

# Foundations of Academic Freedom: Making New Sense of Some Aging Arguments

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**Abstract** The article distinguishes between the various arguments traditionally offered as justifications for the principle of academic freedom. Four main arguments are identified, three consequentialist in nature (the argument from truth, the democratic argument, the argument from autonomy), and one nonconsequentialist (a variant of the autonomy argument). The article also concentrates on the specific form these arguments must take in order to establish academic freedom as a principle distinct from the more general principles of freedom of expression and intellectual freedom.

**Keywords** Academic freedom · University functions · Marketplace of ideas · Professional autonomy

## Introduction

Ever since academic freedom was adopted as a fundamental principle by modern higher education systems, it has been justified in ways which, though partly related and often sharing a similar idiom, are not fully reducible to one single justification. Like most ethical principles honored in today's liberal democracies—free speech is perhaps the best example—the various arguments which serve to legitimize academic freedom are strongly connected to one another, make reference to similar values and goals, use analogous language, and indeed overlap partially, sometimes to a confusing effect. Indeed, ideas such as the search for truth, personal edification, and the creation of an enlightened polity were inseparably involved in the modern university project (Simons 2006). Nevertheless, while the justifications of academic freedom are not completely independent from one another, each individual argument illuminates better than the others one or more specific reasons for which liberal societies remain strongly committed to the principle in question.

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All of the arguments justifying academic freedom discussed below are, to various extents, drawn on by current discourses on the university, its functions and its meanings. Most of these arguments have an old pedigree, dating back to the time academic freedom was conceptualized as a distinct principle, and do not always seem wholly in tune with contemporary concerns. Some higher education theorists would probably consider certain of the justifications below too idealistic, conservative, or unmindful of the recent changes in the role of universities, and would even go so far as to call for new foundations for academic freedom (see, for instance, Slaughter 1998)—and typically offer none themselves. It is not my intention here to resolve and, in fact, to comment extensively on these issues, animated and relevant though they may be. As I hope to show in the following pages, academic freedom rests on a complex set of justifications and though scholars may, following the signs of the times, place a stronger emphasis on some arguments and tend to play down others, none is profitably disregarded.

The goal of the present article is to outline as clearly as possible the most important justifications of academic freedom. Generally, I will not dwell in detail on the various criticisms leveled against the arguments presented below, preferring instead to focus on the question of what such arguments need to prove in order to establish academic freedom as a principle different from free speech and intellectual freedom (Van Alstyne 1975; Dworkin 1996; De George 1997). While this distinction remains a somewhat contentious issue, it will not be addressed directly in this paper, as a survey of free speech and intellectual freedom justifications would require considerable additional space. An indirect route is taken instead: I will show that academic freedom *may* consistently and convincingly be construed as a principle distinct from free speech and intellectual freedom. Furthermore, I also accept as a premise the notion that academic freedom is partly different from and usually stronger than not only the general rights above (O’Neil 1997), but also the autonomy enjoyed by non-academic professionals. Finally, I do not attempt a precise characterization of academic freedom or of its appropriate scope (e.g., whether it covers professional acts alone, or aprofessional expression as well). As a background for the discussion that follows I offer the following definition, which I regard as one of the best devised so far:

‘academic freedom’ is ... [the] personal liberty to pursue the investigation, research, teaching, and publication of any subject as a matter of professional interest without vocational jeopardy or threat of other sanction, save only upon adequate demonstration of an inexcusable breach of professional ethics in the exercise of that freedom. Specifically, that which sets academic freedom apart as a distinct freedom is its vocational claim of special and limited accountability in respect to all academically related pursuits of the teacher–scholar: an accountability not to any institutional or societal standard of economic benefit, acceptable interest, right thinking, or socially constructive theory, but solely to a fiduciary standard of professional integrity (Van Alstyne 1975, p. 71).

## The Argument from Truth

The traditional justification for academic freedom refers to the social role academics play in the discovery and dissemination of truth. This argument, as Edward Shils (1993, p. 87) observed, follows closely in the steps of John Stuart Mill’s classic defense of free speech in *On Liberty*. In the second chapter of his well-known essay Mill noted that the evil done in

preventing the free expression of opinions is of a special sort, since the entire human species—both the actual generation and posterity—is thus robbed of an important benefit; and, indeed, those who are of the contrary opinion even more so than those who support it.

If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error (Mill 1977, p. 229).

As the philosopher further explains, we are justified in establishing the truth of something only provided all others have complete freedom to contradict our beliefs. “The beliefs which we have most warrant for, have no safeguard to rest on, but a standing invitation to the whole world to prove them unfounded” (p. 332). Although this does not by itself guarantee any certainty, we may at least hope that “if there be a better truth, it will be found when the human mind is capable of receiving it” (p. 332).

Echoing Mill, Richard De George identified “the attainment of truth for the benefit of society” as the “core justification for academic freedom” (De George 1997, p. 74). In the groundbreaking *Keyishian* decision of 1967, the members of the US Supreme Court similarly hinted at Mill in declaring that “the classroom is peculiarly the ‘marketplace of ideas’”. The list of quotations linking academic freedom and truth-seeking may be extended almost indefinitely. Indeed, one frequently encounters academic freedom defined simply as *the right to seek the truth*: “Academic freedom is ... the right of university faculty to follow their research wherever it leads them, and to teach their students based upon their own best understanding of the truth” (Glenn 2000, p. 41). Anthony Diekema was blunter still in defining academic freedom, even in the specific context of religiously affiliated higher education, as “the fundamental right in the academy to pursue truth” (Diekema 2000, p. 7).

It seems evident that the argument from truth is fruitful as a justification for academic freedom. To the extent that society has an interest in the attainment of truth, it has implicitly an interest in protecting freedom of expression in general and, more specifically, in safeguarding the freedom to investigate, research, and experiment with ideas. A society which seeks the attainment of truth has a further interest in maintaining wide access to scientific data and information—and universities with their “communist” ethos, to use Merton’s phrase (1979, pp. 273–275), seem deliberately designed to secure and foster the circulation of scientific information. A large part of the expressive acts which we regard as legitimately protected by the right to freedom of expression do not make a substantial contribution to the discovery of truth (of course, this is not the only reason why they are protected). But a few of them, from the expression of considered or elaborate views to the communication of research findings or theories, contribute to the “attainment of truth” in more direct as well as more obvious ways. This seems to be the reason for which democratic societies which prohibit Holocaust denial do nonetheless allow for the expression of negationist ideas in a scientific context: because, according to the argument from truth, society has a special interest in fostering a “marketplace of ideas” abundant not only in diverse opinions, but also in diverse opinions of high intellectual quality.

For the argument from truth to function as a justification for academic freedom specifically, rather than simply for a general principle of freedom of expression, the Millian conception of truth-seeking must be supplemented with a theory concerning the special role played by universities in the “attainment of truth for the benefit of society”. According to this view, universities are factories for the generation and examination of ideas, the best approximation we have of intellectual testing-stations (Shils 1997). Truth is no longer an indirect, secondary product of the individual interests and pursuits of the various social

actors (as it happens in the wider “marketplace of ideas”), but the chief goal of a university. It is sought and engaged directly, deliberately, and systematically. Academics are paid, sometimes with taxpayer money, to collect and compile existing ideas, classify and re-define them, subject them to critical examination, and in the process develop on their basis or in opposition to them fresh conceptions. Irrespective of field or discipline, the assumption is that whoever becomes a member of the academic profession takes upon himself or herself a professional duty not only to repeat and transmit received ideas, but also to engage them critically and follow reason and method wherever they lead. (Academic freedom, it has been frequently observed, is conditional on this duty.)

Given their direct engagement with the production and testing of truth—the argument from truth goes—university professors deserve especially strong protections in their teaching and research (that is, professional)<sup>1</sup> activities. When and where universities defined their missions exclusively or predominantly in terms of the static reproduction of knowledge (as in many pre-modern European universities or in the American colonial colleges) nothing seemed unnatural in faculty’s direct accountability to an outside authority or its academic representatives.

So far, given the theory of the role of universities sketched above, the argument from truth has established an academic freedom principle that appears to be stronger than the general principle of free speech. However, we still need to spell out clearly why the principle of academic freedom is also different from a more specific principle of intellectual freedom. What distinguishes universities as institutions engaged in the pursuit of truth from, say, the R&D departments of public or private pharmaceutical companies? What makes the academic physicist special by comparison with one working in the radiology lab of a private institute dedicated to the study of cancer, or in a state-owned space research agency? After all, the employees of pharmaceuticals or research institutes also need freedom to investigate. They too pursue truth in their fields of competence. Their achievements are valuable not only in light of their immediate consequences (eradicating a disease, providing weather reports), but also if one takes a long-term view and considers the growth of knowledge. Furthermore, agencies such as the NASA or the European Space Agency do not even have their eyes on financial profit (unlike big pharma). Why would the principle of academic freedom amount to anything beyond intellectual freedom applied to the specific case of university professors?

The common answer is that the difference between universities and other knowledge-producing institutions (research institutes, company labs, R&D departments etc.) resides in the fact that academics pursue truth “disinterestedly”. I shall refer to this claim, which is central to the theory of the university underlying the argument from truth, as the “disinterested pursuit thesis”. This thesis has been the subject of often disparaging comments by critics of the contemporary university affiliated with governments, businesses, or higher education. These critics have argued cynically or, depending on one’s point of view, realistically that universities have never pursued truth disinterestedly and they are most certainly not doing it today. On the one hand, like most organizations of any stripe, universities desperately seek to perpetuate themselves and survive in a sometimes hostile and often competitive environment. To do so, they focus not (or not only) on the search for truth, but (also) on increasing their institutional prestige to attract

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<sup>1</sup> Whether academic freedom should also extend to the aprofessional activities of academics is a contested issue, especially in the United States, where AAUP doctrine refers to the rights of academics writing and speaking “as citizens” (Byrne 1989; Rabban 1993; Shils 1993; Finkin and Post 2009). I have discussed this matter in detail elsewhere (Andreescu [forthcoming](#)).

students and funds, or on enhancing their budgets and endowments to make sure that their employees' salaries are paid in full and on time etc. In so doing, universities often act in ways which make them resemble private companies more than impartial knowledge factories. On the other hand, academics themselves are personally motivated by countless individual interests, such as the need to achieve renown, to earn more, to reach a position of authority, and so on. Some even hope to further, through their scholarship, broader social goals. Last but not least, the disinterested pursuit thesis has been interpreted by postmodern theorists of higher education, perhaps as a response to haughty Humboldtian rhetoric, to imply a claim that academic research should be non-instrumental in nature (see Haverhals 2007, pp. 423–424). This, it has then been pointed out, is clearly not the case in today's academia.

Granted the above, one may affirm the disinterested pursuit thesis without underwriting the naïve or idealistic sociology frequently imputed to its proponents. Doubtlessly, there are all sorts of interests besides the attainment of truth behind every form of intellectual or scientific investigation. Sometimes these interests may be easily identified, while at other times they are difficult to pin down even by the individuals having them. (What is it, after all, that determines a researcher to obstinately pursue an abstract problem over an entire scientific career without a clear answer in sight?) What sets a university apart from other knowledge-producing centers, the disinterested pursuit thesis claims, is that it does not impose on its members strictly formulated goals or rigid efficiency standards, at least not to the same extent private firms and even public research institutes do (Birnbbaum 1988). And the difference is not merely one of quantity, but one of quality. In other words, supporters of the argument from truth claim that a society will obtain special benefits, which would be otherwise harder to attain, if it allows universities to organize themselves, under the principle of academic freedom, in such a way as not to impose on their members strictly formulated goals or rigid efficiency standards in the way other organizations do. In this sense, academic freedom represents a principle of academic organization, as Michael Polanyi (1947) recognized six decades ago.

The principle of academic freedom, then, says that academics should be shielded from pressures such as those just described. The institution of tenure (or equivalent occupational arrangements), which in some higher education systems is considered fundamental to the principle of academic freedom, constitutes a wager of this type: should professors be granted the security of satisfactory income, they will respond less than other scientists to financial interests that might keep them away from some types of activity (such as basic research) or exotic pursuits (e.g., the study of Sanskrit). Many academics have voiced concerns that a university which emphasizes the institution's wealth or encourages its faculty to focus primarily on securing financially attractive contracts might eventually lose sight of the proper goals of higher education.<sup>2</sup>

By contrast, in private, commercial enterprises the profit motive determines to an essential degree the direction of research. When a line of research fails to yield the expected results, whether short- or long-term, it is usually abandoned. And often when a marketing ploy brings in more income faster than an R&D investment, the former will be preferred. The point here is practical rather than idealistic. The claim is not that, by comparison with universities or state research agencies, for-profit companies do not make considerable or, indeed, essential contributions to human knowledge. On the contrary,

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<sup>2</sup> The assessments on this matter vary wildly. Bok's (2003) conclusions concerning the presumable threat of commercialization in contemporary American higher education remain moderately optimistic and seem to me to be among the most thoughtful and balanced.

financial gain may, in particular contexts, yield scientific results—to say nothing of immediate social benefits—which the academic environment would be slower to generate. But this observation in fact dovetails with the theory of the university and the disinterested pursuit thesis underlying the argument from truth: it is precisely because of such differences between researchers in the academic and the commercial environment that universities require academic freedom. Whereas universities need to be isolated from financial pressures (and temptations), pharmaceuticals need trade secrets and intellectual property protection to ensure their efforts will be properly compensated for. The latter will lure scientists with substantial salaries and bonuses; a university will attract faculty with a greater degree of freedom to choose one's sub-specializations and research topics, with occupational security, and with individual renown amplified by the halo of disinterested scholarly work.

The situation of non-profit private or public research institutes is, from the perspective of the disinterested pursuit thesis, somewhat similar to that of for-profit companies. They have a pre-established mission, through some members may enjoy a substantial degree of intellectual independence within the latter's scope. A meteorological institute will have to constantly provide weather forecast analysis, so it will not be able to channel too many of its resources towards the study of very abstract problems without an assured long-term payoff. In principle, nothing prevents an academic physics department from gradually shifting its focus and resources from space research to earthquake research, as long as they still teach the core physics courses in undergraduate programs. NASA, on the other hand, will be unable to do so. And, the proponents of this theory of the university emphasize, this is the right state of affairs for both NASA and the physics department. For, they claim, universities and faculty need extensive freedom to pursue intriguing or promising lines of research not because that is *the only way* to reach scientific or intellectual results; nor because it is *the sole legitimate method* to pursue truth. Rather, the academic mode of pursuing truth has its own particular virtues: it is the best way to yield a specific type of results (for instance, in basic research or in exotic disciplines and eccentric subjects) and needs to be preserved and cultivated as such. A former Harvard president even offered this imperative for universities: they should not strive to do things that other types of institutions perform just as well or better (Bok 1982, p. 76).

As for the personal interests of academics, many of them are, in fact, quite compatible with “disinterested” investigation and research. The fact that a certain type of activity also serves personal interests does not necessarily mean that the activity in question was carried out *for the purpose* of serving those interests. Furthermore, as long as academics comply with professional ethics, the fact that some of the things they do also serve personal interests (and, occasionally, are motivated by such interests) does not do any disservice to the disinterested pursuit of truth. (Similarly, we resist re-defining altruists as egoists just because some of their altruistic gestures also satisfy and perhaps are even motivated by some hard-to-pin-down inner craving). The satisfaction of personal interest and the unprejudiced search for truth are hardly incompatible.

This is, in fact, the reason why professional ethical norms are, for academics enjoying academic freedom, sometimes more restrictive than for researchers working in private companies or public research agencies (who enjoy their own intellectual freedom). A typical example involves restrictions in the field of publication and the dissemination of ideas. Non-academic researchers may—and are often compelled to—accept a degree of secrecy or confidentiality concerning their scientific activities which academics should not only be free to reject but, it has been argued, have a duty to refuse whenever it may impose an onerous burden on the communal pursuit of truth (Press and Washburn 2001). While

dilemmas of secrecy and openness pervade many sectors of a democratic society, and while the question of germination (“satisfying our curiosity about new ideas while protecting their development from premature exposure”) (Weinstein and Wimberly 2001, p. 3) remains essential beyond the academic community, in the case of academia the balancing act is carried out with a finger on the scale of openness. Precisely because the disinterested pursuit of truth is central to the modern understanding of the university, it entails not only a greater scope of professional freedom,<sup>3</sup> but occasionally also more stringent professional duties. No matter how idealistic in theory, the fair-minded search for truth is practically ensured by the balance between academic freedom and professional deontology.

Such talk of truth and its pursuit is bound to raise eyebrows in a day and age when the concept in question has been the target of incessant qualifications, contestations, and occasionally out-and-out attacks. Unsurprisingly, it has been suggested that the notion of truth presupposed by this justification of academic freedom remains committed to a naïve Enlightenment-era concept undergoing a profound crisis in our postmodern times. (More typically, it has also been claimed either that postmodern relativism is out to destroy academic freedom—alongside other liberal principles we revere—or that it will unwittingly do so.)

The matter of how the justification of academic freedom might cope with the various conceptions of truth “out there” is too vast to be adequately explored within the space of this paper. Suffice it to say that some of the most interesting and persuasive critics of the so-called Enlightenment conception of rationality have, often explicitly, justified academic freedom by using versions of the argument from truth tailored to suit their respective conceptions of “truth”. In this context, the university has been variously defined as a privileged site of “communicative rationality” (Habermas 1987); an arena for the “constrained disagreement” between “rival and incompatible traditions” offering incommensurable standards of rationality (MacIntyre 1990, p. 228); or the place where men and women work to achieve intersubjective agreement by following so-called “standards and methods of disinterested and objective inquiry”, which are in fact simply “how the people we most admire conduct their inquiries” (Rorty 1996, p. 29).

Furthermore, many academics behave as if truth discovery happened in the old-fashioned Enlightenment way. They seem impervious to recent epistemologies, and work instead with an insider’s “local hermeneutics”, to borrow a phrase from Stanley Fish (1989, p. 316). Theories of truth may have changed dramatically over the past few decades, but scientific practices, including those deployed in academia, have progressed more or less in the usual fashion.

## The Democratic Argument

If the justification of *Lehrfreiheit*, to use the original German concept, consisted solely in the consequentialist argument from truth, the case for academic freedom would probably not have the force we usually ascribe to it. Although, as suggested above, the distinction between academics and other scientists or intellectuals remains pertinent, in many cases the differences between thinkers in academia and thinkers elsewhere are, from the perspective of the justification of their professional freedoms, blurry. Furthermore, the argument from truth applies with substantial force to some types of academic activities

<sup>3</sup> Including protection against compelled disclosure of scientific data (O’Neil 1996).



(original research), but seems less convincing in the case of others (most importantly, teaching). As formulated above, the argument from truth partly ignores one role of higher education which many regard as its core purpose—the educational function.<sup>4</sup> The notion that universities have to excel first and foremost in research, even at the expense of teaching, is a relatively recent development.

A second consequentialist argument for academic freedom, the “democratic argument”, places the proper stress on the educational function. According to Amy Gutmann, academic freedom and institutional autonomy are rooted in “the primary democratic purpose” of the university: “protection against the threat of democratic tyranny” (Gutmann 1999, p. 174).<sup>5</sup> “Control of the creation of ideas [whether by a majority or a minority],” she continues,

subverts the ideal of *conscious* social reproduction at the heart of democratic education and democratic politics. As institutional sanctuaries for free scholarly inquiry, universities can help prevent such subversion. They can provide a realm where new and unorthodox ideas are judged on their intellectual merits [by] ... valuable members of a community (p. 174).

The educational function comes into play through universities’ task to continue the project of democratic education initiated in primary and secondary schools, in particular that of critical social reproduction. On the one hand, universities engage in “the never-ending enquiry” into “the elementary conditions that have to be safeguarded in order to secure the possibility of a normative-critical perspective” on society (Haverhals 2007, p. 432). This they do both directly, in addressing normative and empirical questions in the social sciences, and indirectly, by generating and reorganizing norms and practices in the various professions. On the other hand, universities shape citizens with an enhanced ability to absorb, assess and produce information and who are therefore less liable to respond uncritically to the calls of tyrannous majorities; and, presumably, citizens who are more involved in the life of the community as well. “Taken together,” Gutmann sums up her case,

the academic freedoms of scholars and of liberal universities serve as safeguards against political repression, not just for scholars but also for citizens. They help prevent a subtle but invidious form of majority tyranny without substituting a less subtle and worse form of tyranny—that of a minority—in its place (p. 177).<sup>6</sup>

One may ask at this point whether the democratic argument and the argument from truth are in fact different. Gutmann speaks of the democratic importance of universities in cultivating “unorthodox ideas” and defending “unpopular” conceptions. The importance of such ideas and conceptions consists in their ability to keep democratic tyranny at bay. In other words, liberal democracy is the goal and free exchange of ideas (one of) the means to achieve it. Mill himself, in *On Liberty*, tied his plea for free expression to truth and its importance in a democratic society. He seemed to proceed in the opposite direction: if we

<sup>4</sup> The argument from truth may be extended to cover this function as well, as the university is the institution where numerous citizens acquire the habits of thought and the methods necessary for pursuing truth.

<sup>5</sup> Gutmann speaks of the tyranny of the majority because she ascribes the wider goal (protection against tyranny in general) to primary and secondary education, whose chief task is to inculcate the basic democratic virtues.

<sup>6</sup> The democratic argument was sometimes used, less persuasively in my opinion, to contend that universities have a duty as corporate bodies to express opinions on matters of pressing social and political interest (Wallerstein 1971).



consider the attainment of truth desirable, whether for its social significance or as a paramount human goal, we should carefully guard our fundamental freedoms—under constant threat from tyrannous majorities—for their role in generating unorthodox ideas. In other words, truth is the goal, and liberal democracy the means.

The distinction proposed here between the argument from truth and the democratic argument should therefore be retained. The first establishes the importance for the pursuit of truth of the freedom to express and criticize ideas; as well as the meaning, practical and otherwise, of truth-seeking for society and the individual. Academic freedom serves in the attainment of truth, whether the latter is justified in terms of its social utility or as a value (perhaps the greatest human value) in itself. The democratic argument, on the other hand, argues that new and unorthodox ideas—whether the unorthodox ideas are also true ideas is of secondary importance—which are given careful consideration because they emanate from a respected institution, play a crucial role in a liberal society. Academic freedom is important because it fosters the exchange of meaningful ideas.<sup>7</sup>

The democratic argument may be extended further. Universities also serve democracy by producing experts for the liberal state, a role which is fulfilled both by university professors and by other professionals who are university graduates. Richard Hofstadter noted in his study on “the rise of the expert” that, as the functions of governments increased in scope and complexity, experts had to be embraced by the state “in the interests of democracy itself” (Hofstadter 1963, p. 197).<sup>8</sup> Societies have therefore an interest in keeping their experts shielded from political partisanship and political coercion, at least in their professional activities, as Kant recognized in the process of establishing “the arts” as superior to the “higher” vocational faculties (Kant 1798/1992). Academic freedom is needed for the university to discharge this role of an abode for politically unbiased experts, immune from partisan pressure.

This second democratic function of the university is, in fact, larger than simply the nourishing of politically independent experts for the modern liberal state (see Biesta 2007). Higher education is tasked with producing democratic elites and, more generally, the professionals in a number of domains crucial to a liberal democracy. Even in the modern era there was a time when, in order to become a practicing lawyer, individuals had alternatives to university education. Although a degree from a “higher” law faculty was an option, one could also serve as a lawyer’s apprentice and then take the bar examination to obtain a license. Today, a university degree is a *sine qua non* for a license to practice in the legal profession as well as, of course, the medical profession and others. Contemporary universities are the “gateways to the professions” and this has wide-ranging implications for democracy: “Universities have a monopoly on the education of researchers, particularly because they are the only institutions within the Higher Education sector with degree awarding powers. Through this Universities first of all control the definition of who counts as a qualified researcher. This, in turn, also contributes to the definition and perceived ‘standard’ of what counts as ‘scientific’” (Biesta 2007, p. 471).

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<sup>7</sup> It should also be noted here that arguments from and for truth and democracy often overlap. One concept is frequently employed order to justify the other. Nonetheless, truth and, respectively, democracy do not exhaust the justification of the other term: we desire truth for its democratic consequences, but not only for that reason; similarly, we want democracy because it is advantageous in the attainment of truth, but also for other important reasons.

<sup>8</sup> In Germany, the rise of the (non-democratic) administrative state was contemporaneous with the advent of modern higher education. Administrative science (the so called *Kameralwissenschaft*) was introduced at arguably the first modern university, Halle. (Tribe 1984).

Does this type of contribution to a democratic society, which in itself is indisputable, justify academic freedom? Firstly, the function of professional training and certification, through which universities provide an exclusive channel to crucial professions, provides a justification for academic freedom for the same reasons for which professionals enjoy a right to professional autonomy. At the core of academic freedom and, more generally, of professional autonomy lies the professional's claim to epistemic authority. The belief that certified professionals possess quasi-exclusive expertise in their field, and that they best regulate themselves through independent professional bodies, are among the arguments justifying professional autonomy (Gortner 1991). As professionals themselves and as educators of future professionals, academics have a right to autonomy with regard to their professional activities.

Still, as before in the course of our demonstration, we need to ask ourselves whether academic freedom thus justified provides a *stronger* degree of protection for academics than it does for other professionals. The high esteem in which we hold the principle of academic freedom and the powerful immunity from sanctions we associate with it suggest this should be the case. In my view, both the professions and society in general should recognize a special and stronger degree of freedom for university professors because academics fulfill a critical function with respect to the former (they not only train professionals, but define professional knowledge) and thus make an essential contribution to the wellbeing of the larger community. We return here to a modern version of Kant's argument in *The Conflict of the Faculties*. Kant (1798/1992) claimed academic freedom for the "lower" arts faculty (philosophy) by contending that it alone can act as a critic of the "higher", vocational faculties of law and theology (and, to a lesser extent, medicine). For while the latter two were bound by a duty to teach positive doctrine (scriptural doctrine as interpreted by the church and, respectively, positive law as defined by the state), philosophy, with its commitment to reason alone, was free to explore the foundations of the higher disciplines.

Applied to the modern university and the professions, this Kantian argument claims that academia acts not only as a guardian and disseminator of professional knowledge and standards, but also subjects the latter to critical examination. Former Cornell president Frank Rhodes (2001, p. 34) recently wrote that, among the various benefits of making professional studies part of university education, the "reflection on the ethical obligations and social consequences of each profession" remains of chief importance. Not all professional associations do that. Indeed, many professional fora usually act conservatively, for better *and* for worse, in order to preserve professional orthodoxy. Academic professionals, the argument goes, need the strong protections of academic freedom in order to be able to challenge these prevailing attitudes among their professional peers, whether those inside academe or—and perhaps especially—those without it. To the extent to which the professions are crucial to a democratic community, then, academia fulfills the critical role of assuring society at large that the autonomy of the professions does not represent a license for self-sufficiency, self-serving behavior and uncritical self-satisfaction among their members.

### The Argument from Autonomy

The third justification of academic freedom involves the value of autonomy. In its consequentialist version—a nonconsequentialist variant will be discussed further down—it is closely related to the Romantic Idea of a university (Hofstetter 2001) which gave birth to

modern higher education and, with it, to the notion of academic freedom. This Idea, influenced among others by the Weimar neo-humanism of Goethe and Schiller and by the Romanticism of Schelling and the Schlegel brothers, saw in the university an institutionalization of the ideal of *Bildung*—the free cultivation and development of the human faculties in an expansive and comprehensive manner, through science as well as beyond it, and indeed beyond the artificial fragmentation of human reason into disciplines (Simons 2006). The goal of academic instruction was to edify all-around human beings, open in Faustian manner to the whole breadth of human experience. Intellectual freedom played a fundamental part in this conception, for young men came to the university to challenge themselves and enlarge their rational and moral faculties.

Translated in more up-to-date terms, this idealist conception of the university remains attractive (though no less idealist). The Romantic *Bildung* may be replaced by the liberal “autonomy”, signifying the individual capacity to act in accordance with one’s views concerning the right and the good and to actually enjoy the fruits of one’s actions (Raz 1986; Fallon 1993). University education is, in this modern view, primarily about “help[ing] one acquire the tastes” and the habits of thought “that make possible the deeper delights” (Blanshard 1973, p. 37).

As a defense of academic freedom, the argument from autonomy claims that in order to fulfill the role of cultivating the individual, of edifying him or her intellectually as well as morally, of helping him or her become an autonomous human being, academics need a considerable measure of freedom. A higher education institution enjoying university autonomy and ensuring academic freedom for its members will excel at shaping autonomous personalities since it will offer students environments rich in varied and stimulating ideas and teach them to form independent judgments, on the basis of which they may shape views and goals in life which are truly their own.

The academic freedom of faculty is important in the shaping of students as autonomous human beings also because the former are in a position of authority and serve as role models. Professors who censure themselves in their teaching and research out of fear of repercussions which are perceived as illegitimate will not only be, to their students, bad exemplars of professionals, but also poor examples of autonomous individuals. Only independent and autonomous professionals may inspire autonomous habits in others. Many academic reformers of the 19th century who subscribed to this understanding of the university consequently stressed the importance of treating students as partners in science (Simons 2006). This was one of the reasons behind the creation of the seminar in the modern German universities. Writing at a time when the American university was undergoing important reforms, philosopher Josiah Royce similarly noted that, even though most students will “ere long return to the outer world”,

we shall have given [them] our best if we have regarded them for the time as possible future colleagues, as beginners in constructive wisdom, and have tried to give them our best ideals as to how one labors when one is a scholar. For what is scholarship but spiritual construction (Royce 1891, p. 388).

Speaking of *Bildung* and students, the argument from autonomy, in its consequentialist variant, applies with equal force to them. In order to become autonomous human beings they too need extensive freedoms, since their development depends on their capacity to express themselves freely and responsibly and to engage others—perhaps especially when the latter are in a position of institutional, epistemic and sometimes moral authority. That is why in 19th-century Germany the *Lehrfreiheit* of academics was more or less inseparable from its twin-concept *Lernfreiheit*, or the “freedom to study”. The latter included such

things as students' freedom to choose their courses, often at more than one university, and to take their final exams when and where they wished. When transplanted on Anglo-Saxon soil and, as time went by, practically everywhere else in the West, *Lernfreiheit* gradually diluted (Metzger 1961; Pritchard 1998). This was partly due to a paternalist tradition in some academic cultures, partly due to the massification of higher education, partly because the disciplines became more strictly segregated, and in part because 20th-century universities were already playing more roles than they had done decades or centuries before. Still, the argument from autonomy provides a justification not only for faculty's academic freedom, but also for students' "freedom to study".

Once again, to the extent to which autonomous students and graduates will be better citizens (more informed, more participative, less likely to associate with others in order to act tyrannically), the argument from autonomy partially overlaps with the democratic argument. Nonetheless, at least since Kant we usually value autonomy in itself, beyond its democratic significance, so the argument from autonomy should be distinguished from the democratic argument for academic freedom.

### The Autonomy Argument: A Nonconsequentialist Justification

I noted previously that academic freedom justifications involving the value of autonomy admit of both a consequentialist version (the "argument from autonomy" above) and a nonconsequentialist variant which I shall dub, for the sake of keeping the two apart, the "autonomy argument". According to the autonomy argument, academic freedom is important to a university because it enables us to *treat academics as autonomous persons*. The meaning of autonomy here is closely linked to the nature of the academic profession, and in particular to the belief that freedom to investigate and teach lies at the core of the professional dignity of academics. Take that freedom away, and the profession itself will be rendered meaningless. As the American Association of University Professors' 1915 "General Report of the Committee on Academic Freedom and Tenure" put it, "To the degree that professional scholars, in the formation and promulgation of their opinions, are, or by the character of their tenure appear to be, subject to any motive other than their own scientific conscience..., *to that degree the university teaching profession is corrupted...*" (AAUP 1993, pp. 396–397).

Academics who are not free to exercise their profession in accordance with its ethos, with the methods and deontology appropriate to it, are subjected to treatment which is professionally degrading. Since academic work cannot be separated from the scientific ethos in general and since the latter includes, as a central component, the critical exchange of ideas and the unfettered pursuit of truth, academic freedom is central to the profession of an academic. For one may not expect faculty to pursue truth and at the same time deprive them of the appropriate means to do so. Not only will this make it harder or even impossible for them to reach their professional goals; it will also humiliate them. Those who have experienced academia under totalitarian regimes are particularly aware of this last aspect.

Though the autonomy argument justifies academic freedom as a professional right on the basis of a conception of the academic profession, it engages not only the autonomy of the academic professional, but also the question of personal autonomy in its broader sense. The curtailment of academic freedom is certainly professionally degrading, but it is also degrading in a more general, human way. For the choice of a profession often responds to an individual's intimate need for self-expression and self-fulfillment. We do

not always think of the professions this way, but in the case of some of them at least we often identify a strong connection between profession and “individual fulfillment, exploration, definition, and development” (Salzman Kurzweg 1999, p. 439). A paradigmatic case is that of the artistic professions. We often say that professional writers, painters or musicians have chosen their profession out of love for their subject. This is so because there are frequently no obvious financial incentives in these lines of work, but the perception stays the same even when money or fame are plausible reasons for the choice of one’s profession. The sense of identification between the individual and her profession is supposed to be, in such cases, profound and authentic.

The scientific professions are in many ways similar to the artistic professions. Both often start from a “creative need or impulse”; both have an “intangible value” that is immediately obvious to the community of artists and, respectively, scientists and is independent of their instrumental social and personal value; in both cases, though for different reasons, the general public is often unable to judge the value of professional creations (Salzman Kurzweg 1999). Last but not least, communication is central to both types of professions. It is as difficult to believe that a researcher would satisfy her creative impulse by keeping exciting findings completely secret as it is to imagine a playwright wholly gratified by a play never read or performed by anyone else. In this sense, then, the curtailment of academic freedom harms not only faculty’s professional self-esteem, but also their human dignity. This view has prompted some philosophers to argue that academic freedom, which “for some individuals ... has such great intrinsic value”, represents a natural right “the protection of which is morally and legally obligatory regardless of the consequences for society of protecting it” (Sartorius 1972, p. 136).

### **The Slippery Slope Argument**

I will briefly outline a fifth academic freedom argument which does not tell us *why* such a freedom exists and needs to be defended but that, once we have established on independent grounds that it should be protected, we should make that protection especially strong. It is a variant of the slippery slope argument and it contends that, since restrictions on the freedom to teach and research presuppose substantial risks, we should tolerate an “excess of freedom” in the academe (Volokh 2004).

The slippery slope argument claims that a sweeping, strict prohibition against restrictions on professorial freedoms serves the principle of academic freedom better than regulations that are very sensitively crafted and make room for numerous distinctions and qualifications. This is so because, first of all, in many cases the acts or statements which presumably fall outside the scope of academic freedom actually inhabit a grey area. And, the slippery slope argument runs, the finer the distinctions which we make in order to determine what is sanctionable and what is not, the more we qualify the protective rule and the more precedents we create. As precedents increase in number, so do the attempts of those who want to restrict professional acts which they consider offensive or otherwise undesirable. Eventually, the number of exceptions to the sweeping rule banning restrictions on teaching and research will call into question the principle of academic freedom as originally defined.

Secondly, a prohibition of restrictions on academic freedom that is simple and resistant to change has the advantage, compared to a rule that is flexible and often amended, that it will be easier to mobilize society in its defense (Volokh 2004). If a rule is changed

infrequently and only when the reasons are compelling, most efforts to amend it will be generally perceived as constituting a grave threat to the principle itself. If a prohibition is qualified repeatedly, people will become insensitive to small and, sometimes, even more substantial changes. Eventually, the logic of the slippery slope suggests, small change piled upon small change could result in a serious, destructive alteration which society might fail to notice.

## Conclusions

Before summing up the arguments in this paper, let me first offer an assessment of its limitations. Perhaps the most visible is the absence of an in-depth discussion of the relationship of academic freedom to the kindred principles of free speech and intellectual freedom. This is a project too complex to be undertaken here, so I have accepted the general consensus (Dworkin 1996; De George 1997) that the three refer to different types of rights. Admittedly, however, the issue is intricate and in my view still outstanding: the growth of academic freedom has overlapped both historically and conceptually with the development of the liberty to express oneself and to investigate (Hofstadter 1955). An exploration of the relationship between these principles must consider, besides their genealogy, additional conceptual issues such as the relationship between core and derivative rights (Raz 1986); and the vexing question of whether general rights such as free speech may admit of an institutional dimension, or must by definition exclude it (Horwitz 2007).

Secondly, in my analysis of academic freedom I have relied on the distinction between consequentialist and nonconsequentialist arguments, which is common in the theory of moral deliberation (Pettit 1993) and has been applied frequently to the justification of the basic freedoms.<sup>9</sup> Yet this distinction remains a contested one. Typically, it is pointed out either that behind all tenable consequentialist arguments there lies some result-independent moral duty; or that nonconsequentialist arguments are ultimately reducible to questions of desirable or undesirable effects. Furthermore, as Amelie Rorty (1972) noted with reference to academic freedom specifically, deontological (nonconsequentialist) justifications of professional rights may in fact simply reflect society's widespread acceptance of an institution's or a profession's self-description, i.e., an acknowledged claim that in the absence of this or that right it could not properly discharge its duties. Conversely, when the status of a certain profession is being contested or redefined, the burden of legitimating professionals' rights is shifted onto consequentialist justifications ("society as a whole will benefit if faculty are accorded such and such rights"), while deontological justifications undergo a legitimation crisis. Both the question of whether consequentialist and nonconsequentialist justifications are reducible to a single category, and Rorty's social relativization of this distinction in the case of professional rights are relevant matters that could not be addressed here.

Thirdly, the academic freedom arguments above refer to values the meaning of which is hardly undisputed. The truth of German idealism is different from the truth of scientific positivism which is different from the truth of pragmatism and the "truths" of postmodern relativism. Similarly, definitions of autonomy may vary considerably, even within the same modern liberal tradition. While the arguments presented here do not account for the diversity of possible senses of "truth" or "autonomy", they remain general enough to

<sup>9</sup> By, for instance, Greenawalt (1989), the structure of whose essay is loosely followed in this article.

accommodate—as I have suggested in the section on the argument from truth—a variety of particular and sometimes even conflicting conceptions.

The limitations above notwithstanding, the five arguments analyzed add up, in my view, to a convincing case for academic freedom. Not all of the five apply to academics alone. Some are also valid as justifications for intellectual freedom or for professional autonomy in the case of non-academic professions or individuals engaged in particular types of activities (scientific research, most typically). Furthermore, some arguments (for instance, the nonconsequentialist autonomy argument) do not distinguish clearly between academic activities and other types of acts (e.g., artistic creation) which need protection. Does this mean that academic freedom is, after all, a principle difficult to distinguish from the more general principles of free speech or intellectual freedom?

In my view, the answer is in the negative. The specific nature of academic freedom has two sources. First, although some of the arguments presented apply both to academics and to other persons or other professionals engaged in more or less similar pursuits, they apply to the former with additional force. This is most clearly so where the arguments are underlain by specific theories of the university. Such is the case of the argument from truth and of the democratic argument, where the special role of higher education serves to legitimize strong protections for academics' professional acts. Secondly, the entire set of academic freedom justifications isolates academic freedom as a distinct principle. Taken separately, some arguments may seem unable to distinguish clearly between academics and other professionals, or between academic professional acts and other classes of acts. Considered together, however, the arguments mark out a separate principle.

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