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## A clear and present danger

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Many scholars feel that their freedom to question is in danger of being eroded or even lost. Zoe Corbyn examines the threat in the UK, while Christoph Bode and David Gunkel consider the state of affairs in Europe and America

There is an online retailer in the UK that sells T-shirts marketed specifically at academics. Most of them feature geek jokes and nerd humour (one sports the slogan "Chillin' with my genomes", another a Rubik's Cube image), but one carries an amended version of the popular short poem *First they came*. The original by Pastor Martin Niemöller was a rebuke to the intellectuals who stood by while the Nazis purged group after group of "undesirables" ("First they came for the communists, and I did not speak out - because I was not a communist;"). The T-shirt makes changes to detail the lack of voices defending black people, gay people and "bleeding-heart liberals", but it leaves the final line intact: "Then they came for me and there was no one to speak up for me."

Although it may seem odd to some, the sentiment speaks to many inside Britain's academy who feel they are in danger of losing a core feature of scholarly life: academic freedom. Barely a week goes by when *Times Higher Education* does not carry a complaint or a warning from an academic about threats to their cherished right to speak out. And it is not just high-profile people - there is a real sense of unease among rank-and-file academics that their right to speak truth to power, to set their own research and teaching agendas and to voice their opinions about the management of their institutions is being stripped away.

Despite the UK's generally liberal atmosphere, there have been many instances where officials have come down hard on scholars attempting to exercise their freedom.

Aubrey Blumsohn lost his job as a researcher at the University of Sheffield in 2006 after he blew the whistle over his difficulty accessing research data on a drug from his funder, Procter & Gamble. After 30 years at the Dartington College of Arts, Sam Richards, a lecturer, was sacked in 2007 because his apology for publicly criticising his principal was judged to be insufficiently sincere. And last year, outrage greeted the decision by the University of Nottingham to vet the reading lists of politics lecturers after it was discovered that a student had downloaded an al-Qaeda training manual.

Last year also saw the sacking of David Nutt, the independent scientific adviser on drugs, after he "campaigned" against the Government's policies - a case that underscored the broad threat to scholarly values, even if it was arguably more a crisis of scientific advice than of academic freedom (as there was no university reprimand).

Other notorious and unpleasant cases test the limits of academic freedom. Chris Brand was fired by the University of Edinburgh for gross misconduct in 1997 after questioning paedophilia charges against Nobel prizewinner Daniel Gajdusek on the grounds that his own research suggested that paedophilia with a consenting partner over the age of 12 with above-average IQ was not harmful. Frank Ellis, an expert in Russian and Slavonic studies at the University of Leeds, sparked intense debate about scholarly liberty in

2006 after he was suspended for expressing support in a student newspaper for a theory that whites were generally more intelligent than non-whites.

There are, nonetheless, academics who are rather more sanguine about the state of their personal freedoms.

Steve Fuller is not a biologist, but that does not stop him arguing publicly that intelligent design should be accorded equal status with evolution and other scientific theories. In fact, he believes it is his right to speak out as he does. According to the controversial University of Warwick sociologist and author of *The Sociology of Intellectual Life* (2009): "Academic freedom isn't simply the right to speak within your expertise: it is the right to speak about anything - but in a way that involves an appeal to reason, argument and evidence."

He regards his participation in the debate about evolution as living proof that academic freedom is alive and well in the UK. "There are people who hate my guts, but they have not been able to shut me down."

Another scholar unafraid to speak his mind is David Colquhoun, professor of pharmacology at University College London. Best known as an outspoken campaigner against pseudoscience, he is also an inveterate critic of the objectionable changes he sees at universities, including his own. On hearing that his department would be restructured, he launched a blog to chart its journey to "death". "People say it is brave when you challenge your institution, but if you think things are not being done right at a place you are very attached to, you should say so."

Which examples give the true picture of the state of liberty in the UK academy in 2010? Are scholars being cowed? Is the UK academy suffering a catastrophic loss of liberty? What dangers are looming, what lines are being drawn and how is freedom being protected and defended?

### **A year of reckoning**

"2010 looks like being the year when academic freedom needs to be defended everywhere," claims Dennis Hayes. The professor of education at the University of Derby is also leader of Academics For Academic Freedom (AFAF), a campaign group set up in 2006 to put freedom at the top of the agenda of everyone in the academy. Controversially, it also argues that a wider definition of academic freedom must include a right to no-holds-barred free speech.

"I don't think people live in fear, but academic freedom has been lost and a lot of critical people now are moving out of universities."

His concern is echoed by a transatlantic observer, Cary Nelson, president of the American Association of University Professors (AAUP). "It is under threat in a fairly similar way in every country that has made a major shift towards employing people without any long-term job security," he says, making clear that that includes the UK. In his book *No University is an Island: Saving Academic Freedom* (2009), Nelson lists 16 threats to scholarly freedom, which range from the ethos that sees higher education as little more than job training, to the claims that institutions and their managers must be afforded a free hand amid financial crisis.

A great many UK academics consider the biggest threats to academic freedom to be increasing commercialism and managerialism. Teaching has been reduced to "box-ticking" and "learning outcomes", they complain, while research must increasingly be configured around the agendas of others. But they also identify a raft of specific threats including institutional changes to governance arrangements, the Government's research impact agenda and its approach to tackling extremism (see box page 33).

Terry Hoad, lecturer in English at the University of Oxford, is vice-president of the University and College Union. He believes that a "creeping culture" that is "mostly insidious" is encroaching on academic freedom. "All these things conspire, and whether it is to do with extremism or government priorities or threats to livelihoods, the pressures are such that they make people look over their shoulders more."

"Academic freedom has always been under threat," notes Blumsohn, who is now a hospital researcher, campaigner for openness in research conduct and co-chair of the Council for Academic Freedom and Academic

Standards (Cafas), an organisation seeking to provide support to individuals whose academic freedom is infringed, which it does largely through letter-writing targeted at vice-chancellors.

"I don't know if it is fair to say that it is more under threat than it has been in the past - we have never been able to do all these wonderful things we imagine we should - but I do think that the types of threats have changed a lot over the past decade. A lot of things that are threatening now were not really big issues on the agenda 10 or 15 years ago," he says.

Others, too, see this as a crucial time. "I think it is going to be a crunch year for academic freedom," notes Tim Horder, senior research fellow in medicine at Oxford and co-editor of Oxford Magazine, which recently dedicated an issue to academic freedom. "The impact agenda and libel laws are firmly poised to impinge on it," he says.

Like Hoad, Eric Barendt, a professor of media law at University College London and a member of Cafas, thinks freedom is slowly withering. His book titled *Academic Freedom and the Law* is due out later this year. "In many respects academic freedom hasn't gone, but there is a gradual decline in academic freedom in practice. Although in the traditional older universities it is still in its main substance honoured, the anecdotal evidence from newer universities is that many more academics tread on eggshells to avoid trouble."

### Enemy within?

Such wariness leads some to argue that academics have been complicit in the restriction of freedom by not standing up in its defence.

"The real threat to academic freedom today is the failure (of the academy) to see it as something that needs defending," says Hayes.

A similar point is made by Roy Harris, emeritus professor of general linguistics at Oxford: "Academics are the chief enemies of academic freedom." Harris, who was also instrumental in establishing AFAF, accuses many in the academy of being "plodders" who just want a quiet scholarly life and who do not see it as their duty to speak up on vital issues.

Others continue the enemy-within argument. "Nobody bats an eyelid when they are told: 'This is what you are going to do research on.' It is just accepted that people will roll over," notes Frank Furedi of the University of Kent, also an AFAF supporter. He is another controversial sociologist who has written books including *Politics of Fear* (2005) and *Where Have All the Intellectuals Gone?* (2006).

Colquhoun, too, has noticed a timorousness in some colleagues. He laments the "self-censorship" that he sees - the people who "daren't speak for themselves" - and he lays the blame at the feet of an intimidatory "cult of managerialism". "Whether (academic freedom) is actually reduced is hard to say. But I think the perception that it is worse is real, and the perception is quite enough to effectively gag people," he notes.

What worries him most is academics' timidity about "everyday" matters: people won't stand up even at departmental meetings to express their opinions, he says. "While it is easier for older academics to speak out, the younger either don't want to speak or heavily self-censor. They are worried by the fear that it will harm their careers - that they won't get a promotion or they will be seen as 'troublemakers rocking the boat'."

It's difficult to say just how widespread is the intimidation and restriction of academics. Blumsohn says many institutions use gagging agreements to ensure the silence of academics they get rid of. "In the end, (some staff) get so beleaguered that they just sign and leave." The agreements prevent campaigners and colleagues from finding out just how universities deal with staff who raise unpopular matters, he says.

Perhaps most pessimistic for the future is Terence Karran, a senior academic in the Centre for Educational Research and Development at the University of Lincoln and scholar of academic freedom. In his regular surveys of legal provisions governing academic freedom in European Union member states, the UK repeatedly comes "bottom of the pack".

Karran - whose surveys are theoretical and do not take account of the cultural protections not explicitly stated in the law - makes the point that two bulwarks of academic freedom are largely absent from the UK. Tenure (which basically ensured that an academic could not be sacked) was abolished in 1988, and the right of academics to engage in the governance of their institutions is all but non-existent (Oxford and the University of Cambridge are exceptions - see box page 32).

The list includes a third element - institutional autonomy - according to Gill Evans, professor of medieval history at Cambridge and a veteran who has long fought for academic freedom, including many years with Cafas. She argues that without institutional autonomy, which faces many threats, academics would be at the mercy of the state's control. Although the UCU agrees, it also notes that there are plenty of powerful university groups defending autonomy, which simply isn't the case for academic freedom.

Generational change may explain some of the reason academics could be losing their hold on this aspect of academic life, Evans explains. She says the UK is in "new territory" in the sense that in the past ten years the older scholars who retained academic tenure after it was abolished have begun to retire and leave the academy. "(Now) the vast majority of academics do not have tenure and so we are in a more precarious position," she notes.

Karran advocates a return to a system of tenure with caveats such as a probation period and some get-out clauses for universities.

As to the necessity of academic freedom to the academy, Evans does not mince her words. "Weaken it and you are in very dangerous territory for the future of civilisation. It is the best way of ensuring that knowledge moves on without being distorted by factors irrelevant to the nature of the truth."

AFAF's Hayes agrees: "Lose academic freedom and you have not just lost a freedom, you have lost the university."

### **What are we fighting for?**

But exactly what is it that campaigners seek to defend? There are almost as many different interpretations of academic freedom as there are academics, and the line between where it stops and where other rights such as freedom of speech start is as blurry as it is controversial.

In 1954, at the height of the McCarthy hearings in the US, Albert Einstein offered as a definition of academic freedom the "right to search for truth and to publish and teach what one holds to be true". This right also implied a duty, he asserted: "One must not conceal any part of what one has recognised to be true."

But how much practical value is a statement of principles?

For those in the UK, the law offers some solid support. The right to academic freedom is enshrined in legislation, as part of the Thatcher Government's Education Reform Act 1988 (which is duplicated in the devolved administrations). However, notes Hayes, few academics are even aware of this protection.

The Act's main aim was to scrap tenure but, at the 11th hour and after wrangling in the House of Lords, a section securing academic freedom was inserted to offer academics some compensation for their loss.

It provides special employment protection for academics by placing a duty on institutions to ensure that academic staff have "freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions without placing themselves in jeopardy of losing their jobs or privileges they may have at their institutions". Strictly speaking, it applies only to pre-1992 institutions, but most post-1992 institutions have included it in their statutes or instruments of governance (except a few Christian universities).

The provision gives academics a "much greater freedom" than any other profession to determine how they work and to criticise the administration of their university, notes Barendt. Yet although it may be a particular and specific freedom that does not apply to non-academic jobs, its precise meaning and extent is unclear. The

simple fact is that it has never been tested in the courts.

At a minimum, most would regard it as the right of academics to, within laws such as those governing freedom of speech, undertake their own teaching and research without interference and according to professional standards. It allows, say, a university economist to issue an evidence-based paper highly critical of the Treasury or an English lecturer to impart a certain textual reading to students without fear of reprimand. It protects the activities at the core of academia and intellectual life, for which disciplining an academic would be both completely absurd and unacceptable.

Yet it is also commonly considered to extend to giving academics licence to participate in and to publicly criticise their university's governance. "Academic freedom (includes) the right to express one's opinion publicly about the institution or the education system in which one works," says the UCU's 2009 statement on academic freedom. Academics have the right to "take part in the governing bodies and to criticise the functioning of higher education institutions, including their own," states the 1997 Unesco "Recommendation Concerning the Status of Higher-Education Teaching Personnel", to which the UK is a signatory.

Understandably perhaps, universities see things somewhat differently. Prefacing his views with the proviso that he is "speaking as a lawyer more than as a head of an institution", Malcolm Grant, the provost of University College London, says: "Certainly academics may criticise their own institutions publicly, and that is a not uncommon habit. But it is not an entitlement to act with impunity. The legislation protects freedom of speech within the law. So it obviously doesn't protect speech that is defamatory, incitement to racial or religious hatred, harassment, malicious falsehood and so on. The extent to which it is conditioned by the contract of employment remains - so far as I am aware - untested in the courts, and in particular whether it would yield to a contractual obligation to their employer not to publicly criticise the institution in ways that would bring it into disrepute."

Barendt's interpretation is that academics "probably" do have the right to be critical of their institution. "It is clear that academic staff, by convention, have a broad freedom to put forward their own ideas as to how the university is run and to criticise the governance of the university without running the risk of losing their jobs ... The Nolan Committee on Standards in Public Life said that it was a very valuable check on bad governance, incompetence and corruption in universities for academics to speak freely about how the university is run."

### **The 'business' of academics**

In considering academics' rights, the UCU's Hoad notes that universities are not commercial organisations and that they and their staff have special missions. The "whole business" of academics is to question and to challenge ideas; the "consequence" of that is that academics "have to be allowed" to publicly question the running of their own institutions.

Evans notes that it was only after the 1988 Act came into effect that academics began to ask if academic freedom meant they could criticise the management. "It seems to me that it has to," she says, "but it has never been subsequently tested in the courts."

The area of "extramural utterance" is equally tricky and just as open to interpretation. Does academic freedom grant special protection to academics who speak outside their own subject and express controversial views outside lecture halls?

AFAF says there is no question about it - such speech should be protected under academic freedom. "The most creative aspect of academic life is often the ability to comment on areas that are not narrowly part of your 'contracted' area of expertise," says Hayes.

For his part, Fuller argues that it is the scholarly "mode of expression" - relying on reason, argument and evidence - that deserves special protection, irrespective of the subject.

Others counter that while it is completely acceptable for academics to speak outside their expertise, for example, stating beliefs on religion or politics, it does not - and should not - merit any special rights of

protection. "It is up to academics if they speak outside their subject areas," says Karran. "But if they do so, they can speak only in the capacity as citizens. They can't claim academic freedom."

The obvious problem is just where to draw the line. Is a sociologist speaking about evolution protected by academic freedom?

Exactly where academic freedom ends and limits on freedom of speech and expression kick in is also hotly debated. Many believe that academic staff should not be exempt from general laws governing freedom of speech and expression. But the UCU statement argues for less freedom than the law allows, stressing that academic freedom bears a responsibility to "respect the democratic rights and freedoms of others" and noting that it expects members to refrain from "all forms of harassment, prejudice and unfair discrimination". It gives a long list of grounds on which members should take care to ensure that this does not occur.

But AFAF and its supporters object. They argue that the UCU caveats and any "narrow view" of academic freedom amount to "politically correct censorship". While remaining civil, academics (and everyone else) should, they contend, have "unrestricted liberty" to be offensive to others without fear of sanction - indeed, such liberty is necessary for academics to do their jobs. AFAF would like to see the law changed to enshrine complete and absolute freedom of speech for academics. It is a provocative position that offers support for notorious cases from Frank Ellis to Chris Brand. Such individuals may be wrong-headed and voice unpalatable thoughts, but the right to say such things should be sacrosanct, the absolutists argue.

"People say I mix up free speech and academic freedom, but I just see it as a continuum," Hayes explains. "It is freedom of speech that is the core of academic freedom ... and academic freedom is the uninhibited and unrestricted right to be critical and the freedom of people to listen and make up their own minds."

Furedi takes up the intellectual argument. By engaging honestly and openly with people who have very different views, however noxious, scholars sharpen their views and make intellectual leaps, he maintains; suppress the conversations and the quality of ideas and discourse diminishes. "Good arguments about race and racism don't drop out of the heavens," he says. "They come about by arguing with racists - not by being offended by what they are saying but by taking their arguments apart."

Hayes paints a bleak scenario of the "subversive classroom". In it, lecturers are happy to criticise anything and everything within the confines of a classroom but never dream of raising a whisper in public. "You can still have the illusion of criticism ... (but) it is intellectual masturbation," he chides.

He detects a strain of this in the "tragedy" of a distinct lack of support for AFAF's ideals among scholars who busy themselves with the "academic study" of academic freedom but do nothing to defend it. Not one higher education professor has signed a 1,000-strong AFAF petition supporting the ideals, he notes.

"I just don't think we should have carte blanche to be offensive or insulting, let alone to defame," explains Barendt, summing up why he and others disagree with the AFAF view.

Karran thinks the UK must come up with an "agreed definition" of academic freedom that sets out its limits before it can move forward at all.

### **A little less conversation**

However, more talk and discussion is the last thing a pragmatist like Blumsohn wants. He says there is a "huge gap" between the theorising and pontificating about the many and varied aspects of academic freedom, and the messy front line where individuals encounter problems. More action on the ground is what is needed most, he believes.

"We need to look at multiple individual cases and why things have gone wrong and get involved in commenting and challenging and calling universities to account ... But the (theorists) don't seem to care."

Put simply, he thinks there are not enough places for academics who feel their rights have been breached to take their cases and find support. "In the US there are lots, but there are very few places where beleaguered

people can go in the UK and it is a real problem.

"The whole atmosphere of dissent and challenge of universities needs to be upgraded. There are no effective organisations out there with sufficient gravitas and energy to call universities to account in these cases."

He says academics suffer because the UCU is more interested in defending salaries and working conditions than in pursuing universities that infringe academic freedom and because professional bodies that should engage just don't. AFAF raises important principles of free speech, but is not very vocal in the public defence of besieged individuals, Blumsohn says. The situation leaves Cafas as just about the only organisation taking an interest, he says, and it isn't particularly vocal either. It consists of a small group of academic volunteers who get involved in limited casework in a limited way.

## **OXBRIDGE - WHERE ACADEMICS RULE OK**

**Academics at the universities of Oxford and Cambridge enjoy far more freedom to participate in - and criticise - their governance than academics at most other UK institutions.**

It is a model of self-governance that some such as Terence Karran, who studies issues of academic freedom, would like to see adopted more widely.

Given that Harvard University has a similar model, perhaps it is actually part of the fabric of what makes a world-beating institution, he contends.

As established by their own 1923 Act of Parliament, the universities' supreme governing bodies are their Congregation (Oxford) and Regent House (Cambridge). Each consists of all of their 4,000 or so permanent academic staff. And each acts almost like a mini-parliament, giving scholars both the capacity to speak truth to power and to democratically stop their administrations dead in their tracks if they don't like what they are doing.

Of course, the bodies are not involved in the day-to-day administration - mostly their approvals are just a rubber-stamp process. But if they desire, academics can speak their minds and flex their muscles.

Imagine standing up in public to your deputy vice-chancellor as a matter of routine and without an ounce of fear and saying the following, as Andrew Aitchinson, a young computer officer in the department of pure mathematics and mathematical statistics at the University of Cambridge, did in November last year. His comments were part of a four-hour debate on proposed changes to weaken disciplinary, dismissal and grievance procedures (so-called Statute U) and which Cambridge's administration and its Regent House are currently locked in battle over.

"Mr Deputy Vice-Chancellor," he began, after stating his name and his department. "I can't tell you what I really feel about the report, since I am unwilling to use what Westminster calls 'unparliamentary language'. (But) I believe that this proposal, if enacted, will make the university a less good employer, put an unproductive division between academic and academic-related staff, and dilute our academic freedom, so I wanted to be able to stand here and tell you how to make the proposal work better for the interests of the university. I struggled for ages; in the end the best improvement came to me: drop the proposal and stick with what we already have."

Terry Hoad is vice-president of the University and College Union and an Oxford academic. "Ultimately we do have this power, which is very precious to us. We are not the worst off (when it comes to academic freedom in UK institutions), but we are not immune from the creeping threat either."

## **UNDER SIEGE**

**While there are many insidious threats to academic freedom, some are overt. Those currently worrying the academy most include:**

**Institutional changes to statutes or instruments of governance**

Some universities are making changes with a view to being able to remove such entitlements as academic peer involvement in dismissal or grievance cases and the right to an independent appeal against dismissal.

What is being amended is how academic freedom is protected and who oversees that, says Jane Thompson of the University and College Union.

"We are concerned that removing (current provisions) could affect academic freedom," she says.

On the positive side, she notes that the union has successfully worked with some universities to revise governance rules without damaging the principle of academic freedom.

### **The Government's research impact agenda**

This promises to skew research funding to reward those academics whose work delivers the biggest economic, social and public policy pay-offs.

Such a change could restrict the freedom academics have to undertake research into any area that interests them or that they feel is important. The notion that research must be "useful" reduces their discretion.

"I don't think it could be legally challenged and academic freedom is not a positive right to funding, but impact does seem to be something of an undesirable limit on what it is we choose to work on," notes Eric Barendt, a University College London academic who is writing a book on the subject.

Academics acknowledge that research has never been immune to the sway of fashion or patronage in the past - the academy has always had to do some sort of research to get funding (think of the research assessment exercise). But combined with increased priority-setting by research councils and more pressure to secure highly directed industry funding, the threat to researchers' blue-skies ambitions is more significant than ever.

The use of new powers under the Terrorism Acts of 2000 and 2006

The most obvious threat posed by these laws is to those academics involved in security and terrorism studies. But the Acts have also led to worries that in the future universities may be forced into monitoring extremism on campus, which would threaten the student-teacher relationship.

Could academics be investigated and even prosecuted for discussing an al-Qaeda training manual or extremist propaganda in their seminars or publications? Quite possibly, says Barendt, given the broadness of the law.

A Universities UK working group is exploring the balance between academic freedom and the need to prevent violent extremism.

### **English libel law**

"It is almost fascist-style legal intimidation, and people are becoming too scared to raise things because they are worried about litigation."

That is how Aubrey Blumsohn, co-chair of the Council for Academic Freedom and Academic Standards (Cafas), describes the potential of English libel law to curtail academic freedom.

Other scholars believe that its insidious use and chilling effect could grow even further as academics work increasingly with private-sector companies.

A campaign to change the libel laws is gathering support, and the Government has a working group considering the issue.

### **Other specific threats**



Other specific threats to academic freedom identified by scholars include:

- an "increasing obsession" with intellectual property rights on the part of universities
- the restrictive terms that companies increasingly insert into contracts with academics that prevent them from publishing or require them to share preliminary findings
- pressure from senior colleagues to control publication so as to gain a competitive edge
- the move among funders to require research to be done by teams.

### **IT'S NOT JUST FOR LECTURERS**

**Steve Fuller believes that the academic freedom of students also needs to be protected in the UK.**

Students in Germany have traditionally shared some of the rights that academics enjoy in setting the direction of their learning.

That is not the case in the UK or the US, where the consequences of neglecting this issue are being played out across campuses. The right-leaning group Students for Academic Freedom was founded by writer and activist David Horowitz, who believes that some lecturers try to indoctrinate their students in leftist thought. (His book *The Professors: The 101 Most Dangerous Academics in America* (2006) attacks individuals for their conduct.)

Active on many campuses, the group campaigns against professors whom its members regard as steamrolling students with their political biases. It is also pushing a "Student Bill of Rights".

Fuller believes it is unlikely this situation would be replicated in the UK, which has more checks on teaching (such as external examiners). However, he still notes the "tendency" for UK academics to think they are the only ones in the university who have academic freedom.

"(It) is not just the freedom to teach and research, but also the freedom to learn ... Academics have to provide intellectual space for students to question them."

### **LAND WHERE FREEDOM IS TESTED AND DEFENDED**

**"I don't think in practice that our academic freedom is less well protected and respected than it is in the US, but I do think in America there is a much greater consciousness of academic freedom on the part of the academy."**

This is how Eric Barendt, a professor of media law at University College London, describes what he sees as the differences between the UK and the other side of the Atlantic when it comes to academic freedom. He is writing a book on the subject of academic freedom that includes an analysis of the comparable law in the UK, the US and Germany, where the idea of academic freedom was first conceived in the middle of the 19th century.

He puts the "greater consciousness" partly down to the longstanding attention given to protecting and defending it by the American Association of University Professors (AAUP).

The bedrock of academic freedom in the UK is the definition of academic freedom under the Education Reform Act 1988, which is woven into university governance. In the US, it is the AAUP's 1940 "Statement of Principles on Academic Freedom and Tenure" that is enshrined in statutes and faculty handbooks.

The AAUP's statement, in essence, protects freedom of speech in teaching, research and extramural statements. Unlike the UK definition, it has been much tested in the courts, in combination with the right to free speech enshrined in the First Amendment of the American Constitution.

The resulting court rulings have put limits on employee free speech, making the US position less

pro-academic than it used to be.

"The courts have been moving in the direction of saying your governance speech (comments by a faculty member about university governance) is not protected from reprisal," notes Cary Nelson, president of the AAUP.

"They have gone in a really weird direction, saying that the more you are responsible for commenting on university affairs or the more you have demonstrable expertise to do so, the less protected you are!"

As to statements made outside one's field of expertise, academic freedom in the US holds scholars "harmless for any extramural speech except that which suggests they are incompetent in their area of expertise", Nelson explains.

"The distinction would be if an engineer goes to the public square and says the Holocaust did not happen, it doesn't matter because it does not impinge on his ability to do engineering and do engineering research. But if a modern historian does the same, then his knowledge base and competence is really in question."

## RESIGNED TO LOSS

**German academics fear for their right to determine how and what to teach. But, Christoph Bode writes, they are leaving the fight to others.**

In January 2009, Marius Reiser resigned from his position as professor at the University of Mainz - it was, he explained in Germany's leading conservative daily, Frankfurter Allgemeine Zeitung, a helpless protest against increasing infringement of academic freedom in Germany. At 54 and as a professor of Catholic theology, Reiser not only risked unemployment, he also lost a great part of his pension.

Why this "sacrifice", as Reiser put it? After all, Article 5.3 of the German Grundgesetz, or Constitution, guarantees academic freedom in an unequivocal and unqualified way: "Art and science, research and teaching are free." (The original German word for science, Wissenschaft, covers both social and natural sciences and the humanities as well.) As a core right, academic freedom cannot be curtailed by any law - and technically it isn't, with one exception: stem-cell research. Since 2002, German law has made it illegal to produce, clone or destroy human embryos (including blastocysts) for scientific purposes - although, curiously enough, the law allows these practices if such cells are imported from abroad (which is, cynics say, a bit like a vegetarian restaurant that offers steak on its menu because it comes from Argentina).

But apart from that, research is restricted only by the realities of funding - or lack thereof. The more the state withdraws from funding research, the more the disparity between the sciences and the humanities grows: there is simply much more outside funding available for sciences. The situation came to a crisis when the state announced that it intended to couple the amount of its own contribution to institutional or individual success in acquiring outside funding - which would only have increased a disparity that many felt the state should be trying to reduce. It was therefore with some relief that many academics greeted a 2004 Federal Constitutional Court ruling that success in acquiring outside funding must never be the sole criterion for allocating state money and, secondly, that, when calculating the extent of outside funding, applied research and "result-driven" research must not be counted. This ruling was absolutely in line with an earlier verdict of the same court saying that academic freedom is best guaranteed if research is unhampered by considerations of practical application, profit or narrow utilitarian motives. Science serves society best, it ruled in 1978, when it is free from such restraints.

So why Reiser's sensational gesture of protest? It wasn't about freedom of inquiry at all - it was about widespread infringement of the freedom to teach caused, he argued, by the Bologna Process, which radically redefines the idea of the German university, transforming it from a high-level institution of pure academic inquiry with traditionally high degrees of freedom for both teachers and students, into mere Lernfabriken, or "instruction mills" of secondary school level, in which teachers and students alike are told how much (and what) must be taught and learnt in how much time. Although there have always been some curriculum prescriptions and although the professors' right to teach what they want and the students' right to choose whatever courses they want has thus never been absolutely unrestricted, Reiser does have a point: the

introduction of the new three-year bachelors degree has restricted, in some cases severely, the options for teachers and students alike. Departments are now legally obliged to regularly offer certain courses, and students are legally obliged to take them. If universities were not wise enough to define these "modules" very, very generally, they are now constricted by their own definitions - hoist by the petard of their own perfectionism.

In addition, there is much less time: since more and more courses are now obligatory and count towards the final grade, one cannot simply flunk a course, and the pressure on students has increased significantly - a change felt keenly in the humanities, where time for reading, for thinking and for pondering is considered essential for a student's success. Many fear that as "input" and "output" take the place of German Bildung - the idea that higher education is more than just the imparting of knowledge, but also about character building and the formation of independent judgment - the philistines have taken over: it's the rule of the people who, as Goethe said, know the price of everything but the value of nothing.

Reiser's fear that under such circumstances serious academic teaching becomes impossible is not totally unfounded, because time (or lack of time) now impinges greatly on what kind of work students are expected to produce. In the old days, humanities students wrote seminar term papers of 15 to 25 pages. These were expected to be fully researched and documented, with students weighing the relevant literature, arguing a case with an eye on the state of the art, and so on - in short, they were more like scholarly articles than undergraduate essays. Students could work on these papers over two to three months during their term breaks. And it was largely up to the students whether they dared to write two or three such ambitious Seminararbeiten or just one during one break. Under the new system, papers have to be written, marked and returned within two weeks. It goes without saying that this radically restricts the range of topics lecturers can set. It is, or so argues Reiser, a forced levelling-down, a deliberate destruction of university education.

A year has passed since Reiser's resignation, and none of his colleagues has followed his example. But the students are in open rebellion and on strike. Picking up the French students' motto "Le savoir n'est pas une marchandise", they ask for more Bildung, for more time, for fewer restrictions and for the restoration of academic freedom, which, according to their reading, has always entailed the freedom to largely compile your own course of studies (and to face the consequences of that personal responsibility) - a significant difference between school and university education that is now being levelled out.

Given the feeling that these late reforms are a drastic infringement of academic freedom, it is not surprising that many German professors sympathise with the student protest, although many more are inwardly resigned and do not believe that these protests will have much effect. Is this another case of une trahison des cercs, of professional failure, as academics leave it to their students to fight for the idea of a university?

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## STATUTES OF LIBERTY

**David Gunkel outlines the foundations of academic freedom in America, pointing out that scholars are not beyond accountability**

The notion of academic freedom has been around since at least the time Socrates mounted his defence in Plato's Apology. For Socrates, uninhibited inquiry was an essential aspect of the search for truth. The idea receives its modern articulation in the Prussian Constitution of 1850, which stipulated that "science and its teaching shall be free". And in the US, the practice is advanced in an influential document issued by the American Association of University Professors (AAUP) in 1940. This document, "Statement of Principles on Academic Freedom and Tenure", was modelled on the German example, issued in response to a number of highly publicised firings of professors, and endorsed by more than 200 learned societies and faculty organisations.

As characterised by the AAUP, academic freedom consists of three elements. The first concerns "freedom in research and in the publication of the results". The search for truth should be free of external hindrances and influence, and the AAUP justifies this as a legitimate undertaking and social benefit. This does not mean,

however, that anything goes and that scholars are beyond professional accountability and responsibility. Rather, the AAUP endorses what we now call peer review - the principle that, as Immanuel Kant famously stated, "only scholars can pass judgment on scholars as such".

There are, however, two exceptions noted in the statement: "other academic duties" and "pecuniary return". Dismissal for the former has become the standard excuse and detour employed by a number of university administrations wishing to silence or punish outspoken members of their faculty. Ward Churchill, for instance, was not dismissed from his position at the University of Colorado for his published critique of the George W. Bush Administration's account of the 9/11 attacks, despite calls for his resignation by the state's governor. Churchill was, however, subsequently investigated by his peers and eventually dismissed for several forms of academic misconduct, including falsification of research findings, fabrication of facts and plagiarism.

Financial interest is the other notable exception. Today, external funding of research is not only standard operating procedure, especially in the applied sciences, but the dollar amounts of grants have become a significant statistic for university presidents and college deans. This development is both an advantage and a considerable problem. On the one hand, external funding is absolutely crucial to scientific inquiry and experimentation, which has become increasingly expensive. On the other hand, the influence of money can threaten free investigation by introducing the interests of external agencies, for example, the pharmaceutical industry, the Department of Defence or even the seemingly harmless but very powerful Dairy Council. Money can, therefore, trump free inquiry as researchers and their universities willingly contract with corporations and industry groups, agreeing to significant limitations on research practices and the publication of results.

The second element concerns freedom in instruction, or *Lehrfreiheit*, and is designed to protect instructors and institutions from the ancient charge of "corrupting the youth". According to the AAUP, freedom in instruction is indispensable and non-negotiable: "Teachers are entitled to freedom in the classroom in discussing their subject." What this means in practice is something that is unique to US higher education. Unless otherwise stipulated, course content is the sole responsibility and intellectual property of the instructor. From an administrative, instructional and even legal perspective, it is the classroom teacher who is considered to be the final arbiter in all matters regarding course content, texts, classroom conduct and evaluations of student achievement.

There is, however, one important limitation. Freedom in instruction is appropriate and protected only within the boundaries of one's disciplinary expertise and subject matter. In other words, teachers may not use classroom lectures as an occasion to offer opinions on something that is not part of the advertised curriculum. And this position has been upheld by both the political Right and the Left.

On the Right, there is a concern that university teachers be required to stick to the subject matter and not use their position of influence to offer political opinions or social commentary within the context of class meetings. Organisations such as Accuracy in Academia, for example, ask conservatively minded students to monitor their instructors' behaviour and report any perceived bias or infraction on the organisation's website.

On the Left, public intellectuals such as Stanley Fish have argued for such restrictions to protect higher education from these attacks launched by the Right. "It is precisely", Fish argues, "when teachers offer themselves as moralists, therapists, political counsellors and agents of global change rather than pedagogues that those who are on the lookout for ways to discredit higher education see their chance." In other words, the best way to avoid the charge of "corrupting the youth" is to fulfil the stipulations of the employment contract - nothing more, nothing less.

The final element has to do with freedom of expression and action in extramural situations. This is probably the most controversial aspect of the AAUP's statement. It says, in effect, that the institution cannot terminate a faculty member's employment as retribution for political activities, free expression outside the walls of the university or even "foolish behaviour" in public. This proviso is intended to protect the figure of the professor as "public intellectual". At the same time, the AAUP requests that scholars execute this aspect with considerable discretion, asking that public intellectuals recognise that any statement they make will reflect on their institution and discipline.

As in so many circumstances, it is the extreme case that provides the best illustration. In January 2006, Arthur Butz, a professor of engineering at Northwestern University, publicly endorsed the controversial views of Mahmoud Ahmadinejad, the Iranian President. The statement was not surprising given that Butz already had quite a reputation as an anti-Semite and a Holocaust denier based on a book he had published previously. Despite widespread public outcry, Butz's employment was not terminated. The president of the university, Henry Bienen, acknowledged that Butz's "reprehensible opinions on this issue are an embarrassment" but admitted that "we cannot take action based on the content of what Butz says regarding the Holocaust - however odious it may be - without undermining the vital principle of intellectual freedom that all academic institutions serve to protect".

To add what many considered to be insult to injury, one of Butz's colleagues, an adjunct professor named Sheldon Epstein, did not have his annual contract renewed on the grounds that he, in a direct effort to combat Butz's remarks, circulated Holocaust-affirming materials in his classroom. Unlike Butz, Epstein's actions were not protected by the "principle of intellectual freedom" because Epstein had distributed the information in the context of his classroom, thus violating stipulations regarding the exercise of freedom in instruction. A more cynically minded interpretation would point out that Epstein got the axe, because he did not, like Butz, enjoy the protections of tenure ... but that's another (albeit related) story.

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## Readers' comments

- **Dr Howard Fredrics** 11 February, 2010

Perhaps Prof Gunkel is unaware of the ultimate form of restriction of academic freedom, the depriving of personal liberty that has come about as a result of my conviction on harassment charges for having allegedly posted a website exposing wrongdoing at my former employer. (see THES 7 January 2009 - <http://www.timeshighereducation.co.uk/story.asp?storycode=409869>). Once matters extend beyond mere loss of job, which certainly happened in my case, to criminal charges for mere expression of uncomfortable truth, the game is over. Fortunately, the US hasn't quite gotten to the point where academics are being prosecuted for posting unflattering information on the web. But unless academics begin to speak out on an international level, there will, indeed, be "no one to speak up for them."

- **David J. Gunkel** 11 February, 2010

This brings up an important point...In the US, academic freedom is only a quasi-legal concept. It is defined and stipulated in a document issued by a professional organization. It is not, it should be noted, grounded by any official legislation, either federal or state. Although lacking explicit legal guarantee, the AAUP "Statement" has become standard operating procedure for US colleges and universities, many of which incorporate the AAUP's exact language in their own institutional regulations, governance documents, and faculty handbooks. Compliance with the "Statement," however, is entirely voluntary. There is no legislative force behind the AAUP's guidelines, no prescribed legal remedy to redress grievances or consider complaints, and no codified means of enforcement. This means that the power of the statement (and the protections of academic freedom that it describes) is often limited to internal organizational decisions (assuming, of course, that the institution not only incorporates the AAUP principles in its governance but also plays by its own rules) and has very limited power beyond the wall of the institution and its particular operations.

- **Dr Howard Fredrics** 11 February, 2010

@David J. Gunkel -- Yes, it's true that employ-at-will is the law of the land in the US, but at least you don't have to worry about going to jail if you expose wrongdoing by your university.

- **Julie Ryan** 11 February, 2010

Many academics who have spoken up about wrong-doing in their university have been bullied, harassed and silenced. Speak up for proper governance and academic freedom. Add your name the petition at <http://petitions.number10.gov.uk/Justice-Bullying>: "We the undersigned petition the Prime Minister to instigate an open enquiry into allegations of workplace bullying / harassment in institutions of higher education and concerns about the way the judicial system has dealt with complaints about such bullying and with those who protest (publicly or otherwise) about wrongdoing by their employers; the enquiry to be conducted with a view to addressing issues of concern that it may uncover..."

- **David J. Gunkel** 11 February, 2010

Dr. Fredrics, What you reference is an component of "whistle blowing" statutes, which protect employees who "out" illegal/unethical practices by their employers. Although these laws apply to employees of colleges and universities, they have little or nothing to do with academic freedom per se.

- **Eric Sotto** 11 February, 2010

It seems to me that there is a feature in the above article that merits some attention. It is that the focus is almost exclusively on the freedom of academics, and the dire consequences that ensue when this freedom is curtailed. In short, the focus is on individuals. This is clearly an important matter, but there is almost nothing on the needs of the community, which provides those individuals with their livelihood and of course a great deal more, and surely this is also an important matter? It is also the case that there is sometimes a dash between the needs of an individual and the needs of his or her community. If so, I'd have thought that this sometimes inevitable dash merits some attention?

- **Ian Benson - UK Future TV** 11 February, 2010

There are around 20 UK universities where an academic giving an unauthorised interview critical of their institution could well be considered to be breaching one or more regulations. Restraints on "bringing the university into disrepute" discourage academics from bringing scandals into the public domain. The permission requirements for giving public interviews at 120 UK universities are listed at [www.ukfuturetv.com/permissionrequirements.doc](http://www.ukfuturetv.com/permissionrequirements.doc)

- **Charles U. Larson** 11 February, 2010

While I agree with the AAUP's stance on academic freedom in the classroom, there is a problematic question of student's right to an education. If the class is "advertised" in the course catalog as "Principles of Public Relations" and the instructor doesn't touch on that subject, but instead lectures on his/her research project on say "Accuracy in Reporting of my Research Results as published in The Journal of Irreproducible Results for the semester, shouldn't the students have rights to learn something about which they contractually agreed to via the course catalog?

- **Dr Howard Fredrics** 11 February, 2010

@David J. Gunkel -- I respectfully disagree. While what you've described might, indeed, fall under the legal auspices of whistleblowing, it also goes directly to the issue of academic freedom, which according to its broader definitions, includes the freedom to express one's opinions about the way in which the university is run.

- **David J. Gunkel** 11 February, 2010

Dr. Fredrics, Thank you for the continued exchange...much appreciated. The characterization of academic freedom that you have employed includes the following: "the freedom to express one's opinions about the way in which the university is run." Unfortunately, this is not part of the standard definition of academic freedom, at least as it has been articulated in the AAUP's "Statement." This may be a component of shared governance, which again is an institutional and not a legal aspect, but it is not something that is articulated as such in the AAUP document. Now keep in mind I am only

speaking to this matter from the perspective of academic freedom as defined and practiced on this side of the Atlantic. Things might be different elsewhere. In any event, our struggle for academic freedom needs to be informed by and absolutely clear about its terms. When we start conflating academic freedom with other rights, privileges, and responsibilities, we only undermine our own efforts. The debate over academic freedom appears to be, as Ann Mroz points out in her editorial, at crucial turning point. But that debate must, I believe, be executed with a clear sense of the actual terms and conditions that comprise academic freedom. We (academics, scholars, university teachers, scientists, artists, etc.) need to make our best case from an informed and clearly defined position.

- **Durham Ox** 11 February, 2010

The issue of academic freedom - the freedom to enquire, to question, to research and to publish, irrespective of departmental strategies and the politics of research groups or clusters - is fundamental to the nature of universities and to their value not only for those who work in them but for the societies that they serve. It is an issue that goes far beyond the complaints that individuals may have about their own treatment (however justified) and it would be a relief if this thread to concentrate on the broader questions without being hijacked by a small number of individuals.

- **Durham Ox** 11 February, 2010

'could concentrate' sloppy editing, sorry.