

Legislating history, (re)building the nation – no freedom for academics?

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In what ways do regimes interfere in science, education and production of knowledge in the 21st century?

State-led over-regulation in the name of „academic freedom“

State-led over-regulation in the name of „quality“ of HE (employability, autonomy etc)

Value based discourses – national, republican, „European“ values

Precarization of scholars

Use of NGOs

Academic community vs. Academic community

In the name of History!

State-approved interpretations of crucial historical events and promotion of certain narratives about the past, by banning, for example, the propagation of totalitarian ideologies or criminalizing expressions which deny, grossly minimize, approve or justify acts constituting genocide or crimes against humanity, as defined by international law

Revising history or reclaiming the truth?

- ▶ *"Notre histoire est un bloc", a déclaré le président lundi soir. "On en apprend toujours, nos historiens continuent de révéler la vérité, de mieux comprendre, l'historiographie poursuit son chemin. Mais ne cherchons pas à déboulonner des statues et à effacer des noms."*
- ▶ *"Ce n'est pas ça, la nation française. Ce n'est pas davantage cela la République, qui consisterait à lire notre passé avec les yeux d'aujourd'hui, à confondre les combats. Il y a sans doute des héros oubliés, mais il n'y a pas une histoire à revoir", a conclu Emmanuel Macron. (17 August 2020)*

- National legislation vs. international judiciary (the use of red star - Vajnai v. Hungary 33629/06 ECtHR judgement 2008)
- European funded NGOs: European Observatory on Memories <https://europeanmemories.net/>; the Observatory on History Teaching in Europe <https://www.coe.int/en/web/observatory-history-teaching>
- European Parliament resolution of 19 September 2019 on the importance of European remembrance for the future of Europe (2019/2819(RSP)) https://www.europarl.europa.eu/doceo/document/TA-9-2019-0021_EN.html; Declaration of the European Parliament on the proclamation of 23 August as European Day of Remembrance for Victims of Stalinism and Nazism https://www.europarl.europa.eu/doceo/document/TA-6-2008-0439_EN.html
- Academic freedom defined as “freedom of academic staff and students to engage in research, teaching, learning and communication in and with society without interference nor fear of reprisal”
- “The right to freely define research questions, choose and develop theories, gather empirical material and employ sound academic research methods, to question accepted wisdom and bring forward new ideas”

Memory vs. Academic Freedom legislation

Usual suspects

- * 2018 **China** law prohibiting „misrepresentation, defamation, and attempts to deny the deeds and spirits of heroes and martyrs, or to praise or beautify invasions“
- * 2021 the University of Hong Kong has removed a Tiananmen Massacre monument whilst students were on break, citing safety issues as to explain the move (*Al Jazeera* 2021)
- * **Russia** and the case of the NGO Memorial International
- * **USA** - Idaho and Florida specifically ban the teaching of critical race theory; Texas forbids students from learning about the 1619 Project (<https://www.nytimes.com/interactive/2019/08/14/magazine/1619-america-slavery.html>) in public K–12 schools



Poland

- Civil case against Prof Barbara Engelking and Prof Jan Grabowski for a book „Night Without End“ they co-edited about the complicity of Catholic Poles in the Holocaust during Nazi Germany’s occupation of Poland, by Polish Anti-Defamation League
- Court of appeals overturned the ruling, judge Joanna Wiśniewska-Sadomska said that the litigation constituted “an unacceptable violation of the freedom of scientific research and the freedom of expression”



A group of Jewish Poles surrender to German soldiers after the collapse of resistance in the Warsaw Ghetto in April 1943. Photograph: anonymous/AP

- ◇ So-called culture wars and growing right-wing influence on the overall political space
- ◇ Terrorist acts of the last decade(s)
- ◇ Neoliberalization of higher education *on steroids*
- ◇ Entrepreneurial governments

- ◇ Antisemitism vs. Islamo-gauchisme
- ◇ Freedom of speech vs. Secularism
- ◇ Brexit vs. French renewal of European commitment
- ◇ Decades' long dismantling of the welfare state vs. Remains of social-democratic policies

France and the United Kingdom – (un)democratic tendencies and academic freedom

Macronisation of higher education

Constitutional Council 1984: "Teacher-researchers, teachers and researchers shall enjoy full independence and freedom of expression in the exercise of their teaching duties and in their research activities, subject to the reservations imposed on them, in accordance with university traditions and the provisions of this law, by the principles of tolerance and objectivity;"

November 2020 - a formal declassification of every classified document from 1940 to the present (Instruction générale interministérielle numéro 1 300 - la "protection du secret de la Défense nationale,,)



◇ 2020 President Macron blamed the university for the ‘ethnicization of the social question’ and commenting on social sciences within a cornerstone speech on Islam

◇ 2020 Minister of Higher Education and Research, Vidal, bidding from the CNRS an investigation into islamo-leftism in the university – „it spread a ‘gangrene’ in universities“

◇ 2021 Minister of Education Blanquer set up the Laboratoire de la République (Laboratory of the Republic) with the objective of ‘winning the battle of ideas’, particularly in the academic field „that had to suffer the thrust of wokism and cancel culture“

Changing objectives of UK academia	Ability to achieve pursuit of knowledge
<p>Marketisation of higher education, introduction and rise of tuition fees (dependence of HEIs on tuition fees, especially from foreign students), student debt</p>	<p>Short-term contracts, increased workload and real-terms pay cuts</p>
<p>League tables (REF, TEF, NSS), destabilisation with removal of student numbers cap, focus on earnings of graduates, OfS cuts to London weighting and creative subjects, “non-profitable” department closures</p>	<p>Increased regulatory frameworks for research ethics, funding applications, teaching frameworks, data management, immigration monitoring</p>
<p>Increase in philanthropic donations, government intervention in overseas funding</p>	<p>Internationalization: - scholars working in overseas campuses with different academic and personal freedom threats - surveillance, intrusive immigration monitoring and data insecurity for expat scholars and students in UK</p>
<p>Reduction in democratic governance of universities</p>	<p>Increase in online teaching: extended classroom, reproduction of materials, intellectual property rights</p>

UK: existing protections

Case law legal tradition, unlike some other European countries the UK has **no constitutional protection** of academic freedom

HEIs had a **duty to secure freedom of speech since 1986**, and within all subsequent legislative changes

Education Reform Act 1988, besides abolishing tenure, **first established academic freedom in UK law**. Installed a body of Commissioners who should ensure “that academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at their institutions.”

Since 2017, **Higher Education and Research Act** has established the Office for Students with, among else, a task to protect academic freedom: “including, in particular, the freedom of institutions—

- a) to determine the content of particular courses and the manner in which they are taught, supervised and assessed,
- b) to determine the criteria for the selection, appointment and dismissal of academic staff and apply those criteria in particular cases, and
- c) to determine the criteria for the admission of students and apply those criteria in particular cases.”

“Within the law”: unlawful speech in the UK

Threat to kill	Offences Against the Person Act 1861
Endeavour to break up a public meeting	Public Meeting Act 1908
Fear or provocation of violence	Public Order Act 1986
Acts intended or likely to stir up hatred on grounds of race, religion, or sexual orientation	
Intentional or unintentional harassment, alarm or distress	
Incitement to or encouragement of terrorism, including “any form of praise or celebration” of “the commission or preparation of terrorism, whether in the past, the future, or in general”, dissemination of terrorist publications	Terrorism Act 2000, Terrorism Act 2006
Encouraging or assisting the commission of an offence	Serious Crime Act 2007
Defamation	Defamation Act 2013

Where “views being expressed, or likely to be expressed, constitute extremist views that risk drawing people into terrorism or are shared by terrorist groups. ... **the event should not be allowed to proceed** except... where ... speakers with extremist views that could draw people into terrorism are challenged with opposing views as part of that same event.” This includes “non-violent extremism”. *Prevent Duty Guidance for HEIs, 2015*

Competing duties

Public Sector Equality Duty requires “due regard to the need to advance equality of opportunity”:

- Removing or minimising disadvantages suffered by people due to their protected characteristics
- Taking steps to **meet the needs of people from protected groups where these are different from the needs of other people**
- Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.” *Equalities Act 2010*

“Protest is itself a legitimate expression of freedom of speech. However, protest must not shut down debate. **Protesters who attempt to prevent viewpoints being heard infringe upon the rights of others.** Student Unions, Universities and law enforcement must hold such people to account—and ensure that sufficient resources are in place to prevent protesters from blocking debate.” *House of Commons and House of Lords Guidance for universities and students organising events, 2018.*

Freedom of Speech (Higher Education) Bill

Freedom of speech within the law:
“includ[ing] the freedom to express ideas and opinions without suffering adverse consequences”

Academic freedom within the law:
“to question and test received wisdom and put forward new ideas and controversial or unpopular opinions” without loss of jobs or privileges or the likelihood of securing promotion or different jobs at the employer being reduced.

Academic freedom only for academic staff at a **registered higher education provider**

Establishes a Director for Freedom of Speech and Academic Freedom, to monitor the performance of the Office for Students in the matter and oversee the complaints scheme; extends freedom of speech duties to student unions

Possibility for individuals to bring civil claims for alleged breaches of freedom of speech by HEIs (taken out by the Lords, may be reinstated in the Commons)

UK culture war heats up as arts professionals question veto of trustee appointment at Royal Museums Greenwich

Museums Association says government refusal to renew academic Aminul Hoque's term is "worrying", and the chair of trustees has resigned over the decision

Kwasi Kwarteng reportedly vetoed appointment of leftwing academic

Independent panel had chosen Oxford professor Jonathan Michie to be chair of government-funded research body

UK: Ministerial interventions in appointments of academics and academic judgement

'Its decolonising nonsense': Universities minister hits out at woke courses for students

'Woke' National Trust academic tasked with reviewing colonial past 'intimidated' by critics

'Academics working in the humanities have begun to be personally targeted... for some time now.'

Whose Freedoms?

Using antisemitic conspiracy theories to complain about academic research in collective letter to *The Telegraph*, November 2020

“Part of our mission is to ensure that institutional custodians of history and heritage, tasked with safeguarding and celebrating British values, are not coloured by cultural Marxist dogma, colloquially known as the ‘woke agenda’.”

“History must neither be sanitised nor rewritten to suit ‘snowflake’ preoccupations. A clique of powerful, privileged liberals must not be allowed to rewrite our history in their image.”

On alleged antisemitism, to the Parliamentary Education Select Committee:, April 2021

“we need to go further than just fining, we need to start sacking people and [VC], and [named academic], and [named academic] need to go to be quite frank.”

On limiting freedom of expression in schools, at Conservative Party Conference, October 2021:

“The term white privilege is an extremist term, it should be reported to Prevent, because it is an extremist ideology. . . any teacher who's perpetuated in the classroom ultimately should face a disciplinary hearing at the very least.”



Jonathan Gullis MP,
former Education Minister

At the outset of the research:

- ◇ Worldwide, threats to academic freedom go beyond the “usual suspects”
- ◇ In putative liberal democracies, some of the most serious threats to academic freedom are couched in bureaucratic and systematic pressures and not readily thought of as “academic freedom issues”
- ◇ In these states and others, issue loudly contested around academic freedom and freedom of speech in education are often centred on questions of identity, culture, nation and history
- ◇ Calls for defence of academic freedom and freedom of speech are not apolitical

Thank you!

<https://elkanacenter.ceu.edu/global-observatory-academic-freedom>

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