

Governance of private Brazilian HEIs

Godoy

2022-08-16

Contents

Introduction	1
Variables	2
Summary of variables	2
Institutional factors	3
Governance requirements	4
Governance Structure	4
Governance process	5
Descriptive statistics	6
Institutional distribution	6
Rector Appointment Process	7
Number of Boards	9
Stakeholder representation	11
Responsibility	13
Concluding remarks	20
Data collection	20
Statistical results	20
Bibliography	21

Introduction

This document shows an overview of the governance of 20 private Brazilian Higher Education Institutions (HEIs). The focus here is to assess potential differences in governance that may emerge from distinguishing between legal forms, academic status and profit distribution. The next section explains the variables chosen, their theoretical references and potential values. The third section presents charts that summarize the findings. Bibliography, as tradition dictates, is the last section.

Variables

The following table has a summary of the variables used to report on the governance of HEIs in this study. After the table, this section continues with the reasoning behind these variables.

Summary of variables

Code	Variable	Values
Institutional factors		
Maintainer_Type	Legal form of the maintainer	Association, Foundation, Special (Parastatal) , Corporate (Anonymous Society) or Limited (Limited Liability Society & Simple Society)
HEI_Type	Academic level of the HEI	University, Uni_Center (Universitary Center) or Faculty
Maintainer_Profit	Whether the Maintainer legal form allows profit distribution among owners or executives	For-Profit (Corporate, Limited), Nonprofit (Association, Foundation, Special)
Institutional_Category	A variable that combines the previous variables and includes Communitarian and Religious forms	Association, Foundation, Special, Corporate, Limited, University, Uni_Center, Faculty, For-Profit, Nonprofit, Certif_Comunitarian or Certif_Relig
Governance structure		
Board_Amount	Number of upper collegiate bodies stated in the bylaws	Integer
Relative_Freq	Proportion of the total HEIs which adopt this amount of boards	Percentage
Stakeholder	Which stakeholders are represented in any of the upper boards	Students, alumni, academics, staff, executive, owners, government, community, industry or unions
Repres_Freq	Proportion of the total HEIs which have this stakeholder represented at any upper board	Percentage
Governance Process		
Rector Appointment	Type of rector appointment	Universitocracy, academocracy, designatory-colaborative, designatory-directive
Governance_Role	What step of decision making is delegated	Plan, decide or supervise
Responsible_Party	Governance structure responsible for the decision making step	Board, both, executive or none
Bylaw_Freq	Proportion of the total HEIs which have this decision-making responsibility designated in its bylaws	Percentage

Institutional factors

Legal Form

In Brazil, HEIs do not have a legal personality, meaning that they're unable to sign contracts or own property. The legal matters are attended by what are called Maintainers, which are legal persons that instituted the HEI and are responsible for funding that HEI's activities (CNE, 2002). Despite that, HEIs are legally granted financial autonomy, to the limit where such autonomy would incur in increase in expenses, in which case the maintainer retains a veto power (CNE, 2002).

For private Maintainers, six potential legal forms were identified from a sample of HEIs from the Brazilian Higher Education Census (2020):

For-profit

- **Individual Enterprise:** legal entity owned by only one person,
- **Limited Liability Society:** legal entity composed of two or more people,
- **Anonymous society:** same as above, but its ownership is trade as stocks,
- **Simple society:** same as the Limited Liability, but limited to owners from the same professional category.

Nonprofits

- **Association:** legal entity composed of two or more people, which doesn't pay dividends to its owners,
- **Foundation:** legal entity with no owners, just assets and a statute overseen by the government,
- **Parastatal:** An association created by the State for a professional category, to which contribution is mandatory, but its run independently from the government.

Academic Structure

According to decree 9.235/17, HEIs may be structured in three distinct forms: Faculties, University Centers and Universities. Every private HEI is, *a priori*, a **Faculty**. This means that the HEI can only operate in one city (CNE,). To become a **University Center**, the HEI must have:

- one fifth of its faculty as full-time employees,
- one third of its faculty with degree of masters or above,
- at least 8 programs approved by the Ministry,
- extension activities for every programs,
- scientific initiation program,
- institutional evaluation of at least 4 out of 5,
- no penalties applied to it in the last two years.

As a **University Center**, the HEI has autonomy to create new programs, although they'll still need to be certified by the Ministry later, and is also allowed to operate in more than one city, with multiple *campi* within the same federative state. **Universities** have this autonomy as well, and to become one the HEI must have, in addition to the previous requirements:

- one third of its faculty as full-time employees,
- at least 60% of its programs approved by the Ministry,
- four masters and two doctorate programs recognized by the Ministry.

The governance requirements stemming from these forms are noted below.

Qualification

According to law 9.394/96, Brazilian private HEIs may be qualified as:

Communitary HEIs, according to law 12.881/13, are only those certified by the Ministry, and have the possibility of accessing funds open to public HEIs, public infrastructure and firming contracts directly with the State. This certification comes with governance requirements, noted in the next section.

Confessional HEIs self-qualified, attending to a confessional and ideological orientation. This qualification doesn't have governance requirements, but it may indicate patterns in the governance of HEIs.

Governance requirements

The focus here lies in the governance of the HEI, as structured by its bylaws. Every HEI's bylaws must be approved by the National Council of Education (CNE, 2002), which may have an isomorphic effect on the overall structure. Beyond this soft regulation, there are some legal requirements for private HEIs, depending on their academic structure and qualification.

According to CNE (2002), all HEIs must:

- have collegiate bodies (art. 206, VI, Brazilian Federal Constitution)
- allow veto power to its maintainer, on financial matters that increase expenses (1.4.1, CNE 282/02)
- faculty must be represented on the collegiate bodies (1.4.1, CNE 282/02)
- identify the method of executive appointment (1.5, CNE 282/02)

Universities and **University Centers** must also delegate to their scientific and educational bodies the following decisions: (§ 1º, art. 53, law 9.394/96) - Creation, modification or extinction of programs, - increment or decrease in their offer of program placements, - program content, - planning of research and extension activities, - hiring and dismissing faculty, - faculty career plan.

Finally, **Comunitary** HEIs, according to law 12.881/13, must:

- publish annual reports, including financial,
- disclose any public funds received or used,
- instate a fiscal board, to oversee financial management,
- have representatives of academics, students and administrative staff on the academic council.

Governance Structure

Board amount

Number of deliberative decision-making bodies identified as responsible for the upper management in the bylaws. This does not include the Permanent Commission for Evaluation (CPA), which is mandated by the law 10.861/04, since it is an autonomous unit from the HEI.

Stakeholder representation

Based on the works of Viancos González and Ganga Contreras (2021) as well as Choi (2019), nine common stakeholders for HEIs were identified:

- students
- alumni
- academics

- Staff
- Owners
- Government
- Community
- Industry
- Unions

However, there are no rules that mandate or forbid the participation of Rectors and other top executives in the HEI's boards, thus, I include them as a category, and I further specify each category:

- students: Currently enrolled student;
- alumni: ex-students that completed their programs;
- academics: professors and lecturers;
- executive: members of the top executive team;
- staff: Current employed, non-academics;
- owners: Representatives for the maintainer;
- government: Representatives for any governmental level;
- community: Any person so qualified;
- industry: business person or a representative from a business association;
- unions: Representative for labor unions of academics and/or staff.

Thus, for this work I understand that each of these stakeholders is represented in the governance structure of the HEI if there is a provision of **at least one seat in any of the boards** for them. This does not count representation on the CPA, since it's an mandatory and autonomous body.

That said, there are some minimum requirements for the HEIs in terms of stakeholder representation: **Every HEI** must have at least one academic representative (CNE, 2002). Further, **Communitary** HEIs must have representation of academics, students and administrative staff on their academic board (Law 12.881/13)

Governance process

One important dimension of governance is the way the strategic decision process is shared between principal and agent (Fama & Jansen, 1983). According to these authors, this division can be broadly identified in four steps:

- *initiation*: generating proposals,
- *ratification*: choosing what is to be implemented,
- *implementation*: execution of ratified decisions,
- *monitoring*: Performance measure and reward implementation.

Thus, to assess who is responsible for the HEI's performance, it is important to assess who is represented in each step of the decision making. Thus, based on the bylaws, I try to verify if these steps are assigned to the *Board* (any of them), to the *Executive* team (any member of the top management team), if the responsibility is shared or if the responsibility is not assigned in the bylaws.

To make it less abstract, I'll consider the four dimensions of Universitary autonomy proposed by Esterman and Nokkala (2009): *Academic*, *Financial*, *Organizational* and *Staff*. However, when considering these themes, the implementation step, as proposed by Fama and Jansen (1983) becomes obsolete, since neither top management nor boards effectively execute the policies analysed by the themes proposed by Esterman and Nokkala (2009). Thus, the following table lists activities that indicate the responsibility over each theme, for three decision-making steps: *Plan*, *Decide* and *Supervise*:

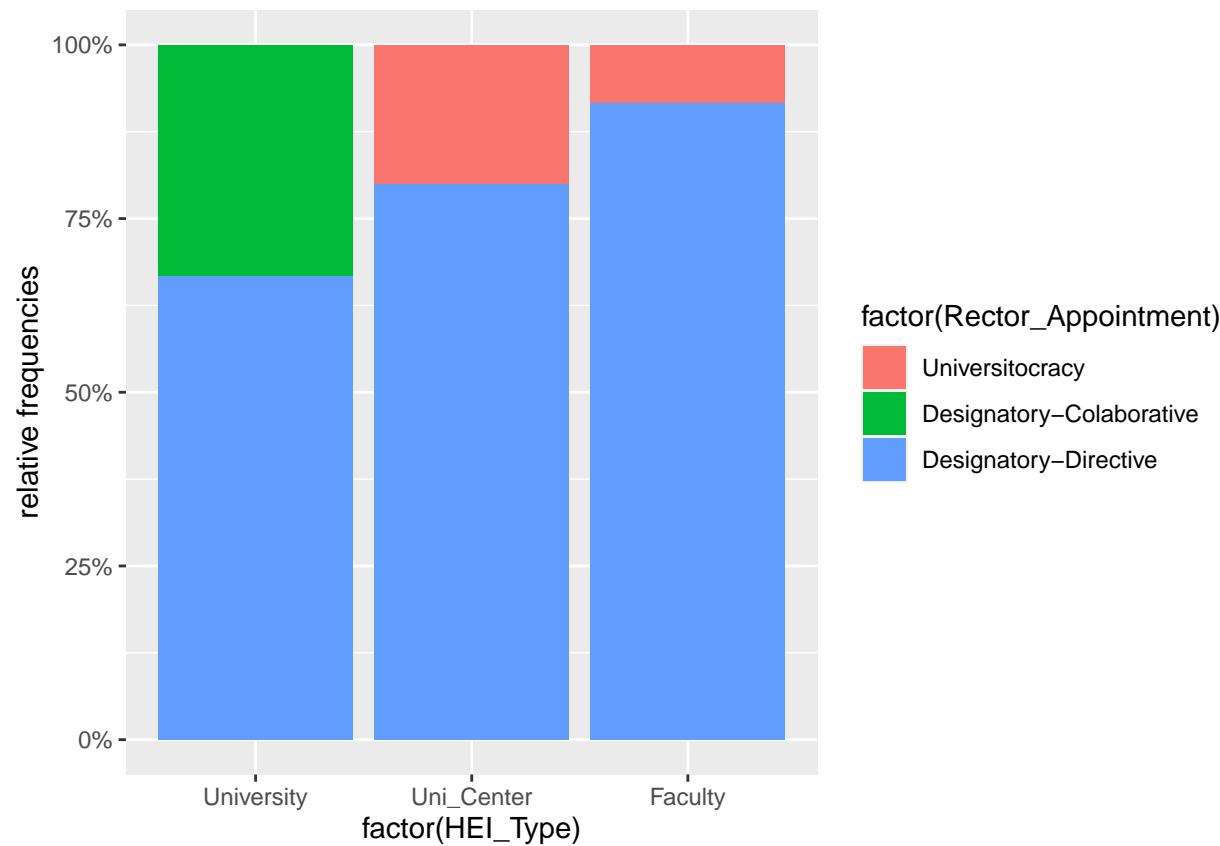
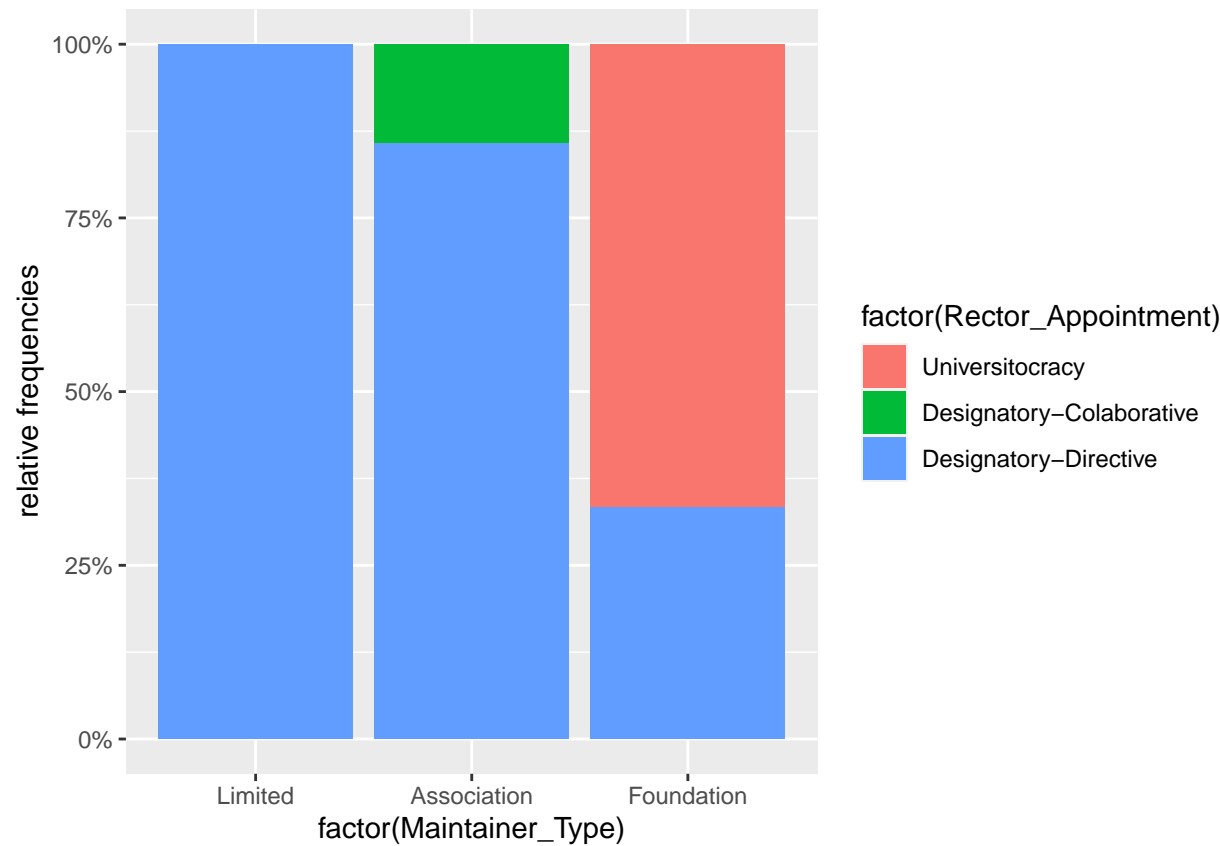
Step	Academic	Financial	Organizational	Staff
Plan	Propose new programs or the termination of existing programs	Propose Budget	Propose changes to the bylaws	Propose hiring, firing and progression
Decide	Approve new programs or the termination of existing programs	Approve budget	Approve changes to the bylaws	approving hiring, firing and progression
Supervise	supervise program evaluation	Supervise financials	punish bylaw infringement	supervise and adjudicate on hiring, firing and progression matters

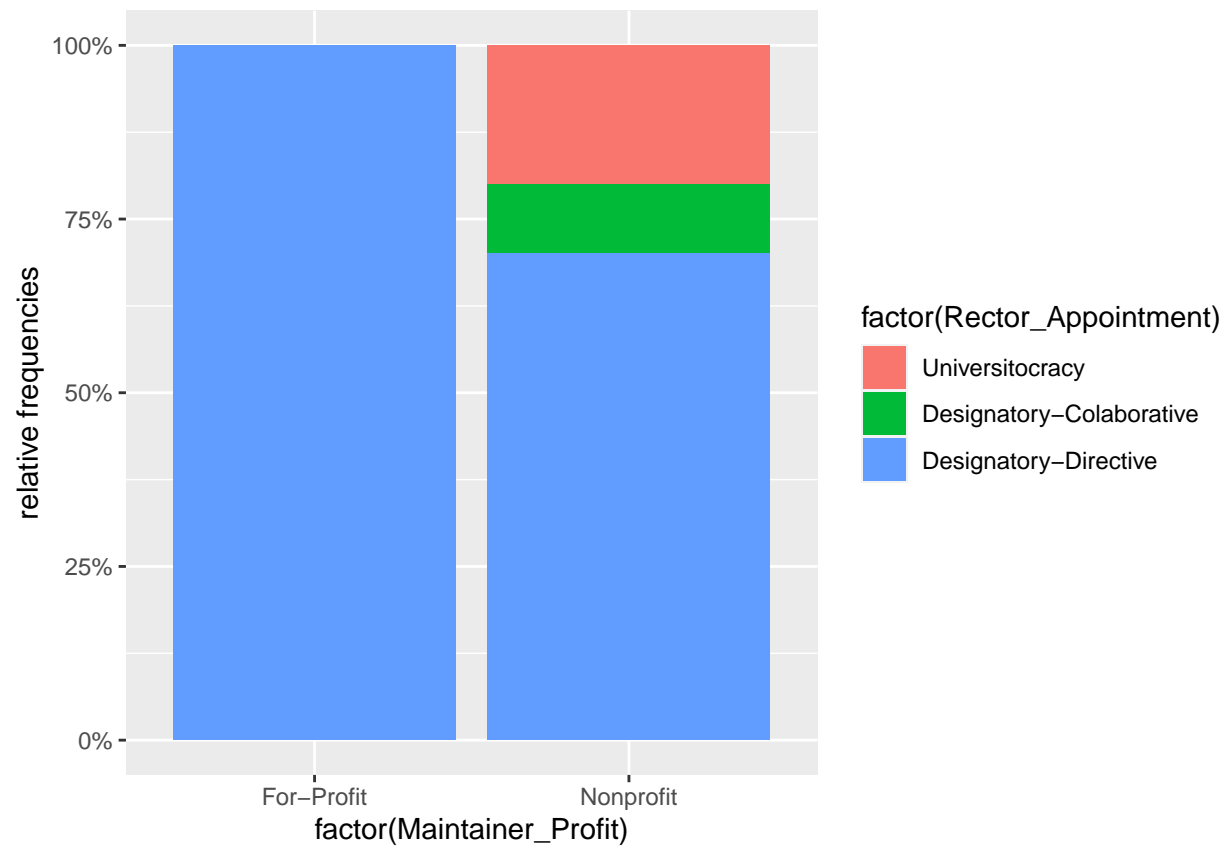
Descriptive statistics

Institutional distribution

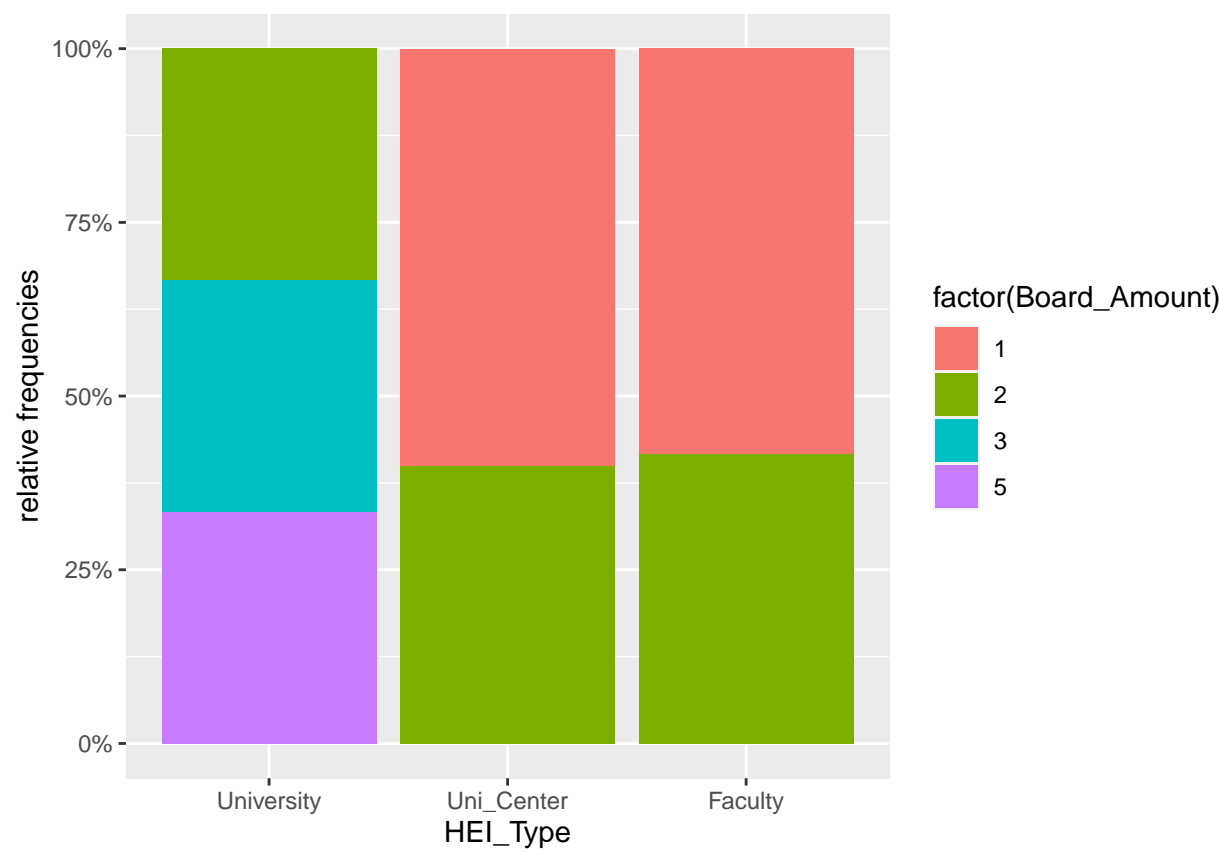
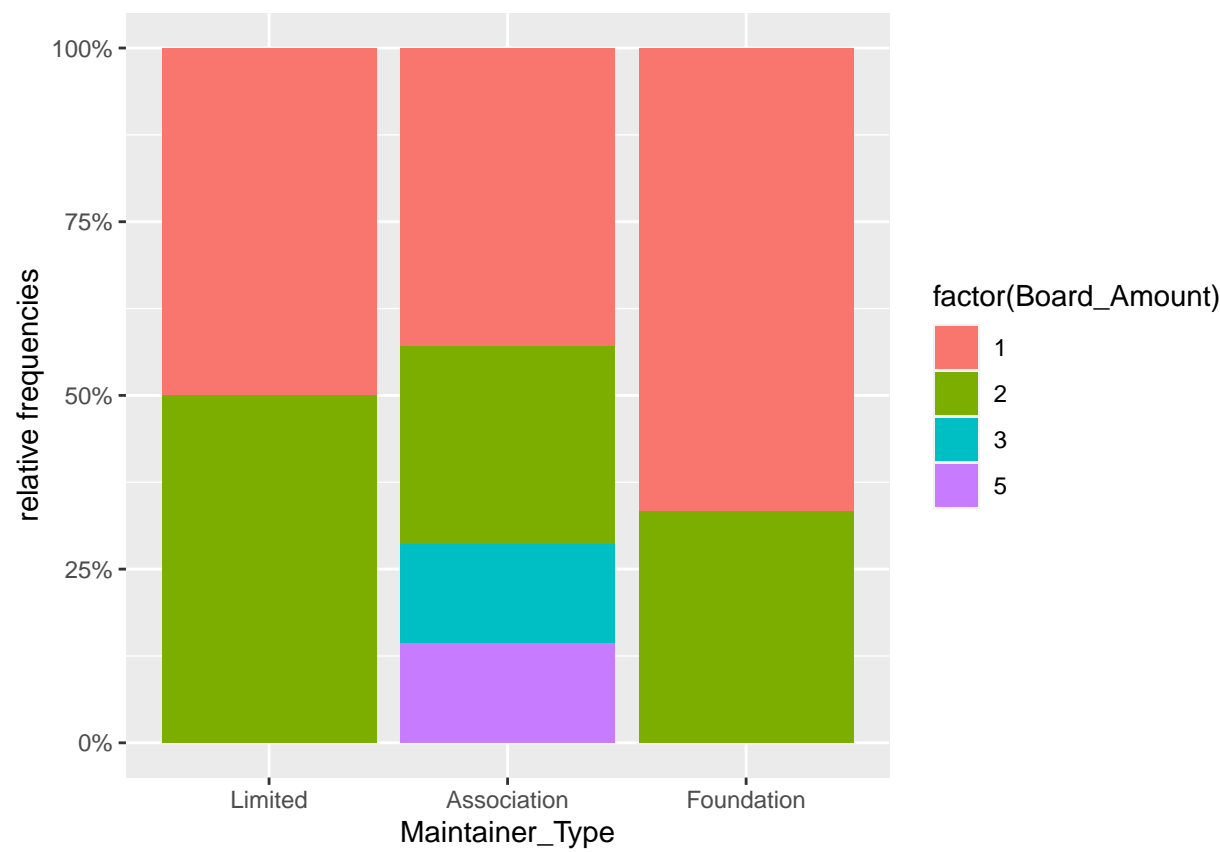
Institutional_Type	Ocurences
Maintainer_Type	
Association	7
Limited	10
Fountadion	3
Maintainer_Profit	
Nonprofit	10
For-profit	10
HEI_Type	
University	3
Uni_Center	5
Faculty	12
Qualification	
Certif_Communitarian	3
Certif_Relig	2

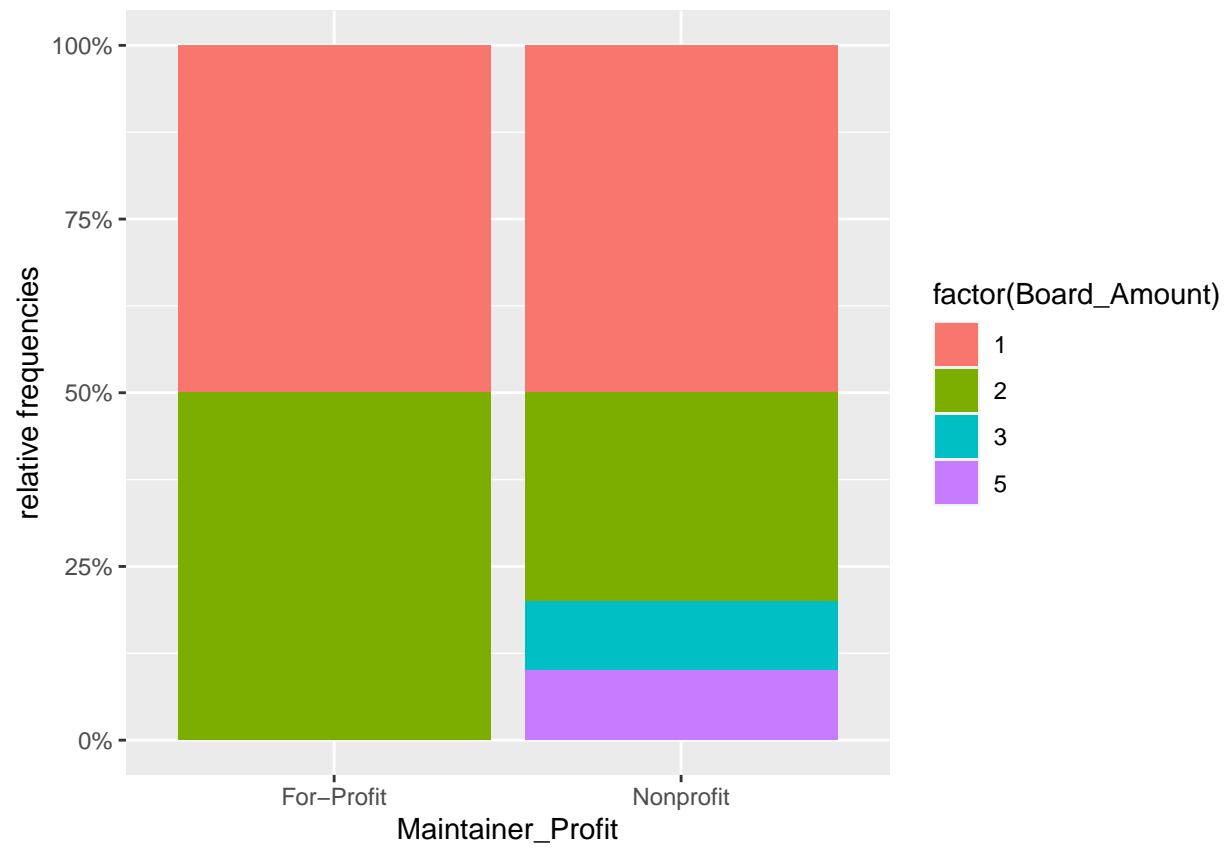
Rector Appointment Process



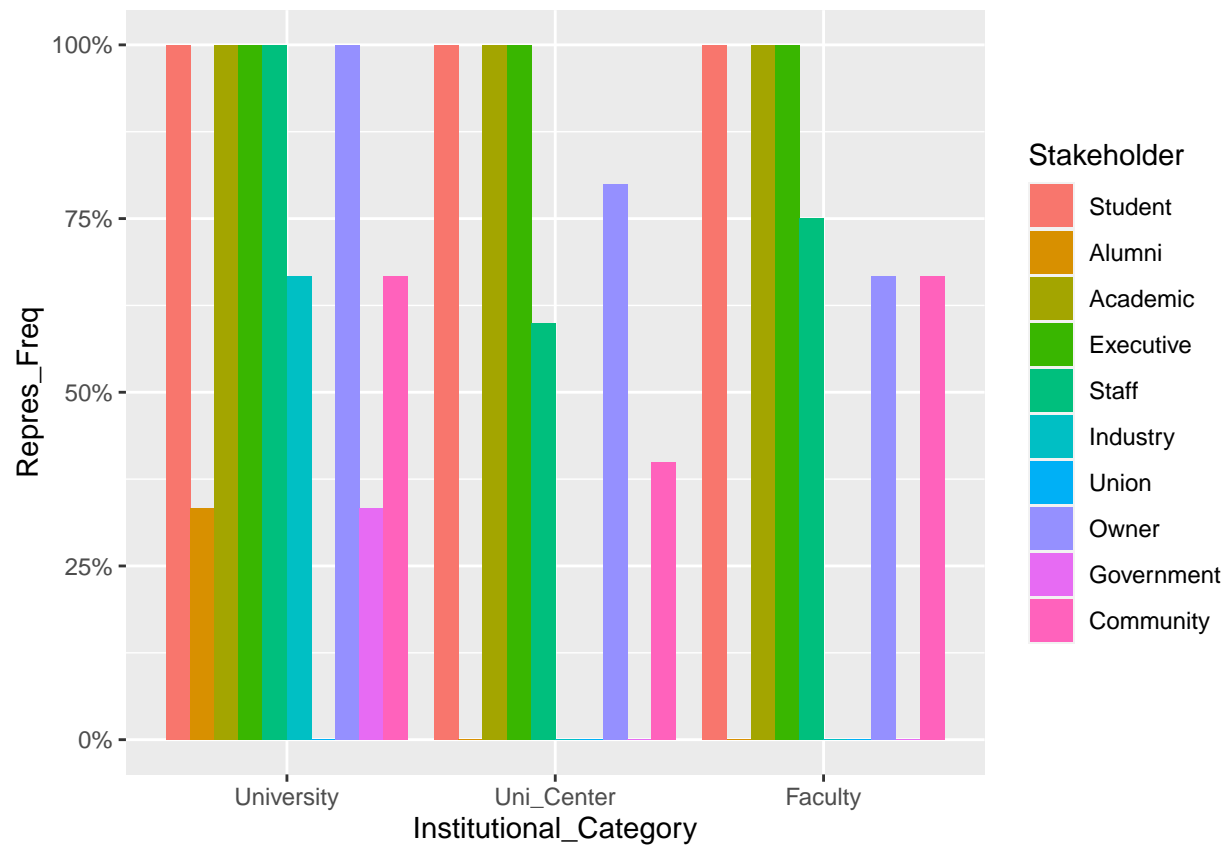
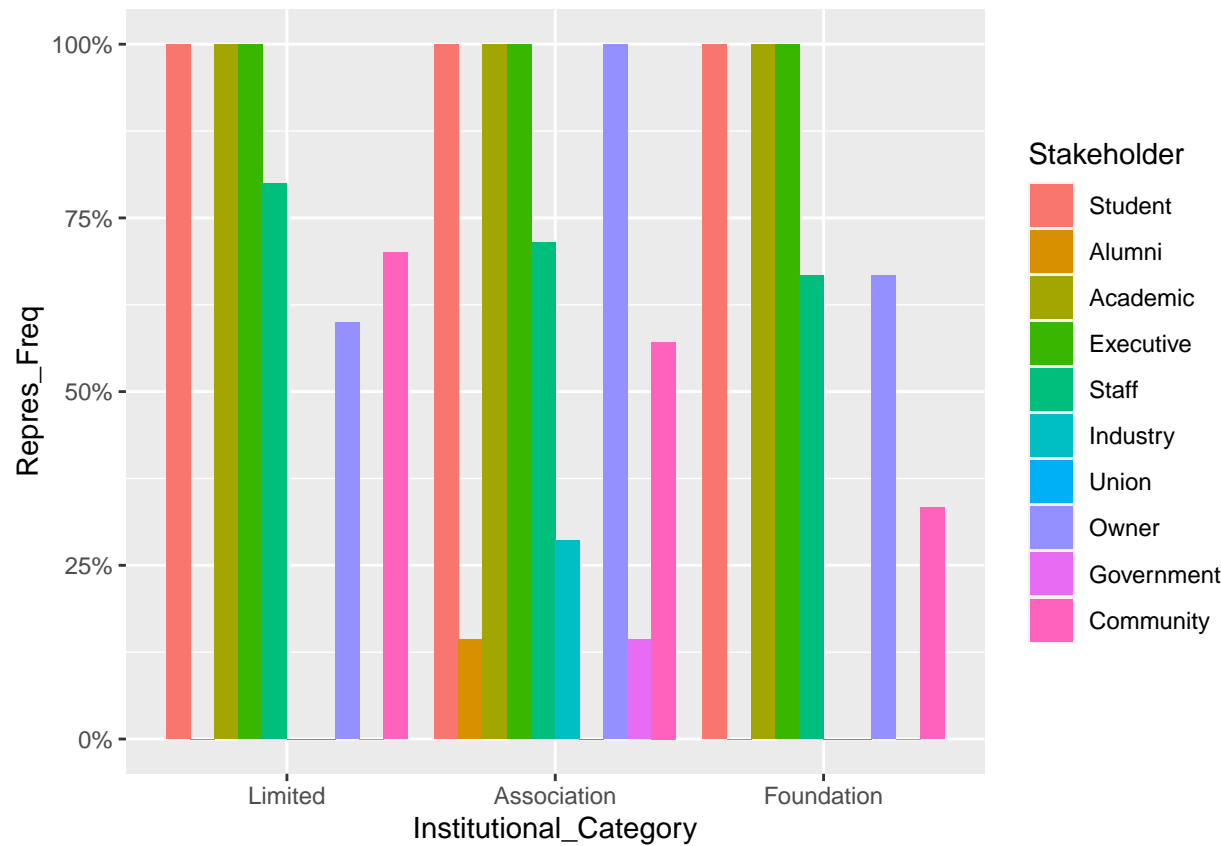


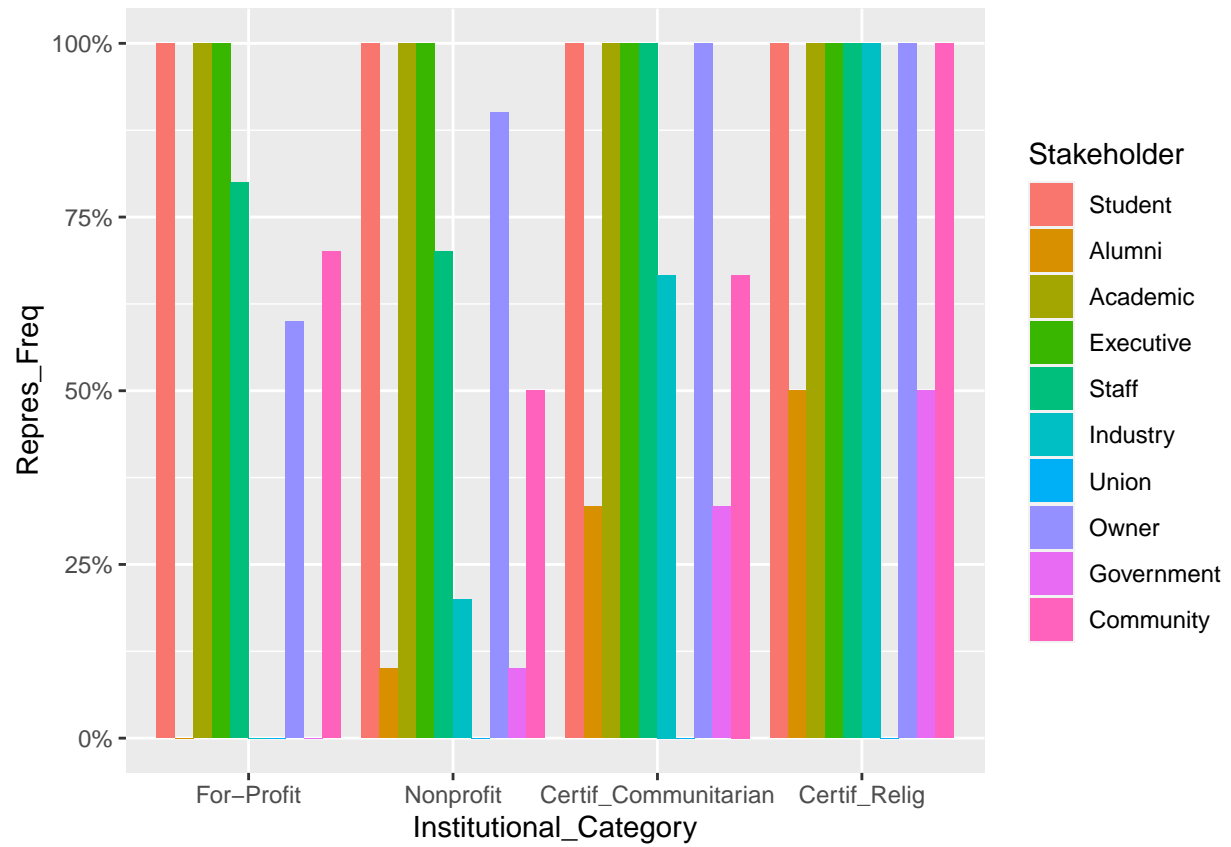
Number of Boards





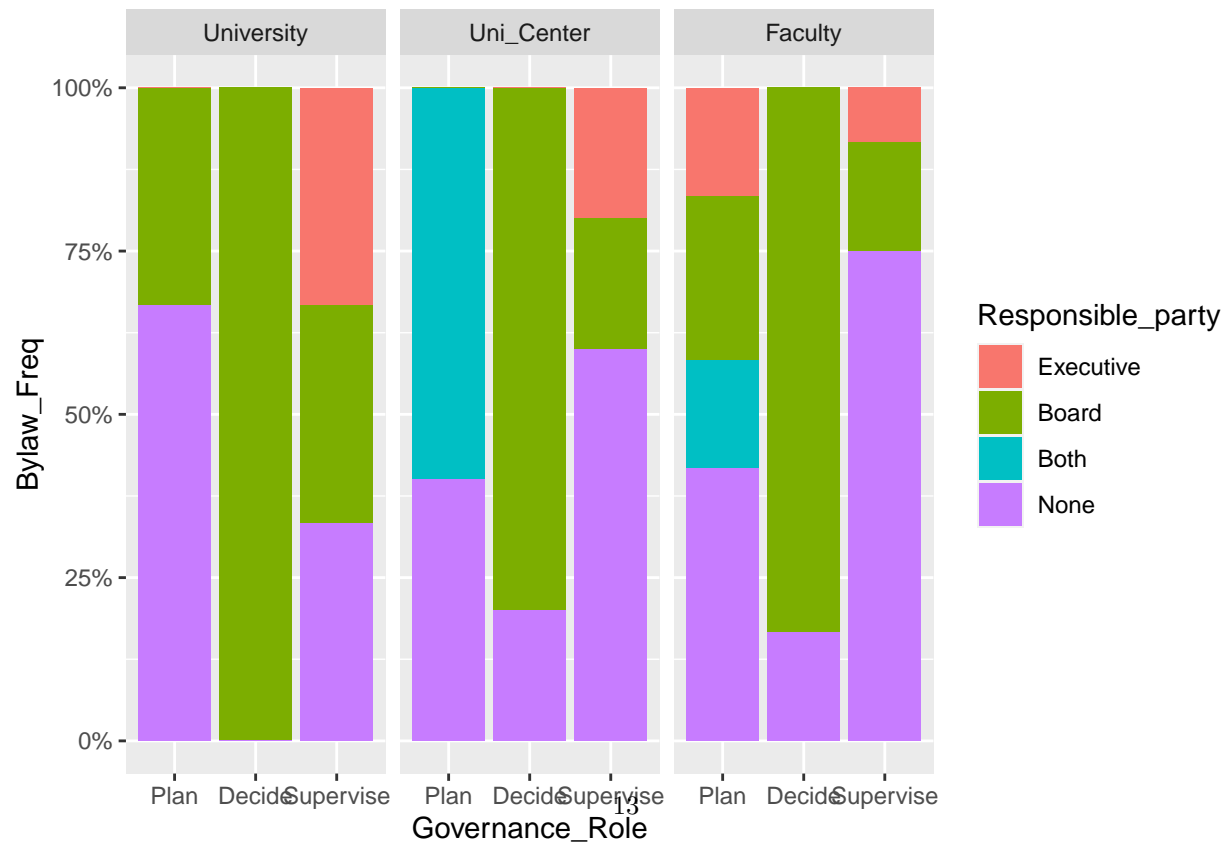
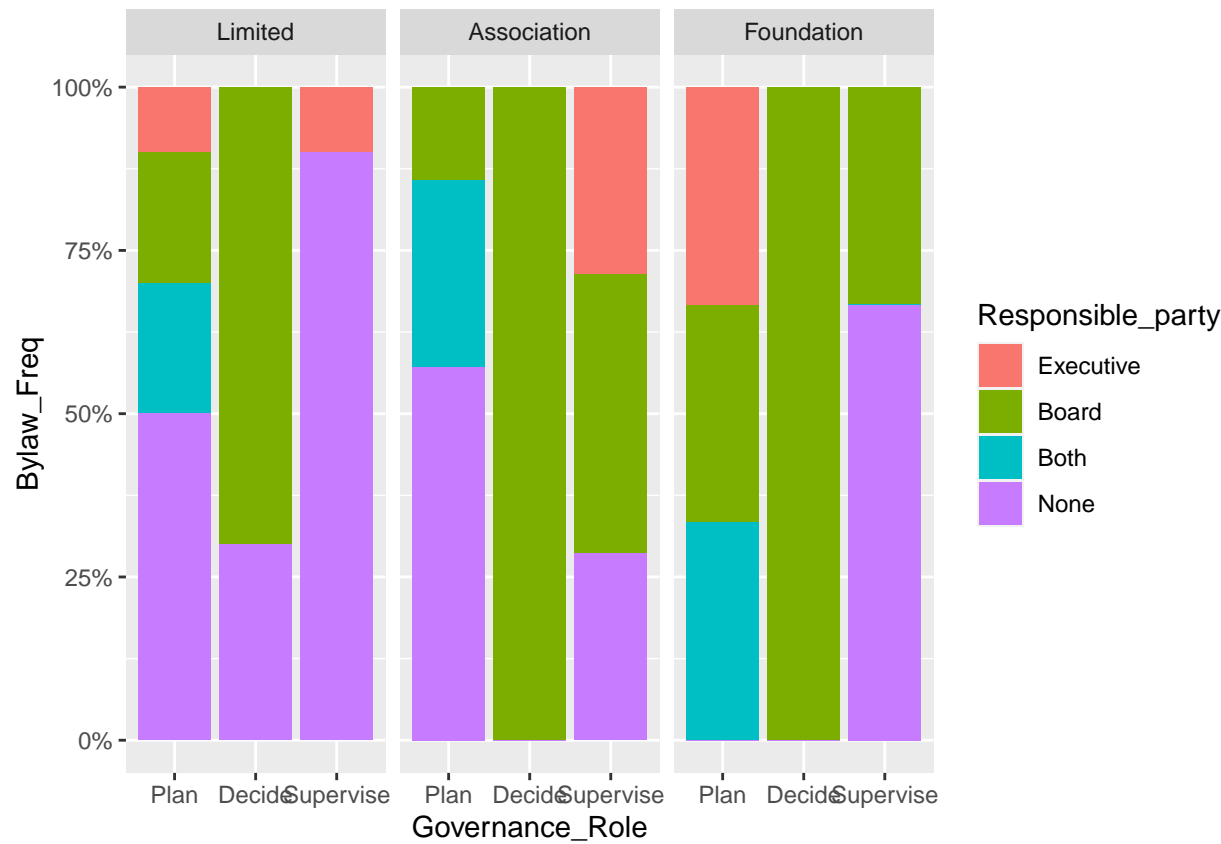
Stakeholder representation





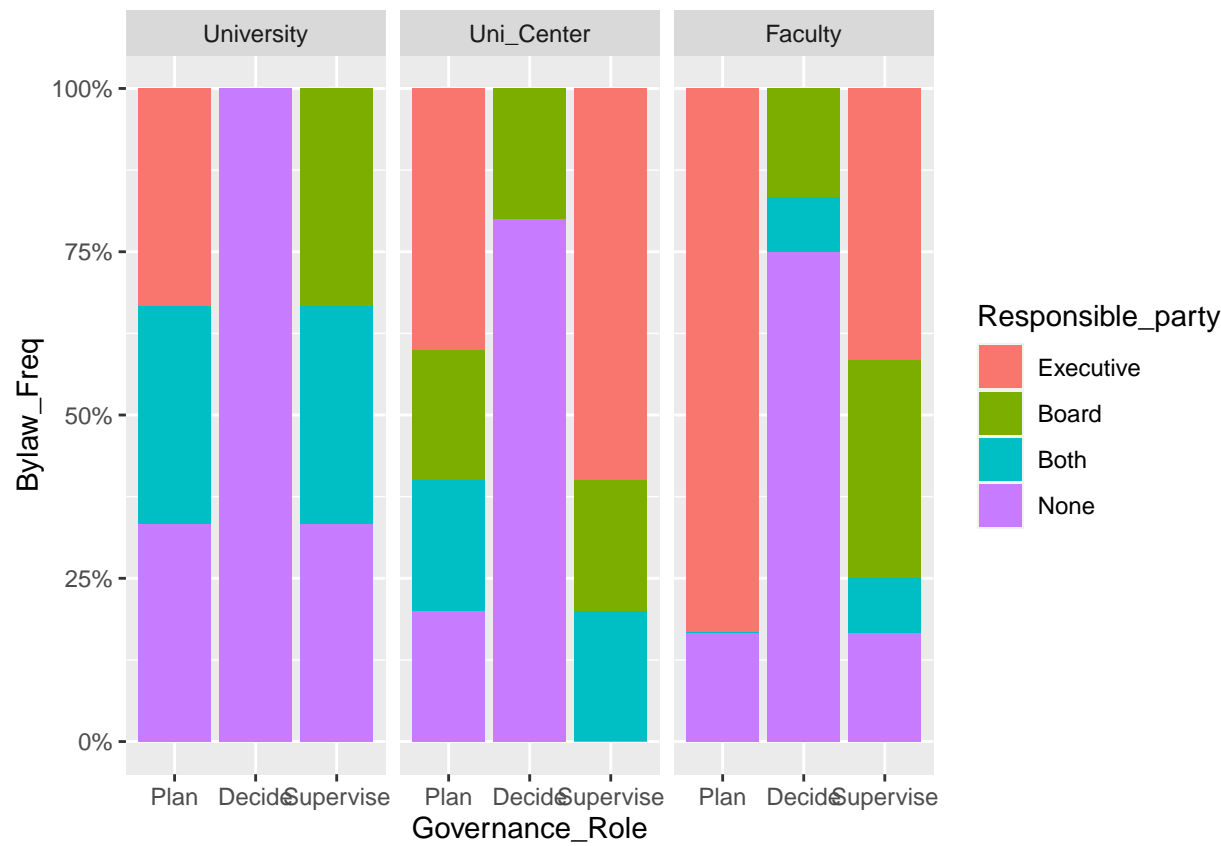
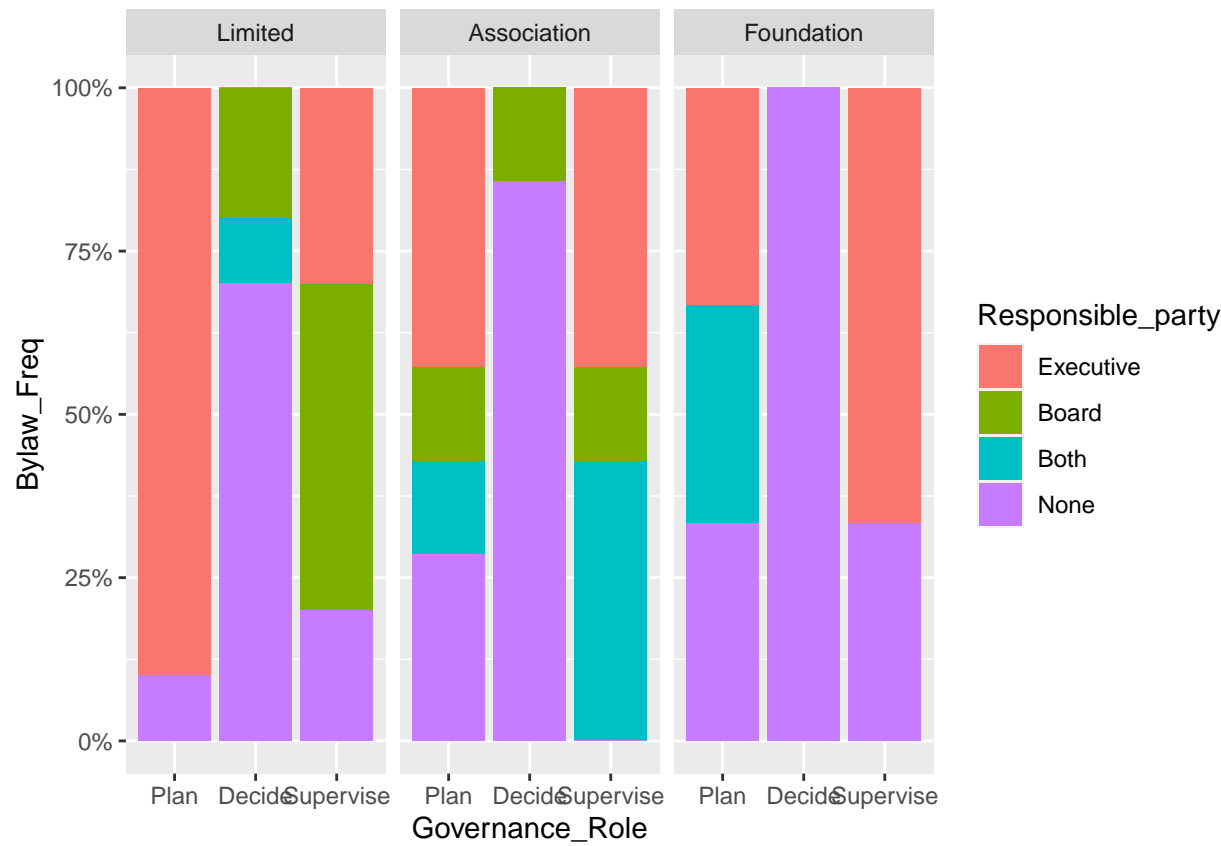
Responsibility

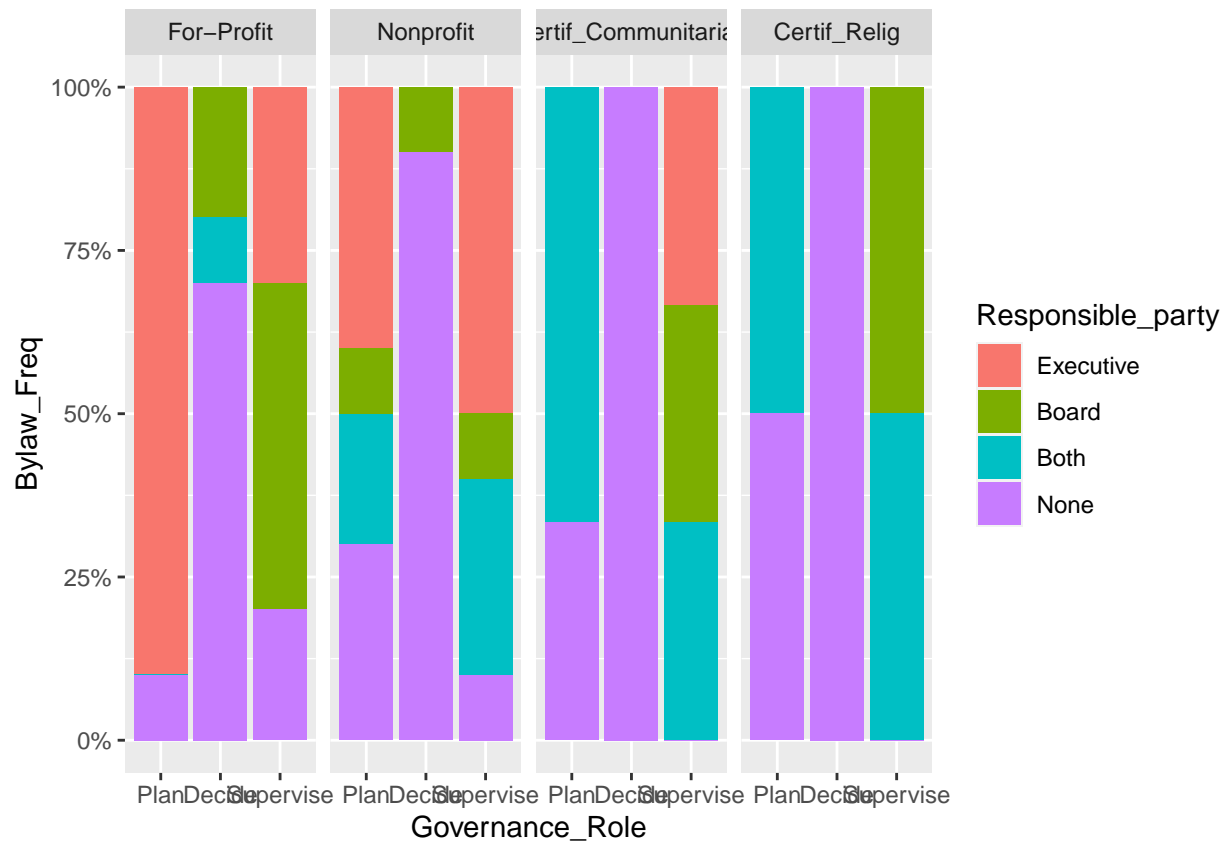
Academic



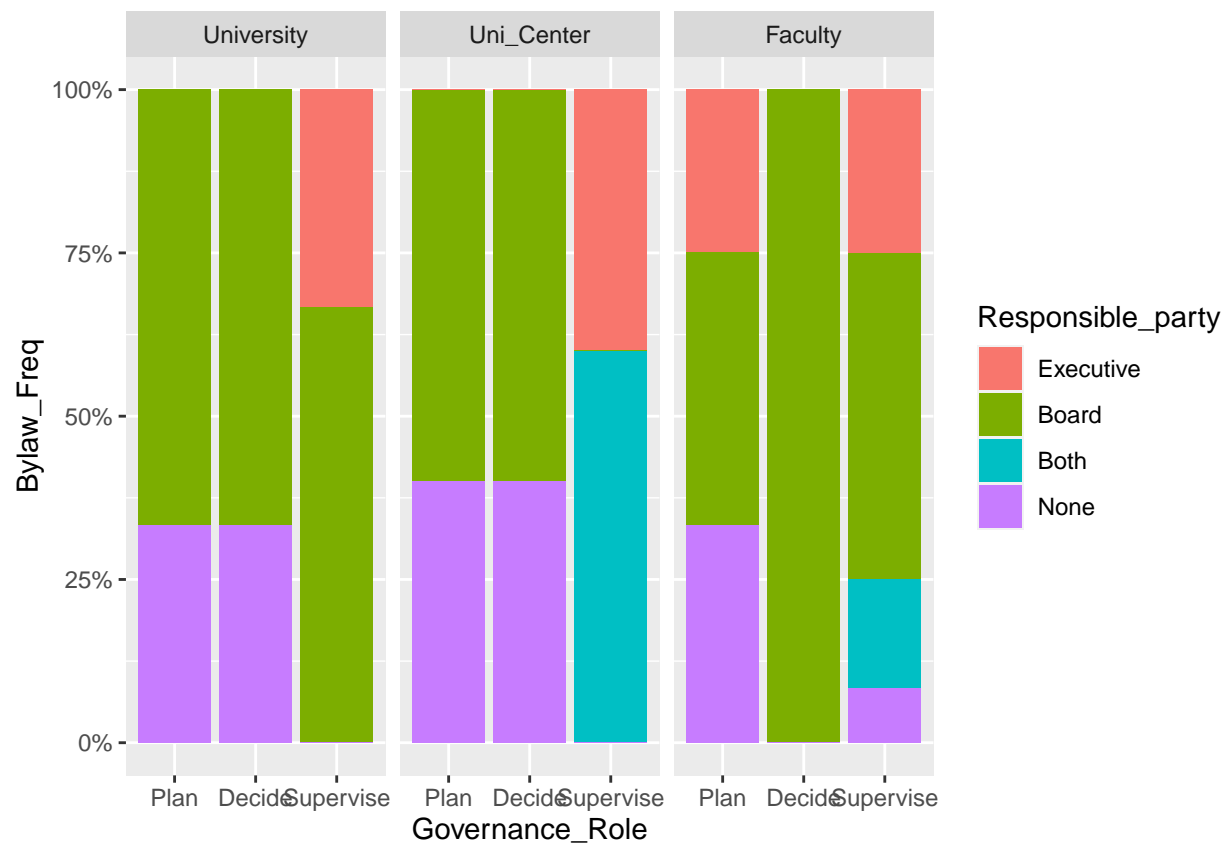
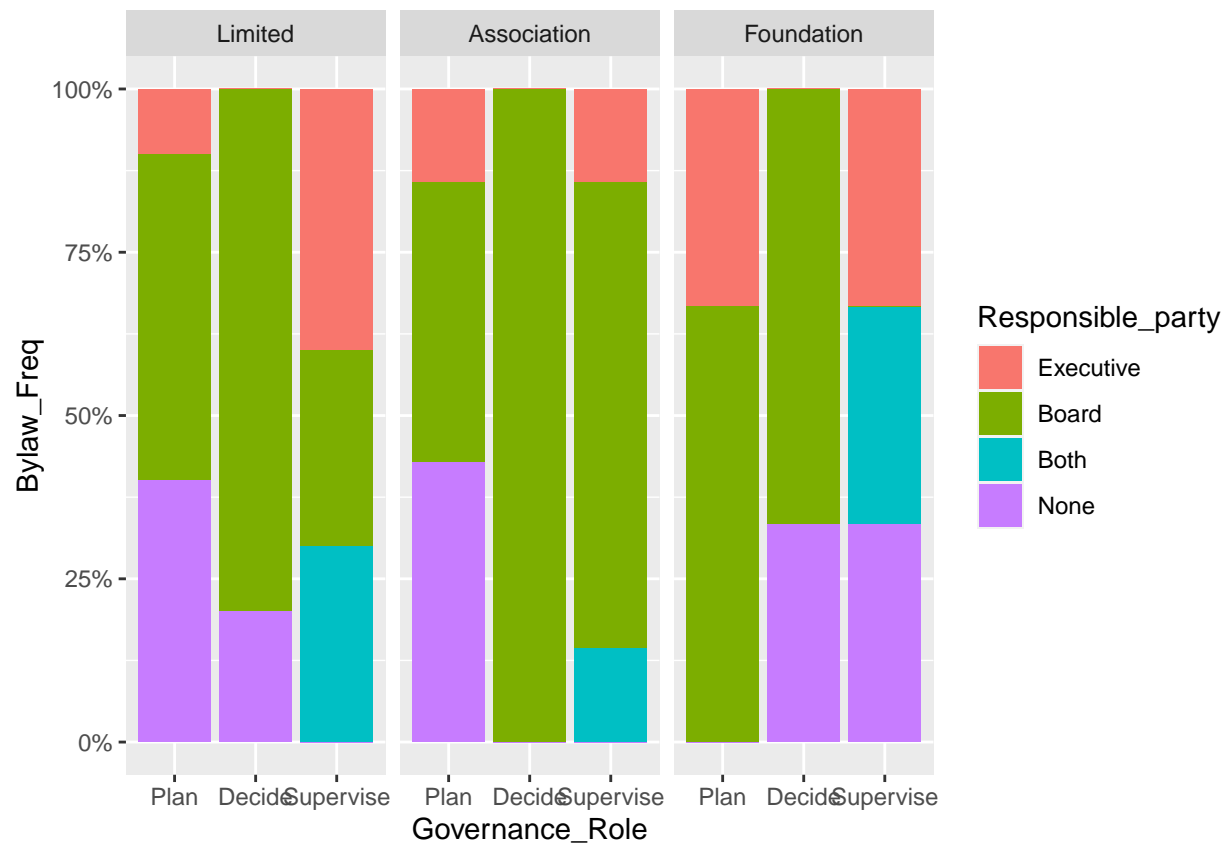


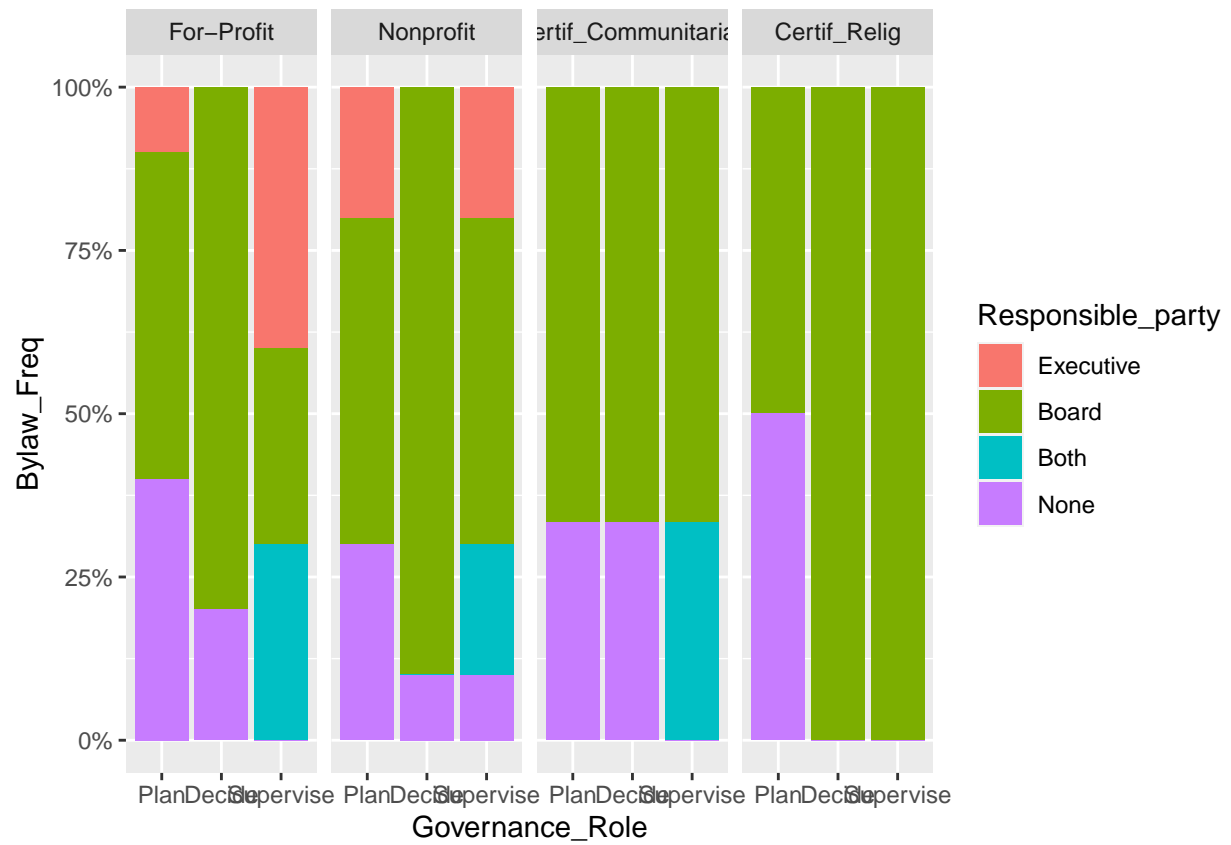
Financial



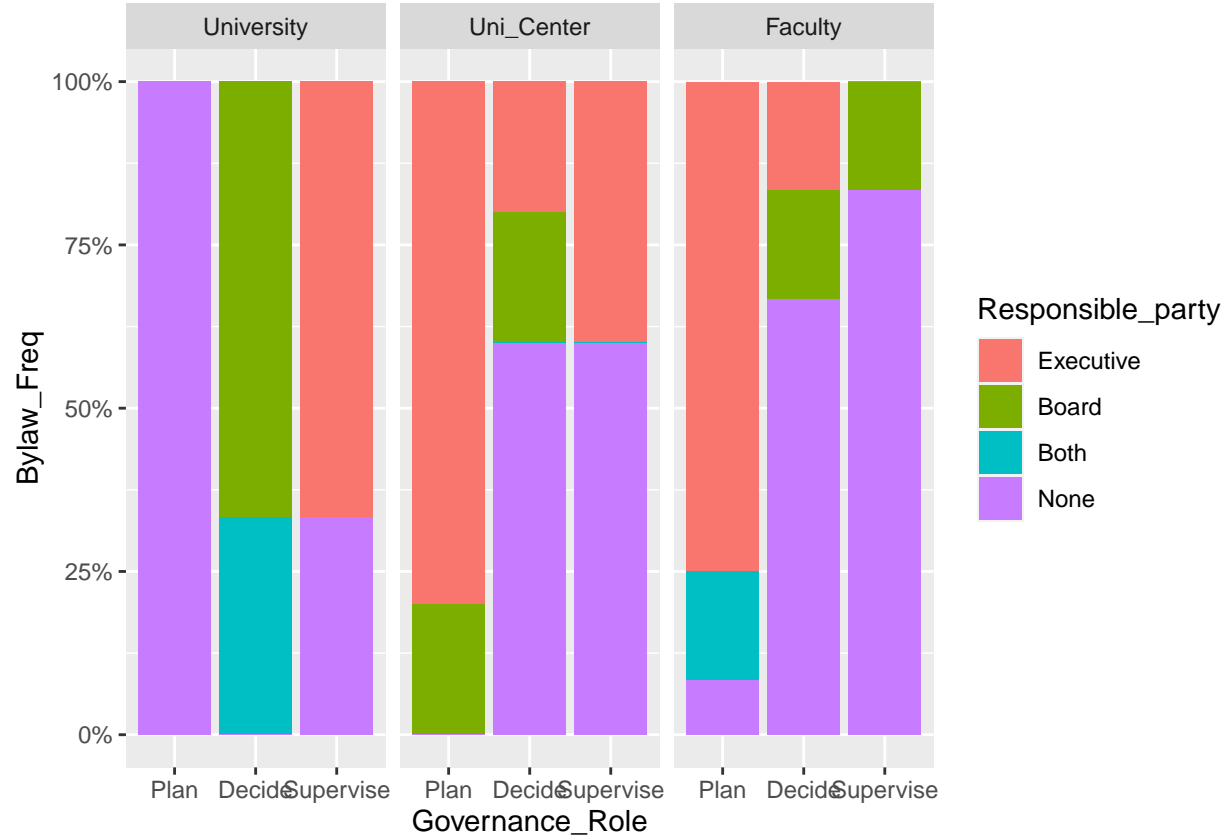
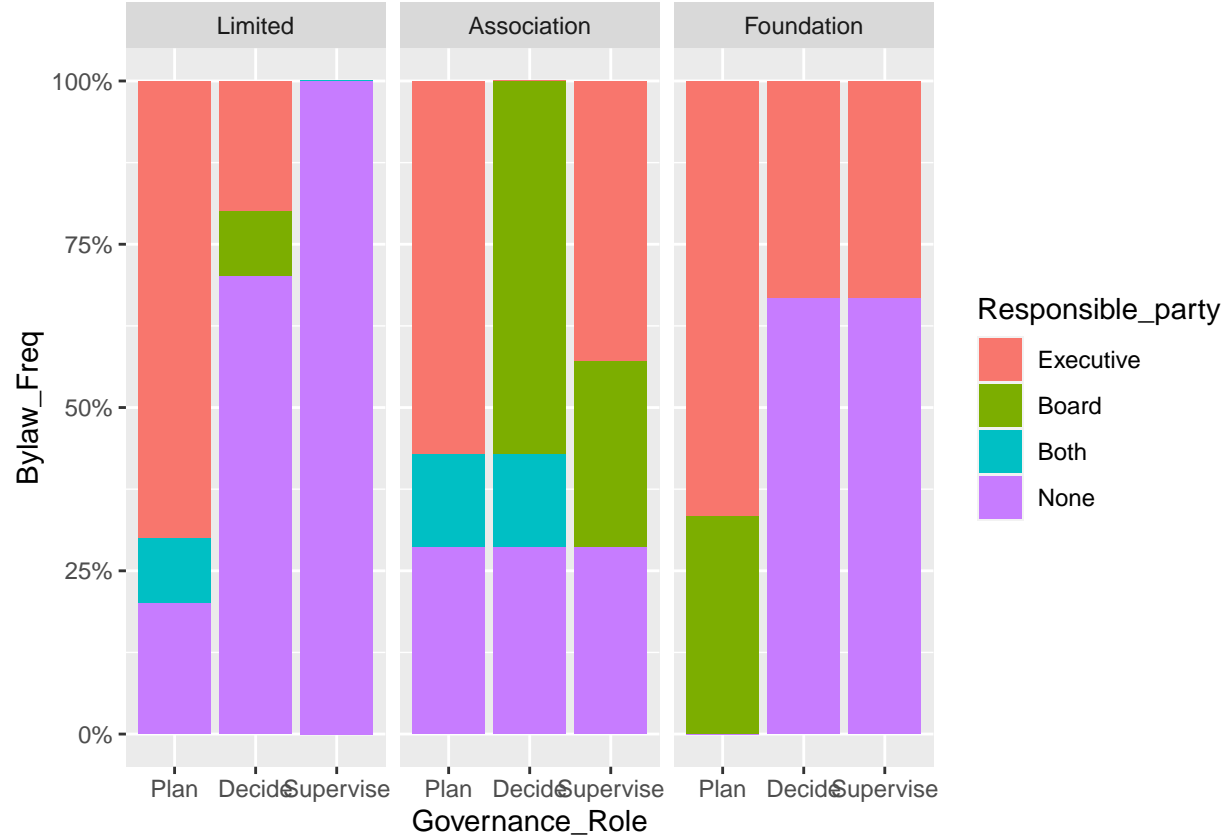


Organizational





Staffing





Concluding remarks

Data collection

- one HEI was listed as Limited in their government registry, but I know that it is ultimately owned by a corporation,
- many institutions give rectors veto power over board decisions, with varying magnitudes,
- some stakeholder representatives were not elected, but appointed by the rector,
- every board has the participation of the Top Management Team.

Statistical results

- Of the three universities analyzed, two were both communitarian and religious,
- HEIs maintained by a Limited company have the lowest representation of Owners in their boards, but have the highest representation of community,
- Religious institutions have the highest representation of Alumni, and 100% of community representation,
- Financial decision-making power is very low, but is higher in for-profit boards,
- Staff decision making power is higher at nonprofit boards

Bibliography

tbd