

How academic freedom and freedom of speech inter-relate and differ

Liviu Matei

Is there a need to reimagine academic freedom?

The first session of the King’s Presidential Series on Academic Freedom¹ addressed the question whether there is a need to reimagine academic freedom at the current time, if so for what reasons, what would it mean in practice, and what should be the place of the universities in such an intellectual, legal and public policy endeavour.

There was a good degree of agreement that reimaging academic freedom was indeed needed. At the same time, it was noted that academic freedom is a centuries-old concept and principle that has always been evolving anyway. In that regard, while the reality of recent imperatives for re-thinking academic freedom is to be acknowledged and addressed, it is also important not to succumb to doomsday intellectual scenarios. Moreover, this reimaging is already happening, mainly in form of new codifications for academic freedom being put forward by public authorities at the system/national or even supranational level in different parts of the world. A 2022 report by the Global Observatory on Academic Freedom (*Changing Understandings of Academic Freedom in the World at a Time of Pandemic*²) attempted a comprehensive analytical inventory of key recent instances in this process of re-thinking academic freedom.

Another important conclusion of the first session was that universities have been largely absent from the process of reimaging academic freedom in the first two decades of the 21st century, two decades otherwise full of challenges for, and developments in, academic freedom. The King’s Presidential Series taking place in 2022-2023 aims to contribute to addressing this situation: reimaging academic freedom is needed, it is even happening, but largely without the participation of universities and, in part for that reason, not necessarily in the right direction. The intention here is not to propose a new definition of academic freedom but rather formulate,

¹ 5 December 2022. Video recording and background documents available at <https://www.kcl.ac.uk/events/is-there-a-need-to-reimagine-academic-freedom>

² <https://elkana.ceu.edu/sites/elkana.ceu.edu/files/attachment/basicpage/391/finalgoafglobalreport20220712.pdf>

discuss, test and put on the broader public agenda a set of principles for reimagining academic freedom up to date and adapted for the current times. This set of principles (“The King’s Principles for Reimagining Academic Freedom”?) should emanate from within the university sector and be generated through a broad, inclusive, frank, practically-oriented and research-informed series of consultations.

Principles for reimagining academic freedom: a proposal.

The second session in the Series is planned as a thematic one. It focuses specifically on the relationship between academic freedom and freedom of speech. This choice is based on the conviction that clarifying (anew) the relationship between academic freedom and freedom of speech, or freedom of expression, should be an important part of reimagining academic freedom at the present time. This need for clarification arises, in part, from the fact that the new and powerful codifications of academic freedom that are currently being developed can be expected to have an impact in the long-term on the practice of academic freedom, on higher education and science more generally. “Long-term”, because once adopted, new laws on academic freedom or freedom of speech will not change again very soon or too often.

In more than one case, it can be stated, these recent codifications rely on skewed and counterproductive understandings of the relationship between academic freedom and freedom of speech, or freedom of expression. Codifications and regulations of this kind, some enshrined in legislation (including with constitutional value in certain countries), can be expected to affect negatively the production, transmission, dissemination and curation of knowledge as a public good, which is the core mission of the university and for which academic freedom, but not freedom of speech *per se* (as a right of all citizens), it can be argued, is a necessary precondition. Codifying (misconstruing) academic freedom as freedom of speech on campus dissociated from the obligation to produce, transmit, disseminate and curate knowledge as a public good in observance of academic standards (whether generic or more specific - such as rigor, adherence to facts, or test-retest reliability) is counterproductive and skewed.

Both academic freedom and freedom of speech are important democratic rights. They overlap partially (and necessarily) in the university and, at the same time, differ in many respects. They do not need to generate insurmountable tensions between them in the university or society, they are not, or should not be, contradictory. But reducing academic freedom to freedom of speech alone does create major tensions, potentially severely affecting the primary function of the university.

Academic freedom is a notoriously elusive concept and its relationship with freedom of speech is not straightforward either. Misconstruing academic freedom in the manner evoked here only adds confusion. The matter of their relationship, it should be stressed, is an eminently practical matter, given its implications, rather than a sterile dispute on semantics or on the abstract and speculative hierarchy of freedoms.

There are other aspects of the relationship between these two freedoms, not discussed here, which add to the challenge of clarifying each of them individually and their relationship for the purpose of better orienting and practicing university education, research and governance.

Academic freedom and freedom of speech are both important in a democratic society and in institutions that profess to operate democratically, such as universities. Yet, once again, they are not the same and reducing the former to the latter alone is not justified and can be dangerous.

Not everybody will agree with this short analysis or even that there was any predicament to spend time talking about here. That is why it is only fair and responsible to test this idea before formulating any principles that take this assumption, or hypothesis, as already validated.

For many members of the university community, broadly defined, academic freedom and freedom of speech are not only necessarily inter-related but indeed one and the same. This opinion was strongly voiced during the first session of the present Series as well. One of the most influential modern elaborations of academic freedom, the 1915 Declaration of Principles on Academic Freedom and Academic Tenure in the US, discusses extensively academic freedom with reference to freedom of expression, including the “freedom of extramural utterance and action”. Many public authority representatives seem to share this position as well, although for different reasons. They can, sometimes, put this understanding into regulations and then work to implement these regulations.

Conversely, a lot has been written recently in the UK and the US, in particular, by legal scholars, social scientists and humanities scholars, or as an exercise in reflexivity by academics from a large variety of fields and disciplinary perspectives, in order to elaborate the point that academic freedom and freedom of speech are not the same. Some of these writings discuss explicitly that reducing academic freedom to freedom of speech is not justified or is outright dangerous. Yet, this large corpus of scholarship and reflective writing does not seem to have made a serious impact inside or outside the academe. Or at least not yet.

A case in point is the UK Higher Education (Freedom of Speech) Bill. This case illustrates well the difficulties, even confusion, in understanding academic freedom, freedom of speech and their inter-relation. (This case is also an illustration of a superordinate predicament of academic freedom: we currently lack a conceptual reference for it that is sufficiently shared, up to date, and effective.) Quite a few academics have written about the Bill, some along the lines outlined here: dangerous codification of academic freedom as freedom of speech alone, plus quite a few even bigger “dangers” and “sins” as well. Yet there is no agreement in the academe and in the broader public arena about the nature of the Bill and its potential impact. Some welcome the Bill, others deplore it, and the separation line does not mirror strictly or linearly the usual boundaries of political positioning. The promoters of this legislative initiative remain unabated in their conviction that the law is good and necessary for the health of higher education, beyond any transitory or partisan political agendas, and whatever imperfections it may still contain they are marginal and will be corrected later during implementation.

If the short analysis here were reasonably accurate, it would follow that a particular principle to be put forward for consideration at this time in the context of this Series may be formulated as follows:

Academic freedom and freedom of speech are not identical. They are both important in higher education, in different ways, and partially overlap. Reducing academic freedom to freedom of speech is not justified conceptually or operationally, and may be dangerous for the production, transmission, dissemination and curation of knowledge in the university, for education, research and governance in higher education. Universities and public authorities must cooperate in order to safeguard both academic freedom and freedom of speech on campus. Guidelines to uphold these principles must recognise that they are different.

A separate question, worth considering in this context and not easy to answer either, is what should be the distribution of responsibilities between higher education institutions, their internal constituencies and governance bodies, and the public authorities regarding the codification, protection, and practice of the two principles.