

Academic Freedom at Oxford: the responsibilities of being grown up

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As Tim Horder rightly opined in the *Oxford Magazine* (No 287, Noughth Week, TT, 2009), “Oxford and Cambridge are generally recognised as being world-class universities. As such they set a gold standard for the entire UK university system.”¹ Indeed, by all relevant criteria, Oxford is a paragon of academic research and teaching, which is why it is one of the top ten universities in the world, as identified by Shanghai Jiao Tong University’s Institute of Higher Education.² However Oxford differs from all the other “top ten” universities in one significant regard – academic freedom is explicitly recognised in its Mission Statement, viz: “The most fundamental value, underpinning all of our scholarly activity, is academic freedom, defined as the freedom to conduct research, teach, speak and publish, subject to the norms and standards of scholarly inquiry, without interference or penalty, wherever the search for truth and understanding may lead.”³ To be scrupulously fair, Cambridge (the other UK “top ten” entrant) describes its core values as “freedom of thought and expression; freedom from discrimination”, but most scholars in the field of academic freedom would regard these as analogous to *libertas philosophandi*,⁴ and therefore broader than academic freedom.

As academic freedom is given such prominence within Oxford’s Mission Statement, it is surprising to read in the *Oxford Magazine* that there have been plans both to alter the system of university governance by increasing the number of external appointments to Council⁵ and to introduce a new contract which reduces the employment security of academic staff.⁶ Published research demonstrates that such developments are likely to have deleterious effects on academic freedom at Oxford. For example, with respect to governance, Brown’s survey of UK universities found that:

*“if there is one common feature running through these reports it is the difficulty which these institutions had in controlling the behaviour of a strong chief executive who was often closely associated with a small group of key Governors who may have bypassed a largely supine Governing Body, many of whom were not sufficiently knowledgeable either about higher education matters or about their own rights and responsibilities as members of the supreme decision making body of a higher education institution.”*⁷

Similarly, Shattock found:

“little hard evidence that the new managerialism ... has been particularly successful in delivering academic success”,

and that:

*“where improprieties and breakdowns have occurred, they have centred on governing bodies and the executive and not on the academic community. Indeed, in nearly all such cases ... attention was drawn to the difficulties by concern in the academic community.”*⁸

With respect to tenure, McPherson and Schapiro’s work revealed that:

*“Faculty members with tenure will have more independence. Administrators need to rely more on persuasion and less on negative sanctions. ... Tenure increases the ability of faculty collectively to shape institutional decisions, through their actions in departments, colleges, or the institution as a whole.”*⁹

while De George notes that:

*“by giving a large number of the faculty tenure ... they are in a position to defend the academic freedom not only of themselves but of all the non-tenured members of the institution, as well as the academic freedom of faculty at other institutions.”*¹⁰

In essence, the substantial body of research¹¹ of which such findings are a part confirms that, as Gerber maintains, shared governance and tenured employment are “the two principal institutional bulwarks for academic freedom”¹² and indicates that current proposals to change both the governance process and employment security at Oxford will contradict a cardinal tenet of the University’s Mission Statement with respect to academic freedom.

The battle over tenure in UK higher education is long lost, having been abolished by the 1988 Education Reform Act, which makes the need to retain faculty control of governance all the more important. In a previous edition of the *Oxford Magazine*, Nicholas Bamforth and Christopher Forsyth¹³ have demonstrated the limits to HEFCE’s legal powers with respect to trying to enforce its current preferences concerning the composition of Oxford’s Council. In considering the “wise response” to HEFCE advocated by Bamforth and Forsyth, it may be useful to refer to the UK’s international responsibilities to UNESCO and the UN. Acting on the UK government’s behalf, the Education Minister, Claire Short, signed the *UNESCO Recommendation Concerning the Status of Higher Education Personnel* in 1997. On the subject of self governance and collegiality, this document states the following:

*“Autonomy is the institutional form of academic freedom and a necessary precondition to guarantee the proper fulfilment of the functions entrusted to higher-education teaching personnel and institutions. ... Self-governance, collegiality and appropriate academic leadership are essential components of meaningful autonomy for institutions of higher education.”*¹⁴ *Higher-education teaching personnel should have the right and opportunity, without discrimination of any kind, according to their abilities, to take part in the governing bodies and to criticize the functioning of higher education institutions, including their own, while respecting the right of other sections of the academic community to participate, and they should also have the right to elect a majority of representatives to academic bodies within the higher education*

institution.”¹⁵

With respect to employment security, the *Recommendation* states:

*“Tenure or its functional equivalent, where applicable, should be safeguarded as far as possible even when changes in the organization of or within a higher education institution or system are made, and should be granted, after a reasonable period of probation, to those who meet stated objective criteria in teaching, and/or scholarship, and/or research to the satisfaction of an academic body.”*¹⁶

Leading universities such as Oxford are not just institutions for teaching and research; they are (*inter alia*) repositories and guardians of national language, literature and culture, and icons of the intellectual accomplishments of nation states. Consequently, it may be considered appropriate (if not obligatory), for Oxford to lead the way in ensuring that the UK government fulfils its responsibilities under the 1997 UNESCO *Recommendation*. Irrespective of whether it would be successful, an appeal to UNESCO’s Committee of Experts on the Application of the Recommendation concerning Teaching Personnel by Oxford (as have been made by institutions from Australia and Denmark), on the claim that the HEFCE requirements constitute an abrogation of the 1997 *Recommendation*, would give the UK government a substantial public relations problem, and also would highlight the fact that the UK is the worst country among the 27 EU states in upholding the 1997 *Recommendation*.¹⁷

Furthermore, examination of the Committee of University Chairmen (CUC) documentation makes HEFCE’s insistence that Oxford follow the CUC’s governance guidelines all the more difficult to comprehend. For example, the original CUC Key Performance Indicators (KPI’s) Project Brief states “No part of the monitoring framework offered by the CUC was intended to be mandatory or prescriptive; in effect a menu of options was offered for institutions to draw upon in the light of their own mission, needs and circumstances.”¹⁸ Echoing this sentiment, the 2006 CUC Report on the use of KPIs states: “Each indicator measures the quality that its designers are interested in and each governing body needs to decide for itself what measures are relevant and helpful in its specific situation.”¹⁹ There is insufficient space to examine in detail the scope and suitability of KPIs to institutions like universities;²⁰ however, it is worth noting that Kaplan and Norton, the originators of the “Balanced Scorecard”, one of the models to which the CUC refers, have stated that when the balanced scorecard framework is adapted for non-profit organisations, “The Mission, rather than the financial/shareholder objectives, drives the organization’s strategy.”²¹ Given that academic freedom is central to Oxford’s Mission—which would be undermined by the governance KPIs proposed by HEFCE—it would seem appropriate, in line with the CUC’s advice, to acknowledge that these KPIs are neither relevant nor helpful to Oxford.

In the July 2007 Report to Oxford, HEFCE’s Assurance Service stated that “the modern governance consensus across all sectors is that it is beneficial for the effectiveness of governing bodies ... and for the independent scrutiny of outside investors’ interests, that their membership should be largely non-executive,

external and without conflicts of interests.”²² However, nowhere on the CUC website is there empirical evidence to either verify this statement or demonstrate how, and in what ways, putting external appointees in the majority on governing bodies improves a university’s abilities to achieve excellence in teaching and research.

Clearly, if it is found that the best universities (as measured by, for instance, RAE performance, position in the Shanghai Jiao Tong rankings, etc.) have governing bodies largely populated by external appointments, then there may be some merit in benchmarking best practice and bringing the governing bodies across the HE sector in line with those of the best universities. It would seem appropriate to start the considerable research required to validate this strategy by undertaking a case study of the best university. Harvard has been classified the best university in the world in every Shanghai Jiao Tong University ranking since 2003, and is also ranked first in the current *THE* ranking. Harvard has two governing bodies, the Corporation and the Board of Overseers. The Corporation comprises seven members, three (all Harvard graduates) from the private sector, three from the public sector (two are Professors at other USA universities) and the President, all bar two of whom have Harvard degrees. The Board of Overseers has 30 members, each elected by Harvard alumni for a six-year term. All the Board’s members have Harvard degrees, and ten work in other universities, eleven work elsewhere in the public sector (as ambassadors, judges, astronauts, etc) and nine have jobs in private companies.

As Areet relates “Harvard ... was closely modeled on Oxford and Cambridge with one significant difference: the governance system. Because there were not enough scholars in Massachusetts Bay Colony to reproduce the English system of faculty governance, the colonists established a lay (in the sense of nonfaculty) governing board.”²³ Hence circumstances rather than choice forced Harvard to include external nominees. However, Charles Eliot, who served the longest term as President in Harvard’s history, was unequivocal in his condemnation of the abuse of power by external appointees on governing bodies, and wrote: “In the institutions of higher education the board of trustees is the body on whose discretion, good feeling, and experience the securing of academic freedom now depends. There are boards which leave nothing to be desired in these respects; but there are also numerous boards that have everything to learn with regard to academic freedom. These barbarous boards exercise an arbitrary power of dismissal. ... all too frequently, both in state and endowed institutions, they fail to treat the members of the teaching staff with that high consideration to which their functions entitle them.”²⁴ Consequently, over time the university has seen fit to allow the governance system to evolve such that control lies in the hands of the Harvard alumni who, in their wisdom, both appoint from within their own ranks, and ensure that nominees from the business sector are in a minority. As a result, decision making at Harvard is probably too protracted a process for either the CUC or HEFCE. However, as the present Harvard University President Drew Gilpin Faust proclaimed in her installation speech, “A university is not about results in the next quarter It is about learning that molds a lifetime, learning that transmits the heritage of millennia; learning that shapes the future”,²⁵ thus echoing Birnbaum’s belief that “The greatest danger to higher education may

not be that decisions are made too slowly because of the drag of consultation, but that they are made too swiftly and without regard for institutional core values.”²⁶

Continuing disagreements between universities and governments about the rationale for, limits to, and benefits of, academic freedom have made it a contentious concept, with the result that, as Moens points out “academic freedom continues to be a commonly used but misunderstood concept ... only a minority of academics bother to explain what the concept of academic freedom means to them or even know what the concept really is.”²⁷ Moreover, historically, the concept has had less credence in England than in other European states. As Neave²⁸ relates, universities in England were more concerned with preserving institutional autonomy (hence the importance of the university charter) than individual academic freedom, which meant that the Humboldtian emphasis on *Lehrfreiheit* and *Lernfreiheit*, which provided the rationale for research universities in many European states and the USA, was largely absent in the UK. Consequently, unlike the UK, many European states and the USA provide constitutional or legal protection for academic freedom, either explicitly (for example, the Greek Constitution explicitly mentions academic tenure) or via interpretation of the constitutional protection for freedom of speech (as in the USA). Nevertheless, writing in 1963, Lord Chorley, then the General Secretary of the AUT, remarked that “On the narrow front of court decisions there is very little to be said on the subject, nor has much systematic attention been given to it on a political, sociological or even educational basis” and concluded that “On balance I think it is fair to say that academic freedom is enjoyed as fully in English universities as anywhere else in the world. British academic staff have very little to complain of.”²⁹ However, the UK lacks a written constitution and although there is a clause in the 1988 Education Reform Act concerning academic freedom, the Act had the purpose of removing tenure – “securing that the statutes of each qualifying (HE) institution include a provision enabling an appropriate body ... to dismiss any member of the academic staff by reason of redundancy” (para. 203) – rather than protecting academic freedom. Moreover, the last Statutory Instrument (No. 604) which confirmed the powers and duties of the UK University Commissioners under the 1988 Act to protect academic freedom until 1st April 1996, was issued in 1995, and none have been issued since.

Whether or not Chorley’s qualitative appraisal was accurate at the time is a moot point. However, it cannot be denied that the legal and constitutional protection for academic freedom in the UK at present is the weakest in the EU. Examining constitutional and legislative protection for academic freedom, along with legal regulations concerning institutional governance, the appointment of the Rector and the existence of academic tenure, in order to create a composite picture of the health of academic freedom in all EU universities, my own research concluded that “in terms of the health of academic freedom, the UK is clearly the sick man of Europe.”³⁰ In Finland, for example, freedom of speech and academic freedom are protected by the constitution and in legislation; the system of governance ensures that the academic staff have a majority voice in institutional decision making; the Rector is an elected, internal appointment; and academic tenure is protected. By contrast, in the UK, no constitutional protection exists for either freedom

of speech or academic freedom; the clause on academic freedom in the 1988 Act is designed to ensure ‘just cause’ for employment termination; in most universities the academic staff have only a minor input in the decision-making process; the VC is an external appointment to which they have negligible input; and academic tenure exists for only a few staff, most of whom are close to retirement.

Management innovations like the governance proposals advocated by the CUC and HEFCE exhibit the characteristics that led Allen and Chaffee to define them as fads, namely they are: borrowed from another context without being fully adapted to the new setting; applied without careful consideration of their limitations; presented as overly complex or deceptively simple, and depend on jargon.³¹ Assessing the life cycles of such fads in higher education, Birnbaum concluded that “If the success of management fads over the past 40 years is measured by the extent to which they have been adopted and maintained in recognizable form in a reasonable number of institutions of higher education, it can be said with confidence that these innovations have uniformly failed.”³² Neave rightly laments that UK universities “have a dangerous faith in management models, often developed in organisational settings other than the university and no less in their capacity to act as a ‘quick fix’. The lesson ... must surely be, ‘There ain’t no quick fix.’”³³

Last year Peter Pulzer wrote in *Oxford Magazine* about “The Day Oxford Grew Up”,³⁴ and recalled the refusal by Congregation to award an honorary doctorate to the then Prime Minister, Margaret Thatcher. He observed that “If De Montfort University had decided to snub Mrs Thatcher then no-one would have taken a blind bit of notice. Because it was Oxford, the event tells us something significant about British academic politics”. Further, he rightly noted that “opposition was not just a moan about Oxford, ... but a general protest on behalf of both the tertiary and the secondary sectors” and concluded “What has changed is that we are now grown up and being grown up means confidence in the worth of what we do in the face of those who have no confidence in us”. Academic freedom, which is already in a parlous state in UK higher education, is a defining hallmark of the intellectual climate and institutional culture at Oxford University, and accounts for its pre-eminence within both the UK and globally. Acceding to HEFCE’s requirements regarding governance procedures will ultimately compromise academic freedom at Oxford, and if academic freedom cannot flourish at a university such as Oxford, then surely it will not survive at institutions like De Montfort. Being grown up imposes responsibilities, not only to one’s self, but also on behalf of others who may be less fortunate.

[Terence Karran will be visiting Oxford at the invitation of the Oxford Student Higher Education Research Group for its meeting on 1st December, 2009, which will be addressing the concept of “academic freedom”. Further details about the meeting can be obtained from Andrew Boggs (andrew.m.boggs@gmail.com)]

¹ T.J. Horder, “Élite but not Élitist”, *Oxford Magazine*, 287 (Noughth Week, Trinity Term, 2009), p.1.

² See at: [http://www.arwu.org/rank2008/ARWU2008_A\(EN\).htm](http://www.arwu.org/rank2008/ARWU2008_A(EN).htm).

³ University Of Oxford *Strategic Plan 2008–9 to 2012–13*, p. 4.

- ⁴ See for example, R. Sutton, "The phrase 'Libertas Philosophandi'", *Journal of the History of Ideas*, 14 (April, 1953), pp. 310–316.
- ⁵ See for example, Gavin Williams, "Not a Governance Working Party", *Oxford Magazine*, 284 (Second Week, Hilary Term, 2009), pp.1-2.
- ⁶ See for example, Susan Cooper, "The Tsunami of Individualised Funding of Academics", *Oxford Magazine*, 286 (Eighth Week, Hilary Term, 2009), p. 6.
- ⁷ R. Brown, "The governance of the new universities: Do we need to think again?" *Perspectives: Policy and Practice in Higher Education*, 5 (January, 2001), pp. 42–7.
- ⁸ M. Shattock, "Re-balancing modern concepts of university governance", *Higher Education Quarterly*, 56 (July 2002), pp. 235–44.
- ⁹ M. McPherson, and M. Schapiro, "Tenure Issues in Higher Education", in M.E. Devlin and J.W. Montgomery (eds.), *Forum Strategy Series, Forum Futures 1999 Papers* (Washington: Forum Publishing, 1999), pp.73–88.
- ¹⁰ R. De George, "Ethics, academic freedom and academic tenure", *Journal of Academic Ethics*, 1 (March 2003), pp. 11–25.
- ¹¹ See T. Karran, "Academic Freedom: in justification of a Universal Ideal", *Studies in Higher Education*, 34 (May 2009), pp. 263-284. For other see studies see the 1250+ entries in Terence Karran, "Academic freedom: a research bibliography" (Unpublished monograph, 2009), available at <http://eprints.lincoln.ac.uk/1763/>
- ¹² L. Gerber, "Inextricably linked': Shared governance and academic freedom", *Academe*, 87 (May/June 2001), pp. 22–24.
- ¹³ N. Bamforth, C. Forsyth, "The limits to HEFCE's legal powers", *Oxford Magazine*, 279 (Noughth Week Michaelmas Term, 2009), pp. 9-11.
- ¹⁴ UNESCO, Records of the General Conference, twenty-ninth session, Paris, 21 October to 12 November, *Volume 1 Resolutions* (Paris: UNESCO, 1997), p. 28.
- ¹⁵ *Ibid.*, p.30.
- ¹⁶ *Ibid.*, p. 32.
- ¹⁷ See T. Karran, "Academic Freedom in Europe: Reviewing UNESCO's Recommendation", *British Journal of Educational Studies*, 57 (June 2009), pp. 191–215. This is available for free download from the journal's website at: <http://www.palgrave-journals.com/hep/index.html>.
- ¹⁸ CUC, *KPIs Project*, (Unpublished mimeo, February 2008), available at: www.shef.ac.uk/cuc/kpi.doc.
- ¹⁹ CUC, *Report on the Monitoring of Institutional Performance and the Use of Key Performance Indicators*, (Unpublished mimeo, November 2006), p.16.
- ²⁰ See for example, Stewart Lawrence and Umesh Sharma, "Commodification of Education and Academic Labour – Using the Balanced Scorecard in a University Setting", *Critical Perspectives on Accounting*, 13 (July 2002), pp. 661-677.
- ²¹ Robert Kaplan, David Norton, "Transforming the Balanced Scorecard from Performance Measurement to Strategic Management: Part 1", *Accounting Horizons* 15, (March 2001), pp.87-104.
- ²² HEFCE Assurance Service, *Final Report*, (July 2007), paragraph 7.
- ²³ Judith Areen, "Government as Educator: A New Understanding of First Amendment Protection of Academic Freedom and Governance", *The Georgetown Law Journal*, 97 (April 2009), pp. 945-1000.
- ²⁴ C. Eliot, "Academic Freedom: An Address Delivered Before the New York Chapter of the Phi Beta Kappa Society at Cornell University (May 29, 1907)" in Clark S. Northup, William C. Lane, John C. Schwab (eds.), *Representative Phi Beta Kappa Orations* (Boston: Houghton Mifflin Company, 1915), p.346.
- ²⁵ Drew Gilpin Faust, "Installation Address: Unleashing Our Most Ambitious Imaginings", *Harvard Magazine*, 62, (Nov.–Dec. 2007) available at <http://www.president.harvard.edu/speeches/faust/071012installation.html>.
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- ²⁷ G. Moens, "Academic freedom: An eroded concept", *Bulletin of the Australian Society of Legal Philosophy*, 16 (June 1991), pp. 57–70.
- ²⁸ G. Neave, 1988. "On being economical with university autonomy: Being an account of the retrospective joys of a written constitution" in M. Tight (ed.), *Academic Freedom and Responsibility* (Buckingham: Open University Press, 1988), pp.31-48.
- ²⁹ R. Chorley, "Academic freedom in the United Kingdom", *Law and Contemporary Problems*, 28 (Summer 1963), pp. 647–671
- ³⁰ T. Karran, "Academic freedom in Europe: A preliminary comparative analysis", *Higher Education Policy*, 20 (May 2007), pp. 289–313.
- ³¹ R. Allen, & E., Chaffee, E., "Management Fads in Higher Education", paper presented at the 21st Annual Forum of the Association of Institutional Research, (May 17-20, 1981), Minneapolis, MN.
- ³² R. Birnbaum, "The Life Cycle of Academic Management Fads", *The Journal of Higher Education*, 71 (January/February 2000), pp.1-16.
- ³³ G. Neave, (1997) "Back to the Future: Or, a view on likely brain teasers with which University Management is likely to be faced in a *Fin de Siècle World*", *Tertiary Education and Management*, 3 (December 1997), pp. 275-283.
- ³⁴ Peter Pulzer, "The day Oxford grew up", *Oxford Magazine*, 274 (Eighth Week, Hilary Term, 2008), p.4-5.