

Utopian Universities: the Organisational and Financial Corollaries of Individual Academic Freedom

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Warning: what follows is essentially a set of reflections on academic freedom by a rather uninformed economist. They have their roots in discussions about the 2013 reorganisation of tertiary education in French-Speaking Belgium, followed by episodic readings on the topic.

Our perception is that academic freedom is most often regarded as an individual right to liberty/freedom for professors, lecturers and other academic staff in universities; a variant, on steroids, of the idea of freedom of speech. That liberty comprises the freedom of scholars and scientists to publish and teach according to their own concept of fact and truth; and also the freedom to pursue personal studies and researchers. In most Western countries and many others, individual academic freedom is unambiguously guaranteed by fundamental laws & treaties. But is that the end of story? The point we make in this short communication is that an "individualistic" approach to academic freedom is insufficient from both a normative and practical point of view. Individual scholars need specialised organisations (i.e. universities) with a status that comes in support of their individual freedom. But that "broader" vision of academic freedom, that invariably points at university autonomy, is much less present in the general public and amongst policymakers. What is more, it has been gradually eroded by recent State-induced reforms. We will illustrate the latter statement with two cases. One in French-Speaking Belgium with the 2013 "paysage" decree, that epitomizes rampant control by the legislator over key aspects of universities' functioning, and the other one in the UK with the creation of the Office for Students (OfS): a State-controlled body with enormous powers to decide what and how competing universities teach.

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1. Academic freedom rests on the conviction that the freedom of inquiry by faculty members is essential to the mission of the academy, and that scholars should have freedom to teach or communicate ideas or facts (including those that are inconvenient to external political groups or to authorities) without being targeted for repression, job loss, or imprisonment (Wikipedia, 2016).¹ In that sense, Academic freedom is primarily regarded as an individual liberty for scholars. But there is a second, apparently distinct, approach to academic freedom that consists of equating it with institutional autonomy, applicable to very special organisations.

Universities are indeed very special institutions. In its origins and still today, a university is community of teachers and scholars characterized by a dose of self-ruling. One of the key purposes of universities is to generate and impart understanding, from generation to generation (Wolf, 2016b). It is also to be a counter power [more on this below]. Unlike other forms of education (elementary, secondary, vocational...), there should be, in the case of universities, some limits to the idea of external prescription, not just of research but also teaching contents and certification (ie. degrees granting). In the UK for instance, institutional autonomy has traditionally been associated with the Oxford and Cambridge models (Barendt, 2010). These institutions have so far retained a distinct sense of institutional independence from the State or the market.

2. Our point is that self-rule, as it exists in Oxford and Cambridge, is probably an essential way to sustain and promote individual academic freedom. Conceiving academic freedom as an individual right is fine, but its effectuation most likely requires to extend some of its ingredients to the organisations hosting scholars i.e. universities and similar higher education institutions. Scholars and researchers cannot realistically exert their academic freedom if the organisations to which they belong, and make their daily activities possible, do not themselves enjoy a certain degree of freedom and self-rule.²

Most people, including a priori pro-market pundits, would agree that it does not make sense to view universities as ordinary for-profit businesses (Wolf, 2016a). This perhaps explains why most private universities of a certain stature are not-for-profit institutions. At the same

¹ Academic freedom has limitations in practice. Professors, teachers should be careful to avoid controversial matters that are unrelated to their subject. When they speak or write in public, they are free to express their opinions without fear from institutional censorship or discipline, but they should show restraint and clearly indicate that they are not speaking for their institution.

² Of course, academic freedom also includes the right of scholars to oppose the authorities of the universities employing them. In that sense, academic freedom diverges from the notion of institutional academic freedom.

time – and this is perhaps something that the general public in Europe has more difficulties comprehending – tax-funded universities are not just the public sector's arm dedicated to teaching and/or research. The fact that universities receive significant sums of public money does not mechanically imply that they should be fully integrated to the public sector, or managed by civil servants.

Historically, universities have acted as a check on the power of the King or the Church, and in practice they have often played a prominent part in resisting authoritarian rulers. Institutional autonomy for universities, in that sense, is just another illustration of the Montesquieu democratic principle of separation of powers. Times are different now in most Western countries, but the concern of State interference remains. In the UK, the Robbins report in 1962 recognised the dangers to academic freedom from the increasing material dependence on the State, insisting that the rising reliance on taxpayer funding should not and need not to lead to an erosion of the freedom of universities for make their own appointments; devise their own degree courses and monitor standards, their freedom to select their own students. Robbins even considered that this last freedom entitled universities not to cooperate with government policy on fostering access to university and stick to their own entrance standards (Barents, 2010).

3. Turning to the 21st century, it is not difficult to find examples of reforms that *de facto* erode universities' autonomy. Several factors concur. Recent decades have been synonymous with the emergence of a more benevolent version of the State, weakening somehow the importance of the separation of powers in the public eye. Moreover, the generalisation of State financing of tertiary education, and the emergence of the idea that the State has a monopoly when it comes to the promotion of the general interest have been very powerful vectors of ever-rising legal prescription and interference.

An example of this trend is to be found in French-Speaking Belgium (FSB). In 1971, the main piece of legislation applicable to FSB's universities was a 15-page document (Moniteur belge, 1971), essentially describing the (public) financing formula. The 2016-equivalent, including the famous "paysage" decree (Moniteur belge, 2013), comprises more that 350 pages and covers almost every aspect of university functioning. Universities of FSB still make their own appointment decisions (for scholars and other staff members) and are relatively free in terms of reseach orientation. But they have almost completely lost control of their admission policy, certainly in terms of number of students, but also regarding entrance standards. External regulations abound in the areas of *i*) programme creation – the State imposes a strict policy of territorial jurisdictions – *ii*) programme formats (number of credits)

and goals (core competencies have to be approved by authorities and must be common to all departments offering a given programme) – *iii*) use of language (e.g. the legislator limits the possibility to teach in English), but also *iv*) pass-vs-fail standards, *vi*) jury composition or *vii*) academic and examination calendars...

FSB is the archetype of a tax-funded model where the State has gradually reduced the autonomy of universities. *Prima facie*, the case of the UK is very contrasted. The goal of a new legislation soon to be enacted by the British parliament, is to turn the UK's higher education system into a truly competitive market, by making it far easier for for-profit businesses to enter and use the prestigious title "university". The proponents of the project argue for opening up "*the sector to greater competition from new high-quality providers*". In the context of this communication, an interesting point is to consider who will determine *high quality*? The proposed solution is external regulation. In place of the Oxbridge tradition of self-rule and mission statement comes external monitoring. The agency that will do the monitoring is the Office for Students (OfS): a body with enormous powers to control what and how universities teach. Members of this new body are to be appointed by the Secretary of State, primarily outside higher education. If this new regulator is to oversee the quality of universities, it needs power. And that it has, "*in spades*" according to Martin Wolf (Wolf, 2016b). The new legislation grants the power to the OfS to revoke the right to award degrees. Thus, in principle, OfS will have the power to abolish the ability of Oxford and Cambridge universities to grant degrees! And Martin Wolf to conclude: "*make no mistake! This is a fully-fledged government takeover of the UK's university sector*".

4. So what should a modern utopian, pro-academic-freedom agenda look like? In principle, considerable institutional autonomy for universities is not incompatible with either public financing or (moderate) public regulation. Countries may opt for an overall organisation of their universities where the latter are established as State-funded but private, independent, and not-for-profit entities. Within the realm of activities funded with State money, economists (Vandenberghe & Robin, 2004) but also lawyers rightly distinguish *i*) organisations that are at the same time State-run (the State finances and operates the universities on a daily basis, and is legally in charge of their functioning) and *ii*) those where the latter responsibilities are ascribed to private/independent boards.³ Many economists would also argue that stable and

³ McKinney vs. University of Guelph (1990). The Supreme Court of Canada dismissed professors from Ontario who opposed the retirement policies of their universities because it violated rights spelt out in the *Charter* applicable to civil servants. The Court rejects arguments "*that the Charter applies to universities because they are creatures of statute carrying out an important public service, or because their survival depends on government funding, or because their powers, objects, activities and governing structures are determined by government. Despite all of these controls, the majority*

diversified sources of funding – including significant sums of private money, coming directly from those who are best placed to judge its relevance: students and alumni – may foster university autonomy, and, by extension, individual academic freedom. Also, limitations to excessive State-rule of universities can be obtained if, within academia, people more systematically file complaints in supreme or constitutional courts.

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[of judges] finds universities are legally autonomous; they control their own affairs and enjoy independence from government regarding all important internal matters. Their decisions are not government decisions".