

Academic freedom and university autonomy

The launch of a reflection



Excerpts of an article by
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Beyond the questions of tuition fees and the accessibility of post-secondary education, the events that marked the Quebec student strike in spring 2012 prompted the need for reflection on the role of institutions of higher learning and their academic bodies in our society.

More specifically, the repeated use of court injunctions to force a return to class gave rise to destabilizing incidents that saw the coercive power of the State pitted against the “academic freedom”¹ of teachers. This played out, at its extreme, in forcible attempts by police and private security to strong-arm education, stripped down to its most basic role of transmitting raw knowledge.

It is in this perspective that the FNEEQ launched a collective brainstorming in spring 2012 on the meaning and scope of academic freedom. The article that follows looks at various sources to help better understand and define this concept.

Historical roots

It is interesting to note that the first university strike, involving both students and professors, was over the issue of political and legal autonomy from royal power. Indeed, in the 13th

century—before the notion of nation state and the coercive monopoly of the state came into existence—the University of Paris suspended its activities in protest over the Crown’s use of criminal law powers against students.² Despite a close connection, if not outright overlap with the Church, university was built on the principle of autonomy from the time of the creation of the very first institution in Bologna in 1088. Historically, university and autonomy are not only indissociable; university has been the very essence of autonomy. This has carried over into the definition of modern university and is enshrined in the *Magna Carta Universitatum*³ signed by 755 universities in 1988.

A social, philosophical and political concept

According to professor and philosopher Plinio Prado,⁴ university—more than just a physical place—is an essential principle of modern society.⁵ Identifying with a holistic view of university, where “social” and “natural” sciences must necessarily cohabitate, influence one another and intersect, Prado posits that

universities can only exist and fulfil their political and social role if they have the independence—or “autonomia”—that allows “the mind to set a law of its own, with thinking as its basis, to govern each of its steps.”

To him, this principle is crucial in that it allows thinking to break free from a mind-numbing collusion with conventional facts, giving one the distance and perspective needed to challenge, analyze and judge these facts, to critique them on the basis of one’s own intellectual demands. It therefore enables universities to fully realize their role of cultural creation, in the broadest sense. This also requires that autonomous university thinking be “publicized”, transmitted, to allow universities to become the stronghold of “public” thinking in a space-time continuum of discussion that goes well beyond the physical place.

If all members of the university community are to be able to take the time to “unlearn” and re-educate themselves to judge without preconception, there can be no subordination of this autonomy.

1 Whereas certain distinctions may be made among the terms “academic freedom”, “academic freedoms”, “university freedom”, “freedom of the University”, or “teaching freedom”, the term “academic freedom” is used here without distinction to refer to the sphere of autonomy surrounding teacher actions in a university context.

2 Comments from a conference given by Finn Makela, assistant professor and director of the Common Law and Transnational Law programs at Université de Sherbrooke. See also: Association des juristes progressistes. “La grève étudiante n’est pas un simple boycott : historique et perspective”, <http://ajpquebec.org/?p=135>, viewed May 9, 2012.

3 Magna Carta Universitatum, adopted by European rectors in 1988 on the 900th anniversary of the University of Bologna http://cicic.ca/docs/bologna/Magna_Charta_en.pdf, viewed May 16, 2012.

4 Plinio Walder PRADO Jr., philosopher, State doctor, teaches in the Department of Philosophy of the University of Paris 8.

5 Prado, Plinio. *Le principe d’université*, Nouvelles Éditions Lignes, 2009 http://www.editions-lignes.com/IMG/pdf/PRADO_LePrincipedUniversite_-2.pdf, viewed May 9, 2012.



Thus, research and fundamental education, which can only be assured through autonomy, become driving elements of the university's social mission.

A legal concept

Not surprisingly, the socio-historical importance of institutions of higher learning has secured the inclusion of university autonomy and academic freedom in Quebec legislation and jurisprudence. *The Act respecting the Université du Québec*, for example, stipulates off the top that:

3. *The objects of the University shall be higher education and research, pursued in keeping with the principles of freedom of conscience and academic freedom befitting a university; within the framework of such objects, the University shall, in particular, participate in teacher training. 1968, c. 66, a. 3; 1989, c. 14, a. 2.*

In terms of jurisprudence, the essential nature of universities, characterized by their freedom from religious or political influence, was also upheld by the Supreme Court of Canada, notably in the case of *McKinney v. University of Guelph*,⁶ which clearly established the legal autonomy of university establishments.

While this concept has not been extensively tested by our courts, a review of the body of international legislation—a “persuasive” source for the interpretation of our own

laws⁷—provides a better picture of the scope of the legal concept of academic freedom.

In 1997, the United Nations Educational, Scientific and Cultural Organization (UNESCO) tabled a recommendation⁸ concerning the status of higher-education teaching personnel that broadly reflects the direct links among the fundamental right to education for all,⁹ the social and cultural role of universities, the autonomy of these institutions and the need to ensure working conditions for teachers that are conducive to the exercise of academic freedom.

It goes without saying that such a freedom cannot be elevated to the rank of a social organizing principle without its exercise demanding a certain individual accountability. As a freedom is not a blanket right for individuals to do whatever they want, UNESCO specifies that “Teaching, research and scholarship should be conducted in full accordance with ethical and professional standards and should, where appropriate, respond to contemporary problems facing society as well as preserve the historical and cultural heritage of the world.”¹⁰ With such a primordial and determining social role comes greater social responsibility.

In short, the university academic community must build itself around the principles of collegiality and self-governance and benefit from institutional autonomy to guarantee against interference from outside sources in order to properly fulfil its mission.¹¹

A contracted concept

University, beyond the actual establishment itself, is concretely expressed through the actions of the academic community, teachers and researchers. In Quebec, academic freedom is mentioned in virtually every collective agreement between post-secondary institutions and course lecturers and professors. These clauses ensure an additional guarantee to the indirect protection contained, for example, in the workload description.

When it comes to legal interpretation, the intentions of the parties are determined based on the assumption that undefined terms in an agreement are to be interpreted according to their generally-accepted meaning, or in the case of a specialized field, according to the meaning generally accepted by the members of that field. This highlights the importance of the recommendation by UNESCO that the meaning and scope of the “academic freedom” in our collective agreements be clearly defined.

An applied concept

The legal autonomy of universities is evident in the judicial restraint generally shown by the courts on all matters concerning admission,¹² the granting of degrees,¹³ recognition of equivalence, evaluation and administration.¹⁴ In an often cited decision, the Quebec Court of Appeal ruled that:

It is a constant and well-recognized principle in Canadian and Quebec administrative law that judicial review

6 *McKinney c. Université de Guelph*, 1990 CanLII 60 (CSC), [1990] 3 RCS 229.

7 Despite the dualistic nature of our legislation (i.e. an international treaty only becomes part of federal law once an implementation act has been adopted), the Supreme Court has made reference to a “presumption of compliance” between federal legislation and the ratified treaties.

8 UNESCO. Recommendation concerning the Status of Higher-Education Teaching Personnel, UNESCO General Conference, Paris, October 21 to November 12, 1997, 29th session <http://unesdoc.unesco.org/images/0011/001102/110220e.pdf#page=32>, viewed March 3, 2014. A recommendation in international law is not binding on member States but serves as a strong guideline that States should consider in fulfilling their international commitments.

9 Art. 13 of the *International Covenant on Economic, Social and Cultural Rights*, and Art. 26 of *The Universal Declaration of Human Rights*.

10 *Supra* note 8 aux art. 17 and 33.

11 *Ibid.* art. 18 and 19.



boards do not interfere in academic affairs or the internal functioning of educational establishments, particularly when the matter concerns examinations or the application of evaluation standards, except under extraordinary circumstances such as, for example, when an institution has shown proof of bad faith or has acted in an unreasonable, arbitrary or discriminatory manner [...].¹⁵

In sum, the courts will only intervene in such matters when there has been an abuse of power or denial of justice on the part of the institution.

In labour law, there is insufficient jurisprudence to determine the full scope of the protection offered by the recognition of academic freedom. From the few decisions rendered on the matter in the area of labour law, it can be concluded that teachers and researchers are given considerable latitude in their actions and speech, in keeping with “best practices”.¹⁶ But just as the courts recognize that a denial of justice can arise from an institution not observing its own rules, teachers will surely be bound to respect the profession’s self-determined rules, such as, for example, those pertaining to ethics.

When we look at the issue from a labour relations standpoint, it is clear that the concept of academic freedom slightly muddies the analysis of acceptable conduct. Normally, the rule of thumb when an employee is given an order by an employer is to “obey first before complaining”, unless that order is unreasonable, dangerous or manifestly contrary to the law or the collective agreement. But delimiting what is “manifestly contrary” to academic freedom is not quite so clear-cut. That said, any alleged violation of this freedom can always be the subject of a grievance.¹⁷

Conclusion

Rooted in the very history of university itself, academic freedom is a direct manifestation of the socio-historical role of these institutions of higher learning in modern society. Our society is undergoing profound changes marked by an economic, or econocentric vision that is seeking to weaken its pillars and foundations.

Yet shouldn’t this rise in power of a single social vision be the core argument for a more aggressive defence of these bastions of critical thought, reflection,

teaching, basic research and cultural transmission that are our universities? What role are course lecturers to play in protecting and promoting this principle of higher learning? ■

Exhibitions

During the University Contract Teachers’ Forum, course lecturers will have the opportunity to showcase their talents, with artists exhibiting their works and authors presenting their publications. Keep an eye on your inbox for an invitation from your union.

12 *Laflamme c. Comité d’appel prévu par la politique générale d’admission de l’Université de Sherbrooke*, 2009 QCCS 2698 (CanLII).

13 See, among others: *Vallée c. Université Laval*, 2006 QCCS 5096 (CanLII), *Morin c. Université de Montréal/Faculté des études supérieures* 2008 QCCS 1091 (CanLII).

14 *Ruel et als c. Marois et als*, 2001 CanLII 27967 au para 63.

15 *Barreau du Québec c. Boyer*, 1993 CanLII 4401 (QCCA). Also see: *Friesen et als c. UQAM*, 1996 CanLII 6188. *Université de Montréal c. Fédération des médecins résidents du Québec*, 1997 CanLII 0675. *Université de Montréal c. Zompa*, 2005 QCCA 250 (CanLII).

16 See: *Association of Professors of Bishop’s University c. Bishop’s University*, 2007 CanLII 68089.

17 Arbitration tribunals have full jurisdiction to rule on grievances involving a teacher’s academic freedom. This jurisdiction derives from the agreement between parties through the recognition of academic freedom in collective agreements.