

OPINION

Academic Rights 101: An introduction in a Malaysian context

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The concept of academic rights is greatly misunderstood, even among some university academics. This paper provides a summary of the historical development of the academic rights from the Roman to the modern era. Many documents and declarations advocating academic rights have been produced, and this paper presents a discussion of the recent documents. The major components of academic rights are elaborated. These include university autonomy, university accountability, academic freedom, academic obligations, security of tenure and collegiality. Some remarks are also made on the current situation in Malaysia.

Introduction

Academic rights and academic freedom are sensitive issues in some countries, especially if academics become critical of the government of the day. The reaction may range from something light such as a reprimand to something more sinister such as demotion, dismissal, physical attack, imprisonment, torture or even murder (Altbach 2001: NEAR 1). On the other hand, academic rights are treated as being sacred and honoured in some other countries. About thirty countries have included academic rights or academic freedom in their constitutions or national law (ICSU). A sampling of the constitutions is shown in Appendix I.

Historical development

During the Roman era, the academic teachers of liberal arts were regarded as honourable as physicians (Kibre 1962). The *Corpus iuris Civilis* provide for privileges such

as exemption from compulsory public and military duties, special purchase of food, and protection from molestation and bodily harm.

These privileges and rights were also carried into the era of Holy Roman Empire with the *Corpus iuris Canonici*. One additional privilege is protection from creditors for non-payment of debts.

The earliest document on academic rights for a university is the *Authentica Habita* (Kibre 1962, Slack 2012). Also known as *Privilegium Scholasticum*, *The Authentica Habita* was a decree issued by the Holy Roman Emperor Frederick Barbarossa in 1155 for the University of Bologna. It set the rules, rights and privileges of the university, its teachers and its students. Some of the rights are:

- Same level of right, freedom and immunity as enjoyed by the clergy
- Freedom of movement and travel
- Immunity from the right of reprisal
- Right to be tried by their masters and not by local civil courts.

- Exemption from taxes and charges for item related to their studies

The next major promoter of academic rights was Wilhelm von Humboldt (1767–1835) (Paulsen, 1902, Michelsen, 2010, Serrano-Velardea & Stensaker, 2010). He introduced the idea of a research-oriented university, doing research besides offering professional training. He envisaged the university as a community of teachers and students with independent thinking and a sense of responsibility. The university must foster academic freedom, be autonomous, free from governmental regulation and free to select and organise studies. There should be protection within the classroom and within the field of specialisation of the academic. These are outlined as *Lehrfreiheit* – the right of academics to teach, *Lernfreiheit* – the right of students to learn, and *Freiheit der Wissenschaft* – freedom of scientific research.

In the early twentieth century, the American Association of University Professors (AAUP) and the Association of American Colleges extended academic rights beyond the classroom and outside the university. Their statements (the 1915 *Declaration of Principles on Academic Freedom and Tenure*, the 1925 *Conference Statement on Academic Freedom and Tenure* and the 1940 *Statement of Principles on Academic Freedom and Tenure*) do not just promote freedom for teaching, learning and research but also for extramural activities (AAUP, 1915; 1940). Academics are seen as valuable social critics and accorded special protection for writing and speech. The statements also introduced the concept of security of tenure. The 1940 statement was endorsed by more than two hundred academic and professional organisations in the USA.

The freedom to speak outside the classroom is reinforced by the UK Academics for Academic Freedom. Their 2007 *Statement on Academic Freedom* called for the right to question and test received wisdom and to put forward controversial and unpopular opinions, whether or not these are deemed offensive. It was signed by more than 600 mainly British academics (AFAF, n.d.).

Another development in the early twentieth century was the 1918 *Cordoba Reforma Universitaria* (History of Education 1918). What started out as a student revolt at Cordoba University in Argentina, has led to the creation of 'autonomous universities' in a number of Latin American countries. The *Liminar Manifesto* (Roca, 1918) advocated for

- Universities to be autonomous from the state.
- Democratisation of universities.
- Secularisation of education programme and university courses.
- Scientific modernisation of curricula.

- Co-governance of universities among academics, students and alumni.
- More full time staff and students.

Even civil authorities are forbidden to enter the university without the permission of the academic community.

Modern developments

In celebrating the 900th anniversary of the University of Bologna, the university and European University Association (EUA) reaffirmed the basic principles of academic rights in the *Magna Charta Universitatum* (EUA 1988). On 18 September 1988, 388 rectors from mainly European universities signed the document. Since then, representatives of 755 universities worldwide from 80 countries have signed the document. Unfortunately, only four of the universities are from the ASEAN region. None are from Malaysia.

The most authoritative and comprehensive instrument on academic rights came from the United Nation Education Scientific and Cultural Organisation (UNESCO). Its *Recommendation concerning the Status of Higher-Education Teaching Personnel* was approved by the UNESCO General Assembly in 1997 (UNESCO, 1997). The Recommendation was formulated by a well-balanced committee consisting of the three main stakeholders: representatives representing the governments, university management and academic unions. It outlined not just the rights and responsibilities of the academics, but also of the universities and the state. It has components of university autonomy, university accountability, academic freedom, academic obligations, security of tenure and collegiality.

The international organisation for university management, International Association of Universities (IAU), has also produced a statement on academic rights (IAU, 1998). Its 'Policy Statement on Academic Freedom, University Autonomy and Social Responsibility' was adopted in 1998.

There are also statements and declarations on academic rights issued at conferences and other meetings (Barrows, 1995). These include the:

- Declaration of Rights and Duties Inherent in Academic Freedom, Siena, Italy (1982).
- Declaration on Academic Freedom and Autonomy of Institutions of Higher Education, Lima, Peru (1988).
- Dar es Salaam Declaration on Academic Freedom and Social Responsibility of Academics, Dar es Salaam, Tanzania (1990).
- Kampala Declaration on Intellectual Freedom and Social Responsibility, Kampala, Uganda (1990).
- Sinaia Statement on Academic Freedom and University Autonomy, Sinaia, Romania (1992).

Table 1: Monitoring organisations of compliance with academic right documents

Monitor	Rights document	Document Owner
Joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART)	Recommendation concerning the Status of Higher-Education Teaching Personnel (1997)	United Nation Education Scientific and Cultural Organisation (UNESCO)
Magna Charta Observatory of Fundamental University Values and Rights	Magna Charta Universitatum (1988)	European University Association (EUA)
Network for Education and Academic Rights (NEAR)		
Scholar-at-Risk (SAR)		

- Erfurt Declaration on University Autonomy, Erfurt, Germany (1996).

Rights of researchers

Closely related to academic rights, are rights of researchers. The main advocate for researcher rights is the International Council for Science (ICSU). It has produced two statements on rights of researchers: *Revised Statement on Freedom in the Conduct of Science* (ICSU, 1995), and *Statement on Universality of Science in a Changing World* (ICSU, 2004). ICSU is concerned about the rights and freedom to conduct research. This includes right to associate in international scientific activities, access to scientific data and information, and unrestricted travel on scientific business.

The United Nations has also produced a document on researcher rights. It is the UNESCO Recommendation on the Status of Scientific Researchers (UNESCO, 1974). It outlined the rights and responsibility of the researchers, their employers and the state.

Table 2: Monitoring organisations of compliance with researcher right documents

Monitor	Rights document	Document Owner
ICSU Committee on Freedom and Responsibility in the conduct of Science (CFRS)	Revised Statement on Freedom in the Conduct of Science 1995. Statement on Universality of Science in a Changing World 2004	International Council for Science (ICSU)
International Human Rights Network of Academies and Scholarly Societies		
American Association for Advancement of Science (AAAS) Committee on Scientific Freedom and Responsibility (CSFR)		
American Physical Society (APS) Committee on International Freedom of Scientists		

Monitoring organisations

None of the above instruments on academic rights provide any legal or enforcement power. However, most universities complied because academic rights are seen as a required prerequisite in being a university. For some others, it could be to avoid the embarrassment of being ridiculed for being non-compliant. This is because there are many organisations that monitor the level of compliance in universities in various countries. The

major monitoring organisations are listed in Table 1 and Table 2. Some are tied to a rights document while others are not.

The most critical of these monitors is the Network of Education and Academic Rights (NEAR 2). It produces public alerts for transgression of academic rights by universities or countries (<http://www.nearinternational.org/alerts.asp>).

Fundamentals of Academic Rights

The UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel has outlined six main components of academic rights *viz.* university autonomy, university accountability, academic freedom, academic obligations, security of tenure and collegiality (UNESCO, 1997).

University autonomy requires the university to be self-governing on academic, management and financial matters. There should not be any external interference.

However, this does not free the government from social responsibility to support higher education.

With autonomy comes accountability. The university must be publicly accountable for funding, academic standards and uses of resources. There should not be any cover up of institutional censorship.

For academics, academic freedom is the freedom to teach and the freedom to do research. Academics are free to teach and discuss, and not forced to teach against their knowledge or conscience. They are also free to carry out research and disseminate the research results by publication in any media of their choice. In carrying out his or her teaching and research, the academic must be given freedom of movement, association, expression and communication. S/he must also be given equitable access to data, information, research materials, libraries and research facilities. Academic freedom also includes the right to express opinions about the institution or system in which they work.

With the granting of academic freedom, academics have obligations to society to excel, to innovate, and to advance the frontiers of knowledge through research and the diffusion of its results through teaching and publication. However, they must take into account the implications which the results may have for humanity and nature. There must be respect for evidence, impartial reasoning and honesty in reporting, and for academic freedom of others and allow for discussion of contrary views.

Collegiality means there must be shared responsibility with academics in governing the university and other academic bodies. There must be a majority of academic representatives to the academic bodies.

There must also be security in academics' tenure. Employment should be equal for all and based solely on academic qualification, competence and experience. There must be negotiation for the terms and conditions of employment. The facilities provided must be conducive to teaching, research and scholarship. Any disciplinary action must only be for professional misconduct.

Notes on Malaysia

One of the current government policies on higher education is to make Malaysia into an education hub. This is being done through international marketing for students, academics and researchers for its universities. Most of the major universities are deeply involved in university rankings. This has exposed Malaysia to international scrutiny of its universities, particularly the NEAR alerts. Malaysia received eleven NEAR alerts over a ten year period (2002-2011), as shown in Appendix II.

Malaysia has not been paying much attention to developing university ideals and increasing the level of academic rights in its plan of expansion of higher education. Academic rights have been overlooked and are regarded as a hindrance to this expansion plan.

However, Malaysia does need to improve its support for academic rights if it wants to be an international player. This has been advocated by the World Bank (World Bank, 2007). It says improvement is needed by:

Increasing autonomy of public universities and expecting full accountability in return. Empowering universities to make independent decisions about their mission, governance, hiring of their academic leaders, academic and non-academic staff, selecting students, and introducing new programmes and courses.

This would ensure that the general academic context and governance structures create a climate that upholds academic values including autonomy, freedom of expression, collegiality, and integrity.

Let us hope that all the stakeholders in Malaysian universities follow this advice and proudly move themselves onto the international stage.

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APPENDIX I: Provision for academic rights or academic freedom in the constitution or national law of selected countries

Thailand

Constitution of the Kingdom of Thailand (1997), Section 42.

A person shall enjoy academic freedom. Education, training, learning, teaching, researching and disseminating such research according to academic principles shall be protected; provided that it is not contrary to his or her civic duties or good morals.

Philippines

Philippines Constitution (1987), Article XIV, Section 5 (2)

Academic freedom shall be enjoyed in all institutions of higher learning.

United Kingdom

Education Reform Act 1988, Part IV Academic tenure, Article 202(2) (a)

... 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.

France

Constitution of the Fifth Republic, Education Code, Article L952-2

The academics, teachers and researchers enjoy full independence and complete freedom of expression in the exercise of their teaching and research activities, subject to the reservations imposed on them under academic traditions and the provisions of this code, and to the principles of tolerance and objectivity.

Ecuador

Constitution of the Republic of Ecuador (2008), Article 355

The State shall recognise the academic, administrative, financial and organisational autonomy of universities and polytechnic schools, in accordance with the objectives of the development structure and the principles set forth in the Constitution.

Universities and polytechnic schools are recognised the right to autonomy, exercised and understood as matter of solidarity and responsibility. This autonomy guarantees the exercise of academic freedom and the right to search for the truth, without restrictions; self-governance and management in conformity with the principles of rotation of power, transparency, and political rights; and the production of science, technology, culture and art.

Their premises are inviolable and they cannot be broken into and searched except in those cases and terms applicable to the domicile of a person. The guarantee of internal law and order shall be the area of competence and responsibility of their authorities. When protection of the forces of law and order is required, the supreme authority of the institution shall request the relevant assistance.

Autonomy does not exonerate the system's institutions from being audited, social responsibility, accountability and participation in national planning.

The Executive Branch shall not be able to deprive them of their revenues or budget allocations, or delay transfers to any institution of the system, or shut them down or restructure them either totally or partially.

Mexico

Political Constitution of the Mexican United States (1917 amended 2005) Article 3 (VII)

Universities and all other higher education institutions which the law grants autonomy to, shall have power to govern themselves; they shall be accountable in executing such a power and shall achieve the goals of providing education and promoting research and cultural expressions by protecting always the freedom of teaching and researching as well as the free intercourse of ideas; they shall determine academic curricula and syllabuses by their own and shall establish conditions for the admission, permanence and promotion of their academic personnel; they shall have power to manage their resources. The labour

relations between higher education institutions and their administrative employees shall be regulated under article 123, section A of this Constitution. According to federal labour law such employees shall be considered as special workers. Such a special treatment shall neither interfere with institutional autonomy nor with freedom of teaching and researching. The goals set down for higher education institutions by this paragraph shall also be unaffected by recognising any special labour regime

APPENDIX II: NEAR Alerts on Malaysia

<http://www.nearinternational.org/alerts-country.asp?countryid=73>

1. Malaysian academic suspended after criticising a decree (26 October 2011)

Abdul Aziz Bari, professor of constitutional law at the International Islamic University of Malaysia, was suspended from his position after criticising a decree made by the Sultan of Selangor. He was later reinstated but remains under investigation in what appears to be a clear violation of academic freedom.

2. Malaysian students face legal action for expression critical opinions (23 February 2006)

Five undergraduate students of the University Sains Malaysia in Penang faced legal action for expressing their opinion in press statements and leaflets where they protested about the validity of the campus electoral processes (activities prohibited under the University and University Colleges Act (UUCA) of 1971).

3. Malaysian students acquitted after four years (7 June 2005)

NEAR has been informed by the Asian Human Rights Commission (AHRC) of the acquittal of seven Malaysian students (known as the ISA7) who were charged with illegal assembly on 8 June 2001. BACKGROUND INFORMATION: The seven students were charged with illegal assembly and then suspended from their university studies for their participation in a demonstration on 8 June 2001 (Please see related NEAR Alerts).

4. Imprisoned Malaysian lecturer freed (24 March 2005)

Wan Min Wan Mat, a Malaysian university lecturer who was arrested in September 2002 in connection with the Bali bombings, has been freed a year before his due release date, *ABC News* reported on 23 March 2005.

5. Repeated interrogation of student over critical article (17 February 2005)

The Science University of Malaysia (USM) has for the second time (please see related NEAR Alerts) investigated Ali Bukhari Amir, a senior communications major at the school, for his critical articles on the university. The focus of the investigation has now shifted to the student's website and his role in

founding a writers' association.

6. Systemic repression of Malaysian students decried (7 January 2005)

Malaysian university students have suffered multi-faceted discrimination over the years. In the most recent case a student was suspended for publishing an article in a campus newspaper. The Southeast Asian Press Alliance (SEAPA) has written a letter to Professor Dato' Dzulkifli Abdul Razak and Associate Professor Dato' Jamaluddin Mohaiadin, of the Science University of Malaysia complaining about the system of discrimination.

7. Students on trial after a three year wait (27 October 2003)

The trial against seven students (known also the 'ISA7') arrested during an assembly in 2001, will resume on 27 October 2003. BACKGROUND INFORMATION On 8 June 2001, more than 500 students protested against Malaysia's Internal Security Act (ISA) of 1960 in front of the National Museum in Kuala Lumpur.

8. Students still await trial after three years (7 July 2003)

The Asian Human Rights Commission (AHRC) has received a report that the academic careers of seven university students who were detained allegedly for illegal assembly on 8 June 2001, continue to wait for the resumption of their studies pending their trial, which has dragged on for more than three years.

9. Fear of torture for two men arrested by Malaysian police (13 January 2003)

Amnesty International has issued an Action Alert the 13 January 2003 regarding the arrest of two men in Malaysia. The two men were reportedly arrested on 11 January 2003 by the Malaysian police under the Internal Security Act (ISA), which allows for indefinite detention without charge or trial. It is not known where they are being held, or whether they have access to legal representation or to their families.

10. Teachers arrested (16 October 2002)

Amnesty International issued an action alert on 16 October 2002. Shaari Mustapha, a religious teacher, and four other people were arrested on 16 October by the Malaysian police under the Internal Security Act (ISA). It is not known where they are being held, or whether they have access to legal representation or their families.

11. Risk of Torture (27 September 2002)

Amnesty International issued this Action Alert on 27 September 2002. On 27 September, Malaysian police arrested Wan Min Wan Mat, a former lecturer at Malaysia Technology University (Universiti Teknologi Malaysia), under the Malaysian Internal Security Act (ISA). It is not known where he is being held and whether he has access to family or legal representation.