Dear Committee members,

I am writing in my personal capacity as an academic at the University of St Andrews. I am currently elected by my science and medicine professors as their representative on the University Court. I am a scientist and my published work is public record.

I have already responded to the public consultation. I prefix my responses with some general comments.

Scottish Universities are over-represented in the top of the world rankings based on population. Scotland produces a disproportionate share of the world’s scientific research including that which is most influential. Scottish Universities attract students from over the world to study at them, bringing prestige and income to Scotland. Scotland’s civic society has remained distinct from an English or British one, precisely because its civic institutions have remained outside the control of government. The Scottish government has said

‘Higher education in Scotland is the mainstay of our knowledge economy and makes a significant contribution to the economic success of the nation. Yet it is not just about the economy: higher education in Scotland is a civilising force which has had a major influence on creating the country and society we are today.’

Scotland has a diverse University sector and as might be expected has different governance arrangements. One of the most disappointing aspects of the original on Prondzynski report, the consultation, the Bill and accompanying comments has been the lack of research to identify best practice, problems and comparators. I struggled to find any evidence that other systems were serious considered? Scotland’s Universities took their inspiration, as did many of its public bodies, from overseas; why has this tradition been neglected. Public institutions in America, (the University of California system in particular), in England, in Switzerland, in Australia and New Zealand are well represented in the higher reaches of league tables. Their governance is de facto and in some case de jure highly autonomous from their funding governments. One does not prove the other, but surely a sensible process might have sought to test correlations.

In reading some of the contributions to the report, the consultation, the Bill and the accompanying papers it is hard to avoid the conclusion that for many they worked backwards from predetermined desired outcomes rather than make any serious attempt to analyze the current situation. Change of this magnitude surely require the most serious consideration?

*Questions are in italic, responses in bold.*

1. *What do you consider to be the existing problems (if any) with higher education governance,*
The Scottish Government has pointed out the strengths and benefits of the Scottish University system. No such evidenced report exists for the problems, therefore it is unclear what problems the Bill even attempts to solve.

At St Andrews, academic elected members are gender balanced and include self-identified member(s) of the LGBT community. This is an ‘accident’ of the electoral process, the students who are also elected by their community are currently all male. Free elections do not always produce entirely representative results, this is a feature of democracy.

2. The extent to which the Bill

(a) will improve higher education governance, particularly in the areas above
(b) may alter the higher education sector’s current level of autonomy
(c) may affect lines of accountability between the Scottish Government, relevant public bodies and the higher education sector

(a) Nowhere has it been articulated the problem the Bill seeks to solve. So the answer is the Bill can not improve governance.
(b) The Bill confers upon Ministers the power to regulate by secondary legislation University governing bodies and senates. Whilst the current elected Government has given assurances it would not interfere in Universities for political ends, it cannot bind its successors. History shows that powers given to an Executive will be used for political ends when there is a political advantage. By granting Minister the right to use secondary legislation and the use of broad language, autonomy in practice as a meaningful concept is extinguished. Upon enactment of un-amended Bill, autonomy is dependent upon the whim of the Executive. I would note, this is contrast to other developed nations which have sought to enshrine autonomy recognizing that the political process is ill-suited to the direct control of complex institutions with long-term horizons such as Universities. The democratic will, I argue, is legitimately and best exercised through an arms-length arrangements where broad principles laid out by elected representatives are turned into detail by autonomous Institutions.
(c) By taking such powers, Ministers will ensure they personally become the ultimate arbiters of the sector. This is a role they are unsuited for, have even less time for and will, therefore, be delegated to officials. The broad powers envisaged will ensure that the job preservation instincts and short-term political considerations come to dominate the behavior of University governing bodies.

Whilst no one can prove these changes will damage the University system, it seems in my judgment highly likely they will. I would have though the onus to show any major changes will actually benefit Scotland and its Universities should fall upon those who advocate changes.

3. Has the correct balance been struck between legislative and non-legislative measures? Are any further measures needed?

That the Scottish Parliament is now debating a law which determines the size of senate reach, gives Ministers extensive undocumented powers to regulate governance (through an enabling Act mechanism) and favours specific political constituencies is evidence of legislative overreach. This legislation will reduce University autonomy to an empty phrase, it would be better and more honest if the problems of autonomy were articulated to justify its destruction.

Specific proposals
The Bill proposes a number of specific changes to higher education governance:

To require higher education institutions to appoint the chair of their governing body in accordance...
with a process set out in regulations made by the Scottish Ministers
To require HEIs to include various persons within the membership of their governing bodies
To require HEIs to ensure that their academic boards are comprised of no more than 120 people, and
include various persons

University Chairs, as a condition of funding, are already appointed in an open way by the code of
governance. For what purpose need Scottish Ministers take powers to regulate who may or may
not be appointed and control the process that leads to appointments?
The disenfranchising of non-unionized staff seems retrograde in terms of promoting an inclusive
environment.
No evidence is adduced that this number is anything other than a figure plucked at random and
quite why it is to be the business of government Ministers is beyond my understanding. On what
basis is the judgment of Ministers and officials to be substituted for Academics and students in
determining education standards at world leading Universities?

4. Please provide your views on the merit of each of these proposals.
Academic freedom
The Bill will also replace the current legal definition of academic freedom “with a view to
strengthening it and making explicit the freedom to develop and advance new ideas and innovative
proposals”.

Please provide your views on the following—
5. The likely practical effect of these provisions, for example, whether there are any areas of teaching,
learning or research that will be particularly enhanced.

As an academic with over twenty years of service at St Andrews, it will not enhance any research
or teaching that I am aware of at St Andrews. In fact, I have for my entire career felt free and
used this freedom to critique University decisions on academic grounds. In writing this letter, I
am exercising my academic freedom. For the first time in my career, I have considered the
consequences of doing so.

The Bill states that academic freedom is to be exercised “within the law”.
6. Are there are likely to be any significant constraints – other than legal constraints – on academic
freedom? For example, the particular ethos within an institution; funding pressures; institutions’
policies on equality and diversity; etc.

At St Andrews, there are none. Civil debate is supported and encouraged. The legislation will in
time reduce academic freedom.

7. Are the situations in which relevant persons can exercise their academic freedom clear? For
example, should their freedom be limited to their work within an institution, as opposed to views they
may express outwith the institution?”

Yes. Academic freedom is clearly understood to protect a person from Government or University
sanction for researching any topic or expressing a view grounded in academic expertise. Freedom
of belief (the right to private views) is likewise protected. For example, although science entirely
discredits creationism, no test of religious belief is applied to any member of scientific teaching
staff.

To summarise, it is my belief that the analysis and research that went into the report, the consultation,
the Bill and the accompanying notes would reflect poorly on any any developed country. That they

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have emerged in a country with world renown for its intellectual endeavors is a source of regret.

It is my hope the parliament will save the Government from itself by amending the Bill to ensure Scotland does not extinguish University autonomy.

Yours sincerely,

Professor James Naismith