

Is there a need to reimagine academic freedom?

Background paper for inaugural event in the Presidential Series “Charting a course for academic freedom”

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I. Is there a need to reimagine academic freedom?

Two main reasons can be invoked to explain the need to reimagine academic freedom:

- *We lack a conceptual reference for academic freedom that is up to date, shared and effective.*
- *The re-thinking of academic freedom is already happening, without universities playing a role. This may have long-term undesirable consequences.*

1. A necessary up to date, shared and effective conceptual reference for academic freedom is currently lacking.

There is need for a new understanding, a “conceptual reference” for academic freedom adapted to the current realities in higher education and science, in politics, geopolitics, and societies more broadly.

The absence of such a reference is one of the main reasons that explain the current state of academic freedom, which may be characterized as a state of crisis.

Several conceptualisations of academic freedom exist that have played a major role in the advancement of higher education over the decades, even centuries. At present, many are outdated; some are forgotten or not known outside limited circles; there is not a single one that is sufficiently shared, in a way that matches actual collaborations and interdependence between and among institutions and individual members of university and higher education policy constituencies locally, nationally and internationally; even the most powerful conceptual references for academic freedom are at best only partially effective, because they are mis-adapted for current realities in higher education, science and society.

Examples of important references for academic freedom and some of their limitations at the present time:

- Wilhelm von Humboldt’s understanding of academic freedom (early 19th century) advocated the use of state power to protect the independence of academic work, including from the state itself. International and non-state threats to academic freedom as we know them today, including from within the university, were not considered.
- American Association of University Professor. The 1915 Declaration of Principles (a statement of principles on academic freedom and academic tenure, consecutively revised a few times) relates to a constitutional amendment in the US, it is not easily translatable elsewhere.

- UN International Covenant on Economic, Social and Cultural Rights (1966). Important and influential international (“universal”) instrument; includes provisions about freedom and education and research. It is largely unknown in universities and difficult to apply or even refer to in institutional settings.
- UNESCO (1997) Recommendation concerning the Status of Higher-Education Teaching Personnel. One of the most comprehensive and ambitious attempts to conceptualise academic freedom and was ratified by many states. Not well known, not implemented.
- The Charter of Fundamental Rights of the European Union (2000). It includes the short provision “academic freedom shall be respected”. The Court of Justice of the European Union could not use it in the Lex CEU case (EU Commission vs Hungary). In 2020, the court had to base its verdict regarding an issue of academic freedom on commercial legislation instead.

Academic freedom is an evolving concept that has always faced challenges. Current predicaments of academic freedom, however, are not business as usual. They must be dealt with through new policy, legal, regulatory (including self-regulatory) frameworks and measures, and action on the ground (continuing and new practices in higher education, including in governance of higher education).

For these measures and actions to be well calibrated and effective, a new overall understanding (conceptual reference) of academic freedom must be put forward to inform their elaboration and implementation. This is an intellectual endeavour, before being legal, regularity, political or institutional. An updated understanding of academic freedom must be reflected in new higher education governance arrangements at the system at institutional level as well.

Educating academics, students, university administrators and relevant other actors to know more and better about the existing references and regulations about academic freedom might help, but only to a limited extent. Insistence on the proper implementation of existing regulations for the protection of academic freedom can also help in many instances. These regulations, however, are insufficient or mis-adapted for a lot of other situations.

A new understanding or conceptual reference for academic freedom (up to date, shared, effective) cannot be a one-line statement or one-sentence definition. Definitions can be generated based on such a reference as needed for the purpose of legislation, system or supra-national regulations, or institutional-level regulations and guidelines.

Academic freedom is a complex, composite, multi-dimensional concept. The crisis of academic freedom has multiple dimensions as well: political, legal, regulatory, administrative, financial, etc. as well simply human (actual human beings suffer, sometimes to the extreme, and these are not even exclusively staff members or students, when academic freedom is severely restricted or repressed).

The crisis of academic freedom is also an intellectual crisis. Since the fall of Berlin Wall, we have taken academic freedom for granted, at least in Europe. Consequently, the very concept of academic freedom remained underdeveloped, mis-adapted for current realities.

Globally, little work is being done regarding the conceptualisation of academic freedom, including in the context of the concerns for decolonizing the curriculum or university education and research altogether.

The task of reimagining academic freedom is primarily an intellectual one. This is a responsibility that universities must assume themselves, together with, if not already before other actors and stakeholders. And they must be given the chance to assume this responsibility.

2. The re-thinking of academic freedom is already happening, although not explicitly, and mainly without universities playing a role.

New understandings of academic freedom are being developed and codified, and formally sanctioned. This is not all and not necessarily for the better. Public authorities are leading this process (or processes), for the most. University participation is limited or absent. There is a need to chart a new course for academic freedom in the 21st century and universities must assume their part of responsibility for the direction and substance of this course.

It can be stated that one of the most productive ways of understating academic freedom in our present times is as **a precondition for the universities to be able to pursue their core mission, which is the production, transmission, dissemination, curation, and use of knowledge as a public good.**

Because higher education and knowledge are a public good, public authorities have both the right and the obligation to protect academic freedom. This includes the right to adopt and enforce legislation, thus acting on behalf of the public, which needs universities to deliver on the public good that is knowledge, for which, in turn, universities need academic freedom.

Recent and current processes and attempts at reimagining academic freedom:

- Magna Charta Universitatum (first adopted in 1988, revised in 2020)

One of the few university-driven efforts to conceptualize academic freedom. The fact that Magna Charta Universitatum was revised recently is an indication for the need to re-think academic freedom. Magna Charta used to focus more on institutional autonomy. It frames academic freedom as a value and governance principle.

- Rome Statement on Academic Freedom (2020)

This is *de facto* a common conceptual reference for academic freedom in Europe. The statement was signed by 48 European countries. It frames academic freedom as a value and calls for the creation of a European-wide mechanism to monitor it. Work on developing this mechanism is underway.

- Amending the Treaty of the European Union to include references to academic freedom

A European Parliament's Panel on Science and Future of Technology (STOA) initiative. STOA initiated a process with the ambition to adopt EU legislation for academic freedom and

amend the Treaty of the EU for this purpose. It frames academic freedom as a fundamental right (not a human right, value or governance principle) and focuses on research only, leaving out education (for constitutional and political reasons).

- Florida legislation on education (2022)

Multiple legislation. Among others, opposes academic freedom as freedom of teaching and research to the parents' "fundamental rights to make decisions regarding the upbringing of their children".

- UK Bill on Higher Education (Freedom of Speech)

Currently in the Parliament. Frames academic freedom as freedom of speech alone.

- European Court of Justice decision on Lex CEU

The court decision in the Lex CEU -EU Commission vs Hungary case (2020) created jurisprudence by making academic freedom subject to commercial legislation in the EU (the right of a university to deliver not education and research but establish and deliver commercial services).

- Attempts at re-conceptualizing academic freedom in France in order to address "*Islamo-gauchisme*" in universities.

The French government attempted in 2019-2021 with support from academic and civil society quarters to re-define academic freedom and restrict the right of academics and universities to engage in new research projects and to promote new academic disciplines, in the name of protecting national security, while accusing French universities of Islamo-leftism.

II. What can universities do?

If efforts to reimagine academic freedom were needed, some are already underway; they are of different natures and magnitudes in different contexts, led primarily by public authorities, often in inter-governmental settings. What can the university do? Clearly, academics and higher education institutions cannot issue and implement laws and regulations (except for self-regulations). It would be useful to discuss and clarify how universities could play a role. This is a tentative list of possible avenues:

1. Applied research

A significant, multi-disciplinary corpus of research on academic freedom exists already. However, little research is available on aspects that would help answer the question whether or not there is a need to reimagine academic freedom at our present time. There is very little research regarding the ongoing efforts to re-think, reconceptualize and codify anew academic freedom. Promoting more research, including applied research in this area would help. It would require integrating approaches from different disciplines and interdisciplinary fields, from legal studies to philosophy.

A possible example of very directly "applied research" is from the situated epistemology of academic freedom. It is often forgotten that academic freedom is a multi-dimensional,

composite concept. Accordingly, available regulations tend to retain only one dimension. Academic freedom is thus understood, regulated and practices in stark separations as a human right, fundamental right, value, governance principle, instrumental principle, democratic freedom, etc. For some academic freedom is only one of these dimensions. For others, it is a random combination, like a kaleidoscope. Maybe it should rather be conceptualized like a Rubik Cube, where there are different facets of the same concepts, inter-related, possible to combine (but not in an infinite number of configurations)? Focusing on a single “facet” can be useful in some situations but not in others. And how do we know what facet to select, what are the dangers with it. Is it dangerous to reduce academic freedom to freedom of speech? What else should be there? The situated epistemology of academic freedom as the study of how individuals, groups organisations understand academic freedom in a specific nexus of social, political and economic relationship (including power relationships) should be able to provide light into the efforts of re-thinking academic freedom.

2. Creating inclusive institutional and inter-institutional platforms.

These platforms should allow to identify current challenges to academic freedom and clarify how university community should position themselves in addressing these challenges. They should also help educating students, academics and university administrators about academic freedom, thus overcoming the current lack of knowledge in this area.

While external regulations for academic freedom might be useful, even needed in certain situations, it might be equally important for universities to have their own internal regulations, guidelines, and processes for protecting and promoting academic freedom. This is happening very rarely at present.

3. Engaging with public authorities, policy makers and other actors attempting or undertaking to re-conceptualize and re-codify academic freedom.

It is a difficult question how best to engage with public authorities at different levels. Staying out of these processes, however, should not be an option for the university.

4. Engaging with the public.

Is this a separate matter than engaging with public authorities to re-imagine academic freedom? How to go about it?

The ambition of the King’s series on charting academic freedom is to create an inclusive platform that allows to systematically scrutinize the current challenges to academic freedom, reflect on how to address them, and contribute to charting a new course for academic freedom.