



Thoughts About Academic Freedom, Autonomy and Accountability

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I. Introduction: Purposes of the Paper

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The Magna Charta Observatory is to be commended for long having recognized that academic freedom and autonomy are best protected if universities strive to be transparent and forthrightly honest in their efforts to reconcile autonomy with internal integrity. The 2007 Bologna Conference was titled “The Management of University Integrity” and an adjoining publication was titled “Academic Malpractice Threats and Temptations”. Clearly, if the academic community wants to argue vigorously for the broader benefits of academic freedom and autonomy, it can do so more effectively if it appears in the courts of public opinion and the halls of government “with clean hands”. To me, this reveals a deep sophistication about the best way to defend those values.

In this paper, I am urging the Magna Charta Observatory and its member institutions to achieve equal sophistication in three other inter-related areas which, sophistication achieved and implemented, would help even further protect these crucial domains.

A. First, I think it is widely recognized that academic freedom and autonomy, though linked, are not the same. Academic freedom, I will argue below, is a universal concept, needed by universities, East and West, North and South, public or private. Autonomy, in contrast, is a relative value and may legitimately differ in its contents from place to place and from time to time. From there I urge universities and their friends to have the sophistication to differentiate their defenses of these values, going absolutely all out in protecting academic freedom, but couching arguments against inappropriate intrusions into autonomy with more nuance. (More on this below.)

B. Second, I will suggest that the issue of autonomy can usefully be broken down into two major parts, procedural (the How) and substantive (the What), and that sophisticated university positions would recognize that the substantive issues are much more compelling and therefore would not become preoccupied with lesser procedural issues. (Again, more on this below.)

C. Third, dealing with accountability, in the U.S. the accountability movement in higher education has operated at both the national and the state level. But in each case, there are three possible layers at which to function: those relating to legality, those to efficiency, and those to effectiveness. Sophisticated university attention would recognize that accountability measures dealing with legality and efficiency may create problems, but still do not raise the same crucial concerns that those relating to effectiveness may provoke. (Again, more on this below.)



II. Academic Freedom

Academic freedom I define as the right of the scholar in his/her teaching and research to follow truth **where it seems to lead** without fear of punishment for having violated some political, social or religious orthodoxy. It is widely considered that the concept emerged from Humboldt's Berlin University in about 1812, involving the terms *Lehrfreiheit* (freedom of the teacher) and *Lernfreiheit* (freedom of the student). (In this sense, *Lehrfreiheit* is a right of the individual scholar. Later I will treat the issue of possible academic freedom for the institution. I do not deal in this paper with academic freedom for the student.) While academic freedom emerged, then, from a Western source, it is maintained here that it is a universal right and not just Western.

A. A Side Argument About Academic Freedom and Western Values

Dr. Jared Diamond, a UCLA social geographer, has strongly put forth in his book, **Guns, Germs and Steel** (1999) that so-called Western superiority in the 19th and 20th centuries was more a result of resources, climate, and serendipity than of any innate greater talents. He argued forcefully for the equality of all cultures and convinced many of the validity of "cultural relativism"; i.e. that what works in one culture may or may not be appropriate in another, where values may differ markedly. However, as convincing as I found many parts of his book, I stubbornly maintain that some cultures include values which are, in fact, universal and that it is valid to criticize a practice in another culture which violates these universals. As non-educational examples, I cite "honor killings" in certain Muslim cultures. Surely, these practices are just innately wrong and not merely a function of our limited Western understanding of their societies' different cultural needs.

So, in the same vein, it is urged here that academic freedom is not just a Western value, but should be recognized and practiced in any university, North or South, East or West, public or private, that wants to claim the title of university. Earlier, universities in the USSR were forced not only to indoctrinate students in Marxist doctrines, but also to respond to state pressure even in the realm of science to honor the Lysenko doctrine in biology when free scientists knew that it was false. In current China, although diplomatic relations and recognition of China's great economic power often soften Western expressions of criticism, we know that social science is not free in that country and that their great universities have grievous shortcomings in those regards. Finally, as an African example, in the 1960's Julius Nyerere was seen then as Nelson Mandela came to be regarded later – a giant hero of emerging African nationalism. But a Canadian author who was a big Nyerere admirer nevertheless wrote a strong article in the 1960's (sorry, I have lost the article) criticizing the great man who had insisted that the Chair in Economics at his national university in what later became Tanzania be filled by someone believing in "guided socialism". It was pointed out that this was an abridgement of academic freedom and that, ironically, an economist who might be critical of the state might ultimately render the state greater service. It is a sweet paradox of academic freedom that universities and societies honoring it provide a "sanctuary for the critics of society" and that societies wise enough to recognize that will surely profit in the long run.



Of today's many academic mavericks, we have no way to determine now who will become tomorrow's prophets and who will end up as just plain wrong. But history tells us that it is worth the gamble to find out

B. Relationship of Academic Freedom to Institutional Governance

If we have established academic freedom as a universal right, then we must turn to its relationship to issues of institutional governance. For it stands to reason that an institution governed with appropriate recognition of the role of faculty in academic matters will be much more likely to be able to protect the freedoms of its faculty. In the U.S. the American Association of University Professors (AAUP), established in 1912 primarily to protect academic freedom of the faculty, early on also paid careful attention to the related issue of the role of faculty in institutional governance. Its Committee T on governance operated for many years alongside its Committee A on Academic Freedom. More recently, in 1994, the AAUP issued a formal policy statement on this issue later published in its Redbook on Policy, **Policy Documents and Reports**, 10th ed. (2006):

In sum, sound governance practice and the exercise of academic freedom are closely connected, arguably inextricably linked. While no governance system can serve to guarantee that academic freedom will always prevail, an inadequate governance system—one in which the faculty is not accorded primacy in academic matters—compromises the conditions in which academic freedom is likely to thrive. Similarly, although academic freedom is not a sufficient condition, it is an essential one for effective governance. Thus, the earliest principles formulated by the Association, those of 1915 and 1916, are most likely to thrive when they are understood to reinforce one another. Under those conditions, institutions of higher education will be best served and will in turn best serve society at large.

One hears much talk these days about the New Management and stronger executive powers in the governance of higher education in other parts of the world. (The U.S. already has universities with strong executive powers, but struggles to balance these with processes called “shared governance” in which the faculty, normally through campus senates, tries to participate as partners in campus governance.) To the extent that executive powers in university governance are strengthened elsewhere to deal with greater problems of finance and accountability, the Magna Charta Observatory will also need to monitor this issue for its obvious relevance to the protection of academic freedom.

C. Possible Tensions Between Academic Freedom for the Scholar and For the Institution

The United States is a highly litigious society, with many disputes ending “We’ll see you in court.” For all that, the Supreme Court has never made an explicit establishment of the right to academic freedom. Instead, passing references are made to it in a series of relevant cases, but the closest to a formal definition came from Justice Frankfurter in a concurring opinion in *Sweezy v New Hampshire*, 354 U.S. 234, 250, 77 S.Ct.1203, 1 L.Ed.2d 1311, 1957): “the four essential freedoms of a university – to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.”



Note, however, that the right is considered that of the university “to determine for itself”. This has later been interpreted to mean that the institution has itself academic freedom, and it may use this either to protect the freedoms of its faculty or, ironically, to impose conditions on them contrary to their preferences. See **Urofsky v Gilmore**, a Virginia case (1999; see <http://caselaw.findlaw.com/us-4th-ccircuit/1434020.html>) where an Appellate Court explicitly defined academic freedom as operating for the institutions of higher education in that state. If maintained by the U.S. Supreme Court, it would permit institutions to impose policies and practices on their faculties that would deny them their individual academic freedom rights.

On the other hand, Dr. Ken Edwards, a former Vice Chancellor of a British university, has pointed out that:

The issue is more complex because faculties as collectives find it hard to be involved in appropriate disciplinary actions against poorly performing academics without feeling that they are infringing academic freedom.. Thoughts of collegiality become predominant. In my view –and with my experience – the university *as an institution* has to deal with such issues and this will require a complicated procedure involving some outside individuals (outside the university that is) including some with legal qualifications.(2011)

This is clearly an issue that the Magna Charta Observatory will want to follow in other parts of the world.

III. Autonomy

In my book, ***Statewide Coordination of Higher Education*** (1971), I suggest that the concept of autonomy can usefully be divided into two parts: one to be called “Substantive Autonomy” dealing with the basic role and mission of the institution (e.g., the staff hired, the students admitted, the courses taught, the research undertaken), or the so-called “What of Academe”; the other to be called “Procedural Autonomy” dealing with the ways that universities carry out their missions (e.g., pre-audits of expenditures, post-audits, capital outlay regulations, civil service and/or staff regulations), or the so-called “How of Academe.” Two years after publication of my work, the Carnegie Commission, headed by Clark Kerr, in its volume ***The Governance of Higher Education*** (1973), put forward a parallel set of notions:

Berdahl usage	Carnegie usage
Academic Freedom	Intellectual Independence
Procedural Autonomy	Administrative Independence
Substantive Autonomy	Academic Independence



Granted, government controls in the realm of procedural autonomy are sometimes onerous and often counter-productive to efficiency (on which more below). They frequently render the university's efforts to achieve its goals more complex and expensive. But they usually do not block the substantive goals of the institution. In contrast, government controls dealing with substantive issues (e.g., establishing role and mission; determining budget allocations; granting approval of new academic programs; creating faculty pay scales and student admission standards; regulating areas of permitted research) come so close to the vital center of Academe that, ideally, some form of partnership is required in order to see that academic values are strongly represented in the highest levels of policy determination. There is no "magic bullet" to do this, but certainly the substantive policy agenda should not be lost in a sea of disagreements over procedural issues. The reality is that accountability measures will almost always impact to some degree on campus autonomy. But university critics protesting what they regard as inappropriate or excessive controls must recognize that, when responsibly applied, such measures are normally a means of serving the broader public interest. I thus argue the merits of sophisticated differentiated responses regarding disagreements over issues in the three areas: academic freedom, procedural autonomy and substantive autonomy.

IV. Accountability

Accountability has been defined as the need "to demonstrate responsible actions" but surely such a phrase needs elaboration: who defines "responsible" and who are the external stakeholders to whom such responsible actions must be shown? In the U.S. the accountability movement in higher education has operated at both the national and the state level. But in each case, there are three possible layers at which to function: those relating to legality, those to efficiency, and those to effectiveness. Legality issues are fairly straightforward and often dealt with by legal staff. But sophisticated university attention would recognize that accountability measures dealing with efficiency may be bothersome and even sometimes counter-productive, as mentioned above under procedural autonomy, but still do not raise the same concerns that those relating to effectiveness may provoke. Efficiency, for example, deals with means/ends ratios – given the purposes in question, could the university have achieved those goals with less money, or, alternatively, could the university have achieved more of its goals with the same money. In either case, the ends were not called into question. In effectiveness, however, questions are asked about getting value for money, or cost-benefit analysis. This means that somewhere in the accountability process, someone is using subjective judgments about which values and which costs in higher education are to be pursued.. While riding in on the tidal wave of support for the public interest, these efforts by the state (Guy Neave (2006) has termed the development as the turn to an "Evaluative State") to assess outcomes in terms of comparative values will require strong and sensitive academic responses. Ideally, the state would not itself attempt to measure the "quality" of higher education outcomes, but, instead, would use qualified experts to evaluate the rigor of the institution's internal quality assurance processes.



In the U.S. federal system, the various states have primary jurisdiction over public higher education and several state systems have offered a compromise of sorts: the state will require that “quality” be measured, but will use a process where the institutions are allowed to draw up their own list of outcomes to be measured, the list subject to approval of the state board in question. Thus, different kinds of institutions may offer somewhat different criteria by which to be measured, related to the particular role and mission of the institution in question. But a sharp departure from this state latitude came recently in Virginia where its Attorney General used his legal powers to seek to require the University of Virginia to reveal the emails sent and received by a faculty member whom the Attorney General regarded as having engaged in unsound research on global warming. This effort to determine quality is being stoutly resisted by the University and the outcome of the issue is still pending.

There are also non-governmental efforts to measure quality in higher education through the vast ratings systems now being used in many parts of the world. These ratings systems raise other problems relating to academic freedom and autonomy and, happily, will be a topic for analysis and discussion at the Observatory’s Conference in September 2011.

V. Linked, But Not the Same

As the Observatory obviously already knows, academic freedom and autonomy, though linked, are not the same concepts.

Certainly, most academic freedom issues which have arisen in the US have pertained to individual scholars and their rights to teach and research freely. As a Political Scientist who has surveyed relations between universities and governments over many years, I would judge that, by far, most of the contentious issues have related to autonomy issues and not those of academic freedom. Nevertheless, one recognizes that governments, outside donors, foundations or business corporations making research grants might try to impose conditions on the recipient universities which would, in effect, violate the institutions’ academic freedom. Some time back, a Middle Eastern country offered a sizable sum of money to Georgetown University in Washington D.C. to establish a Chair in Middle Eastern Studies. But the donor country tried to require that no Jewish scholar could fill that Chair. Naturally, Georgetown turned the offer down.

To turn to earlier examples, Oxford and Cambridge Universities in the early 19th century were nearly completely autonomous and yet they, themselves, denied academic freedom through the imposition of religious tests. And even today private religious universities in the US, largely autonomous of most government controls, may require commitment to their faiths as a condition of employment, particularly in their faculties of Theology and Philosophy. In contrast, as mentioned earlier, the Humboldt University in Berlin around 1812, though lacking autonomy from its regional government, nevertheless granted “Lehrfreiheit” to its scholars and set a pattern for the world. The two concepts are linked in that a university with more autonomy will be more likely to be able to protect its scholars’ academic freedom.



But it will be here argued that institutional and organizational responses to the issues in one sphere should be carefully distinguished from those in the other. On a few occasions, universities have done themselves (and society) a disservice by protesting what they called infringements of academic freedoms while the issues were in reality those pertaining to autonomy. In the U.S. the University of Pennsylvania (*Univ. of Pa. v. EEOC, 493 U.S. 182, 1990*) protested a breach of its academic freedom when governmental authorities demanded to know the ways that votes on awarding faculty tenure were conducted. It was really the university's autonomy that was at play, and it may have lessened the University's ability to protect academic freedom if a real academic freedom issue later arose, to have misused that concept as the central issue in this case. If a governmental authority with appropriate powers denied the request of a public university to add a new law school or a new doctorate in Engineering, these would not be issues of academic freedom, but of autonomy. There is a danger that the public might become cynical about university claims on its academic freedoms, if that argument is used too often or too loosely. Peter Byrne, a legal scholar at Georgetown University, recently (2010) confirmed this warning; noting that overreaching in trying to establish an academic freedom defense could be self-defeating in the political and judicial arenas.

If, however, academic freedoms are genuinely threatened, then the defense must be very strong and, we hope, united across the face of Academe. Happily, recently in Britain, it was academic influence in the House of Lords which resulted in the following sequence of events: in 1988 the British Parliament passed some controversial legislation (The Education Reform Act) which dealt with tenure and after a huge political battle, much argument and some acrimony, included an amendment – thanks to the persistence of the House of Lords – which spelled out the following responsibility on universities:

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 privilege they may have at their institutions” (Edwards, 2011)

Eric Ashby, later deceased as Lord Ashby, wrote a splendid book, **Universities, British, Indian, African** (1966) in which he maintained that academic freedom should be a universal right, not varying from place to place, nor from time to time. In contrast, he noted that autonomy issues were “parochial” and could be handled in different ways in different countries or different times, as long as the “essential attributes of autonomy” were respected. These essential attributes, he suggested, were:

- a. Freedom to select staff and students and to determine the conditions under which they remain in the university,
- b. Freedom to determine curriculum content and degree standards, and
- c. Freedom to allocate funds (within the amounts available) across different categories of expenditure.



VI. Conclusion

While the details of the autonomy issues may have modified in the years since Ashby wrote them, his basic point is still valid: that negotiations over autonomy issues require nuanced arguments, sensitive to concerns about the public interest, but that no such constraints need be used when academic freedom is threatened. In a small minority of cases there may occur issues of academic freedom which also involve universities' substantive autonomy. As argued above, university responses to autonomy issues should normally be couched in terms less strident than those relating to academic freedom. However, when and if such linkage arises, it merits full university opposition. When academic freedom is at stake, either individual or institutional, the defense must be resolute and absolute.

Above all, it should be of an order to appeal to the better instincts of the broader public – which must be convinced, more than perhaps any other constituency, of the merits of supporting higher education and its freedoms as an enduring value, essential to the vitality and integrity of the community.

One wishes the Observatory much success in its historic and crucial defense of those values.

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