

## ARE UNIVERSITY PROFESSORS FREE TO SPEAK OUT?

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Everyone is entitled to freedom of speech, including university professors, but they are, as opposed to other people, also subject to greater restrictions and entitled to “further protections associated with their roles”.<sup>1</sup> Their right to publish – which is an unavoidable part of academic freedom – has traditionally been understood as a right to full freedom in the publication of results discovered through study and research.<sup>2</sup> As such, this right is much more limited than their right to freedom of speech that they have as citizens.<sup>3</sup> But the question is whether the limit to the freedom of expression of university professors when participating in public debate should be “over and above what applies to all citizens”.<sup>4</sup> Although many academics agree that they should not be more restricted on what they can say in public debate than they are as citizens, it seems that they accept special obligations that are imposed on them because of their special position in society. The reason for such an assumption lies, for instance, in the 1940 *Statement of Principles on Academic Freedom and Tenure*, accepted by the American Association of University Professors and the Association of American Colleges, where it is stated that university professors “are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint,

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<sup>1</sup> L. Green, “Civil Disobedience and Academic Freedom”, *Osgoode Hall Law Journal*, Vol. 41, Nos. 2-3, 2003, p. 385; cf. R. Dworkin, “We Need a New Interpretation of Academic Freedom”, in: L. Menand (ed.), *The Future of Academic Freedom*, The University of Chicago Press, Chicago 1996, p. 184.

<sup>2</sup> 1940 *Statement of Principles on Academic Freedom and Tenure*, American Association of University Professors and the Association of American Colleges, Art. 1; University professors “should be free to publish the results of research and scholarship in books, journals and databases of their own choice and under their own names, provided they are the authors or co-authors of the above scholarly works” (UNESCO, *Recommendation Concerning the Status of Higher-Education Teaching Personnel*, point 12).

<sup>3</sup> The *European Convention on Human Rights and Fundamental Freedoms*, for example, stipulates that the exercise of the right to freedom of expression “may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interest of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary” (Art. 10.2).

<sup>4</sup> Ph. Van Parijs, “What can we say, what must we say?”, Selective synthesis and personal conclusions, *Free to speak out? On the right and responsibilities of academics in the public debate*, Third Ethical Forum of the University Foundation Brussels, 25 November 2004, p. 1.

should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution.”<sup>5</sup>

To say that every university professor has a right to publicly express their views is to say that he has *no duty not* to express them. This means that he, as a holder of this right, is free to do something in the sense of non-forbiddance. In this case it is not important if university professors are able to do what they are free to do. The only important thing is that they are not disallowed to publish and publicly express their views. But despite this clear definition of this right as a liberty right, it remains unclear as to whether or not this right means only that the university professor has no duty not to publish, or it also means that he has no duty to publish. The real question here is not – as it might seem at first glance – whether the university professor has a right not to publish at all and still retain his position as a professor at the university. For, the answer to this question is already known at least in contemporary universities where all university professors are more or less in a situation which can be well described with the famous slogan: publish or perish! So, the right question is rather if the university professor is free in a sense of having discretion over whether or not to publish such things that he believes to be important and true and, at the same time, would have undesirable consequences for him if they were published. The answer is yes, if we ask whether he can decide to publish them or not. He is certainly free to choose what to do. But on the other hand the answer might be just the opposite, namely that university professors in such a case are not really free to choose to publish or not, if the point in question were the following: Should the wish to avoid such undesirable consequences for university professors have priority over their moral duty to tell the truth?

The answer, given by an eminent Belgian philosopher, Philippe Van Parijs, is negative. “Many research results, when thrown into the public debate, may have undesirable consequences”, he says, “but this is a small cost to pay for the benefit of being able to trust that, whenever academics speak out, they utter statements they genuinely believe to be true, rather than statements the uttering of which they believe will have good consequences for themselves, their audience or whatever other group. The painful truths, those which politicians and journalists” would not like to be topics in public debate, “are precisely those which academics have a special responsibility to state and emphasize”.<sup>6</sup>

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<sup>5</sup> 1940 *Statement of Principles on Academic Freedom and Tenure*, Art. 3.

<sup>6</sup> Ph. Van Parijs, “What can we say, what must we say?”, p. 8.

Therefore, if university professors have in such cases a special responsibility, a special moral duty to speak out, then they cannot be free to speak out in the sense that they can freely choose to speak out or not.