and research worlds have an effect on the websites, mission statements and publications of think tanks.[133]

That is why think tank representatives emphasize the intermediate character of their institution between academic and political fields when they try to define it. According to a research director of a French think tank, an idea of a think tank consists in a mixture between academic and political logics:

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[130] Richard N. Haass, art. cit.; Thomas Medvetz, 2010, art. cit.; Waltraut Ritter, op. cit.

[131] Diane Stone, 2013, op. cit.

[132] James G. McGann, "Think Tanks: The Global, Regional and National Dimensions", *Think Tanks in Policy Making – Do They Matter? Briefing Paper Special Issue*. Shanghai: Friedrich-Ebert-Stiftung Shanghai Office, 2011, p. 8; Rudolf Traub-Merz, "Do We Need More and More Think Tanks?" *Think Tanks in Policy Making – Do They Matter? Briefing Paper Special Issue*, Shanghai: Friedrich-Ebert-Stiftung Shanghai Office, 2011, p. 4.

[133] Diane Stone, 2013, op. cit., p. 77.

This is a structure in fact which is half-way, between research centre in academic sense of the term and say almost cabinet. It is a structure, which could approximate to a research centre, but which adds to requirements of academic centre other requirements in terms of the effort of operational proposal, in terms of more important dissemination of produced innovation beyond only one academic circle and indeed an objective in terms of influence, that is the dissemination and impact beyond the impact of produced ideas […]".[134]

A research director of a British think tank sees one of the roles of his organization in its situation between an academia and pure government politics trying to improve understanding between these different worlds and ensuring translation of the research into political change.[135]

This vision relies on ideas of science and politics as two substantially different fields of human activity. Representation of think tanks as a "bridge" leads to bringing on a concept of these structures as disinterested publicly driven mediators between the detached scientific and political worlds. The boundaries between the two fields remain unaltered but are connected by think tank bridges where think tanks also take part in both protecting and "mediating the boundaries". The bridge metaphor means that think tanks editing or

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[134] Interview, Paris, June 2014 (translated from French by the author).
[135] Interview, London, September 2014.

recycling knowledge move one-way from fundamental to applied science and from scientists to informed decision-makers.[136]

The metaphor of the "bridge", as well as the concept of distinct boundaries between scientific and political worlds has been called in question.[137] Think tanks do not represent knowledge organizations located out of or over decision-making processes, transferring research from their scholarly autonomous situation into the world of politics. On the contrary, many think tanks assist in supplying the conceptual wording and the empirical illustrations then serving the commonly used postulates for decision-makers. Thus, research and policy are interconnected in the activity of decoding, explaining and reformulating socio-economic actuality. Rather than to be positioned between knowledge and power, think tanks form the "knowledge-power nexus".[138]

Nevertheless, what differentiates think tanks from other structures it is not the simple phenomenon of blurriness, it is rather a special "brand of blurriness" demonstrated by think tanks that allows comprehending their identity.[139] Organizations are inclined to tell tales about their identity, about their history and their future. A story about identity "allows the organization to draw coherence from its past and establish direction for the future".[140] The "bridge" metaphor plays the role of the continuity criterion of the organizational identity

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[136] Diane Stone, 2013, op. cit., p. 79.
[137] Ladi, 2011 and Halffman and Hoppe, 2004 cited in Diane Stone, 2013, op. cit.
[138] Diane Stone, 2013, op. cit.
[139] Thomas Medvetz, 2012a, op. cit., p.16.
[140] Kimberly, 1987, p. 233 quoted in Blake E. Ashforth, Fred A. Mael, art. cit.

of many think tanks which is founded on the historical past of their predecessors, as well as determines their future existence as organizations.

At the same time, social validation is essential in upholding of an organizational identity. Taking into account that the legitimacy of an organization is recognized if its goals and methods seem to comply with social norms, values and expectations, rejection of such external validation will complicate the attraction of necessary resources by the organization.[141] The bridge metaphor has more strength in public imagination than the knowledge-power nexus. This description of think tanks persists "because it serves a purpose in policy discourses". Policy makers and donors require independent, expedient rigorous research coupled with this label. Moreover, legitimacy for assistance to think tanks and the wish of the journalists to use think tank researchers are related to the opinion that they serve the public interest.[142] Thus, the bridge metaphor is socially validated.

Shifting boundaries between think tanks and universities: joint study programmes and collocation of think tanks within universities

In spite of some criticism towards the academic world, like a model a French think tank representative used the example of university-based think tank:

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[141] Blake E. Ashforth, Fred A. Mael, art. cit.
[142] Diane Stone, 2013, op. cit., p. 84.

I think that a model, which summarizes in the best way, what should be a think tank, it is in the United States, Brookings, which is a think tank and it reposes on the academic researchers, or always in Washington, for example, SAIS[143] John Hopkins, which is a think tank within a university, but which strives for producing papers, analyses, which purposes are not strictly academic.[144]

Even if think tank representatives perceive more academic institutes as a model, a research director in a British think tank makes a distinction between a university-based think tank and a stand-alone organization. From his point of view, universities, willing to do policy engagements, aim to be represented more as research institutes, than think tanks, which are "more political, more media, more short term".[145]

Normally, distinguishing a "research institute" and a "think tank" in certain countries rotates around the role of advocacy or conduct in search of media attention, and not to capacity to carry out policy research of high quality, when research produced in institutes is considered as more objective and rigorous than in think tanks. Although a symbolic role played by these differences in the competitive market of policy analysis can be significant, these dissimilarities are frequently more assumed than really existing.[146]

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[143] School of Advanced International Studies
[144] Interview, Paris, June 2014 (translated from French by the author).
[145] Interview, London, September 2014.
[146] Stone, 2004b, op. cit., p. 4.

Pointing to differences, this interviewee again uses the terms of other policy analysts' roles, such as policy assistance and media communication, as well as reminds us about different temporalities of academic and policy research, however, he sees opportunities of shifting inter-institutional boundaries between these organizations and universities:

> I think there is not necessarily always complete compatibility between university and think tank, but they do behave and do continue to work closely together[147].

Think tanks regard universities more like partners than like competitors. And from the point of view of some of them their differences could be basis of their cooperation:

> I think in the UK and also in other European countries universities obviously have very powerful research capabilities. They probably have less capabilities to engage with political and policy audiences. So, we tend to find ourselves and advertise to work with us, because we provide capabilities to engage, that most universities do not have now[148].

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[147] Interview, London, September 2014.
[148] Interview, London, September 2014.

Besides possessing political access, which is not possible "for hundreds and hundreds of academics" think tanks can also provide a good platform for academics to publish their works focused on policy practitioners. However, instead of publishing an eight thousand word paper, university researchers should be ready to produce an eight hundred word summary, giving key conclusions and key implications for policy makers.[149]

Normally think tanks are very open to this kind of cooperation. One of the examples of such collaboration is the Jean Monnet Project.[150] Another form could be the establishing of joint study programs. For instance, the London-based think tank Royal United Services Institute (RUSI) created a joint PhD programme with the University of Roehampton: "Within the programme PhD fellows will conduct their research in a double function as full members of the think tank staff and the university's learning community, thereby benefiting from both the network of one of the world's leading think tanks and a high-quality academic environment tailored to enhance the employability and career prospects of students".[151]

Therefore, the cooperation between these types of institutions is considered by think tank representatives to be mutually advantageous: universities could obtain an access to policy-makers

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[149] Interviews, London, September 2014.

[150] European Commission, 2015. Jean Monnet Projects [online]. Available from: https://eacea.ec.europa.eu/erasmus-plus/actions/jean-monnet/jean-monnet-projects_en, retrieved on October 15, 2015.

[151] RUSI, 2012. News. https://rusi.org/rusi-news/rusi-welcomes-successful-candidates-joint-rusiuniversity-roehampton-business-school-phd, retrieved on June 22, 2016.

and wider audience through networks provided by think tanks, while think tanks could use the research capabilities of universities.

There are also financial considerations for this cooperation. Many of the funding programmes, especially funded by the EU, are looking for excellence, so in the majority of the calls for tenders, think tanks have to show that they are able to carry out a given project in their applications. The members of the team should have PhD degree or 5 years of equivalent research experience.[152]

According to policy analysts the collocation of think tanks within universities could be mainly beneficial for universities:

In the future there might be more collocation of think tanks within universities. Personally, I think that would be quite beneficial, because I think students tend to be interested in think tanks, because it is quite fast, interesting, political. Obviously it does create chances for universities.[153]

A representative of a university-based research institute also considers that the results of their policy-relevant research and preparation of publications contribute to their teaching process:

The main purpose is to research in the area of international relations from the political prospective, as well as economic relations. These are topics, members of the team are looking into

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[152] Interview, Brussels, October 2014.
[153] Interview, London, September 2014.

for research purposes, resulting in publication of papers or books, to bring new knowledge in our teaching processes and also quite importantly providing advice to both government and hopefully also to the business sector from this area.[154]

Nevertheless, a university professor, who simultaneously acts as a researcher in a university-based research centre, regards his "think tank activity" only as a "side product" of his main function as a university professor. At the same time he thinks that this experience could be mutually beneficial for his two roles:

We are group of university professors; our main arena is to be teachers. We are researchers at the same time. A side product of our life trajectories is appeared to be a relatively influential think tank. So, if you ask me if our approach is different, yes, of course, but it does not mean that one cannot use experience and knowledge established here, I do not see important differences.[155]

We can see in the case of cooperation of think tanks with universities an example of transcending not so called "symbolic boundaries"[156] but social boundaries between these types of organizations. Taking into account the permeability of social

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[154] Interview, Ljubljana, July 2014.
[155] Interview, Ljubljana, July 2014.
[156] Lamont, 2001 cited in Loizos Heracleous, art. cit., p. 95.

boundaries, under certain conditions boundaries could produce distinction or they could disappear generating hybridity or new forms of categorization. Considering boundaries as a way of communication, in contrast to separation, demonstrates that they are crucial to the circulation of knowledge and information across different organizations forming networks, partnerships and other forms of cooperation.[157]

Medvetz proposed to conceptualize think tanks as "boundary organizations" based on the concept of a "space between fields" elaborated by Gil Eyal and concept of "boundary spanner", transferred from the individual to the organization, which gets power from their position within larger systems of organizations. The boundary spanning concept spills out the boundaries crossed by a think tank. The being of these organizations relies on the creation of "interstitial fields". These boundary organizations could be considered as influential to the extent that they are successful in exceeding the "spaces between fields" and get "field-like properties of their own".[158]

The need for a concept of "spaces between fields" is related to the notion of "boundary work". According to Eyal, the boundary should be regarded not as a thin line, but as "a real social entity with its own volume". The boundary is not only a means of detachment of internal and external components of the field, but is also an area of important

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[157] Michele Lamont, Virag Molnar, art. cit.
[158] Thomas Medvetz, 2012b, art. cit., p. 128-129.

relations and deals between them.[159] The power of a boundary organization consists in its capacity to settle on the location of the end of political, market, and media production and of the beginning of knowledge production. This aspect becomes more important with regard to the issue of "the conversion rates among different forms of capital". A think tank can transform one form of capital into another by reinvesting it properly.[160] In our case of joint study programmes and collocation of think tanks within universities, think tanks aim to convert political capital into academic capital, which could be consequently converted into economic capital. The university-based research centres also reinvest their policy-relevant experience into teaching and research process and vice versa, but in a less strategic way, than in stand-alone think tanks, but rather as a "side product" activity.

Thus, the partnership between think tanks and universities could be regarded as a concomitant strategy of the organizational identity of think tanks based on their positions towards academic world. This strategy can play four roles with respect to their organizational identity in the terms of Ashforth and Mael:[161] "instrumental" (to put their identity into practice or to implement joint research projects and study programmes with universities, i.e. converting one form of capital to another); "expressive" (to show the examples of their identity or to differentiate "think tanks" and "research institutes");

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[159] Gil Eyal, op. cit., p. 162.
[160] Thomas Medvetz, 2012b, art. cit., p.128-129.
[161] Blake E. Ashforth, Fred A. Mael, art. cit., p. 34.

impressive (to convince society in their desirable identity or to consider universities as partners and not as competitors); constructive (to build their identity retrospectively or to use academic style in think tanks or university-based research centres as a model).

Conclusion

In this article I presented how think tank representatives try to build their organizational identity based on their positions towards academic field.

The same organization can tell different narratives at different times and places. Due to the "relational and comparative" character of identity, the meaning of an organizational identity will differ depending on the reference points and the objectives of comparison. Social comparisons are conduced to idealizing the central organization, in spite of its real position. Owing to "malleability of identity" an organization could be portrayed at the same time in absolutely contradictory manners with certain purposes and could be still correct. However, according to the concept of "veracity of identity" this does not imply falsity of organizational identity, but rather selectivity of identity assertions, which emphasize positive attributes instead of less desired.[162] This selective sense-making is incited by the contradiction, complication and dynamism that often penetrate organizational existence.[163]

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[162] Alvesson, 1990 cited in Blake E. Ashforth, Fred A. Mael, p. 31.
[163] Blake E. Ashforth, Fred A. Mael, pp. 25, 30.

Therefore, the concept of a "think tank" turned into the mixture of numerous diverse plots applied depending on the audience. Their plurality of adjusted myths and ability to accommodate rapidly in various conditions makes them the preferable means of generating discourse and reasoning.[164]

According to the findings of this study, the approach of Medvetz, elaborated for the conditions of the United States, could be applied to the European context. European think tank experts also carry on an everlasting struggle to countervail and adjust their multiple conflicting roles.

Firstly, when think tank representatives explain their central function as producing research and policy analysis, they try to underline their similarity to universities (academic excellence, intellectual independence, employment of people with PhD or at least with similar expertise and research experience). Taking into account that their credibility as researchers depends on the ability to give notice of their independence, they permanently declare their similarity with scholarship, even if they try to underestimate it in other manifestations of their activity.[165]

On the other hand, in spite of spread of the concept of interchangeability between think tank experts and academic scholars, the representatives of European think tanks themselves acknowledge that it is completely different "enterprise". Think tank representatives

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[164] Diane Stone, 2013, op. cit.
[165] Thomas Medvetz, 2010, art. cit.

permanently differentiate their organizations from universities highlighting their advantages in comparison with universities in other aspects of their own activities: policy relevance, entrepreneurship ability and media presence, thereby they try to show their distinctiveness. The acknowledgement of think-tank experts as providing a more realistic connection to politicians and as being a more expedient source of expertise than academics strengthens an advantage of policy analysts working in think tanks over university-based researchers.[166]

However, think tanks can never entirely separate themselves from their "patron" organizations because every linkage provides a form of power that gives credibility to its supposed disconnection from the other organizations. Consequently think tanks must look for taking up a boundary status by accumulating different forms of capital from various worlds.[167] Therefore, in their self-description think tank representatives actively use the "bridge" metaphor or its derivatives, which are based on their historical role of linking academic and policy worlds. So they are not only similar to universities (or imitate their features), but they play a role of "mediator" between the universities and policy-makers, they transform abstract academic research into policy-relevant policy briefs, as well as into accessible information for journalists and policy-makers. This mediation role is possible due to their hybrid nature uniting features of their "patron" fields, but also thanks to employment of people with mixed profiles, who have

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[166] Turner, 2012, cited in Barbara A. Misztal, art. cit.
[167] Thomas Medvetz, 2012a, op. cit.

experience in both worlds. The highly policy-relevant "bridge" metaphor, which is widely contested in academic circles, plays the role of the continuity criterion in the building of the organizational identity of many think tanks.

At the same time, in contrast to other patron fields (policy, media and business worlds), their dependence on universities is not mutual. If policy-makers need their advice, journalists are interested in their commentaries and funders seek their advocacy abilities, universities do not express an explicit necessity in their cooperation with think tanks. Whereas think tanks depend on universities and academic world not only in symbolic terms (their identity building), but also in real terms: they need academic researchers for implementation of research projects, as well as for application for research grants. So the continuity of their existence as organizations is conditioned by their formal or informal partnership with universities, which is represented by think tank representatives as beneficial for universities, as well as for the consumers of their services. That is why one of the possible future scenarios of their cooperation is seen in collocation of think tanks within universities taken into account that it is based on the comparative advantages of both types of institutions: academic excellence of universities and policy-relevance, media presence and entrepreneurial spirit of think tanks, especially in the Internet age when any blogger can become "media intellectual" and compete with both types of these organizations. This strategy of "shifting boundaries" between think tanks and universities could become instrumental, expressive, impressive and constructive with regard to

"ideal" think tank identity based on their orientations toward academic world: fulfilment of research function (crossing boundaries), investment of their political, media and economic capital into academic capital (distinctiveness), creation of "bridge" between academic and policy worlds, as well as preparation of researchers with mixed profile (blurriness). However, it could raise the question of their independence; therefore think tank representatives at the same time disconnect themselves from universities, differentiating think tanks and research institutes.

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