

Third Ethical Forum of the University Foundation
FREE TO SPEAK OUT?
ON THE RIGHTS AND RESPONSIBILITIES OF ACADEMICS IN THE PUBLIC DEBATE
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WHAT CAN WE SAY, WHAT MUST WE SAY?
Selective synthesis and personal conclusions

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"Are there limits to the freedom of expression of academics when participating in the public debate, over and above what applies to all citizens? If so, how should they be enforced and by whom? Do academics have a duty to exercise this freedom? If so, in what form, to what extent, and how should such use be encouraged?"

These were the questions put to the participants in this third forum of the University Foundation. By way of a selective synthesis of the intense exchange that took place around them, I would like to list and briefly discuss first five putative threats to the academics' freedom to speak out and next five possible interpretations of what it means to make a responsible use of this freedom. I shall conclude by suggesting some implications as regards the respective roles of academic authorities and of the academic community.

I. SPEAKING OUT FREELY

1. Legal restrictions

Discussion of our freedom of expression *qua* academics cannot be dissociated from our constitutionally guaranteed freedom of expression *qua* citizens. The latter is not absolute anywhere, and it tends to be less absolute in Europe than it is, for example, under the first amendment of the US Constitution. Thus, Article 10.2 of the European Convention on Human Rights and Fundamental Freedoms 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”.

Several participants expressed concern about the existing legal framework, as actually or potentially interpreted, narrowing down more than it should the citizens’ freedom of expression. Four examples :

- (a) **Not only for freedom’s sake?** One may readily admit that the citizen’s freedom of expression can be restricted to the extent that this is strictly necessary to protect a small set of fundamental civil rights, including the freedom of expression itself? But is there not a danger if this legitimate restriction is extended to the protection to the much larger set of rights enshrined in the EU Charter of Fundamental Rights, including, for example, the right to paid holidays? In particular, does the so-called “general abuse clause” not lend itself to being invoked, as Matthias Storme fears, against any use of one’s freedom of expression to challenge, and thereby threaten, any of those rights?
- (b) **Blasphemy?** Should the criminalisation of blasphemy, which is to be found in some legal systems, be viewed as an innocuous remnant soon to sink into total oblivion, or is there a risk, as Paul Cliteur fears on the basis of a recent declaration by the Dutch Minister of Justice, that it will lend itself to an ominously expansive interpretation that will turn any critical discussion of religion into a hazardous business ?
- (c) **Collective slander?** Uttering and spreading damaging false statements about an individual is uncontroversially deemed punishable by law. But should the banning of libel and slander be extended, as Matthias Storme believes it should not, to the uttering of false statements about collectives, such as, say, Moslems, lesbians or Germans?
- (d) **Hate speech?** Incitement to (private) violence can uncontroversially be made punishable, along with violence itself. But should this restriction of the freedom of expression be further extended, as it often is but should not according to Matthias Storme, to the banning of the expression of one emotion most human beings are at least occasionally prone to, namely hate? From the acknowledgement that hate (even for the most vicious) is a vice, it does not follow that its expression should be prohibited.

2. Private violence

When talking about the academics’ (or indeed anyone else’s) freedom to speak out, one should not focus too narrowly on what formal rules allow them to say. The formal freedom to speak out matters a great deal, but it falls far short of the real freedom to do so.

One dimension of this gap, forcefully stressed by Paul Cliteur, unfolds as soon the State loses its monopoly over the use of force. A Serbian colleague pointed out to me fifteen years ago that the constitutionally guaranteed freedom of the press was a farce in his country, not because of any intimidation by police or state officials, but because these would not or could not effectively protect the premises of

dissenting newspapers' against arson and ransacking by thugs. In the same vein, Paul Cliteur is very worried about the erosion of the Dutch government's monopoly over violence in the territory it is supposed to rule. The fact that no adequate protection against aggression can be afforded to public intellectuals, like Theo van Gogh or himself, puts the freedom of expression at far greater risk than even the toughest attempt currently considered to restrict it by legal means. Self-censorship driven by the physical fear of fellow citizens can narrow down the scope of what can be said no less effectively than censorship by the state.

Needless to say, as soon as the threat reaches beyond a handful of public apostates and publicity-seeking provocateurs, the aim of ensuring the safety of free speakers, whether academic or not, is achievable only at a prohibitive cost, unless one can rely on a widely shared ethos of mutual toleration. Keeping or making it self-evident that one should respect even the expression of opinions one intensely disagrees is bound to be more cost-effective than building up the police force to unprecedented levels.

3. The power of the purse

On most issues, however, the greatest threat to the free expression of academics is neither the fear of legal sanctions nor the possibility of private violence, but the power exercised by those who control material resources and career opportunities. As illustrated by Alain Eraly and Jean-Pascal van Ypersele, self-censorship by academics is often driven by economic sanctions, including in the form of the opportunity cost of not obtaining material advantages one would have had a greater chance of obtaining had one shut up or said the "right" thing.

Some of these sanctions are in the hands of political officials with more than a modicum of discretionary power over whether to grant or renew research credits or other subsidies. Others are in private hands, as when pharmaceutical or oil companies may display greatly varying degrees of generosity in extending lavish invitations to individual academics, in offering them juicy consultancy contracts or in sponsoring the events, research projects or centres they run, depending on how much they like or dislike what they hear them saying in public. Let us be straight about this: the bending of the truth can be caused by the drive to grab the superfluous no less than by the fear of losing the necessary. As a student once told me in Kinshasa, some academics have their mouths so full that they can no longer speak.

Sometimes too, those who hold the economic power may form a less narrowly identifiable group, but the sanctions may be no less real and no less perilous for the real freedom to speak out. Thus, some academics may be lured into saying what a broad public wants them to say, attracted by the prospect of Lomborg-size royalties. Others may be tempted to feed public opinion with anti-Lomborg alarmist declarations in the hope that they will fuel a widespread political will to fund the research they are doing. In more indirect but more general fashion, Herman De Dijn suggested, the governments' anxiety to make a "responsible" use of the taxpayers' money tends to channel resources away from less profitable areas of scholarship, thereby reducing the academics' ability to intervene on public issues that pertain to

these areas. The question is not whether a concern for the public interest, including in its economic dimension, can legitimately affect the funding of research and higher education. Of course it can. The question is how to prevent the mode of funding from scaring academics away from telling (what they honestly believe to be) the truth when it is needed.

One ingredient of the answer is bound to be that as much as possible of the funding should be allocated by public or private institutions exclusively committed to the furthering of knowledge as an aim in itself and/or the genuine long-term public interest.

Secondly, whoever does the funding, maximum transparency must be secured about its source, beneficiaries and conditions. "Transparency" is a complex requirement. It relates as least as much to the legibility as to the visibility of the information provided, and it requires the protection of whistleblowers no less than the right of control by public officials.

Thirdly, one must try to shrink as much as possible the academics' potential for personal gain from saying what some economic power holders, concentrated or diffuse, would like them to say. What about requiring all full-time academics to have their consultancy fees, lecture fees, royalties, etc. paid to their institutions, rather than to themselves? With less potential for filling their mouths, there should be less leverage to make them shut up.

4. Censorship by academic communities

Apart from pressure coming from the outside — general legal constraints, private intimidation, economic sanctions —, there may be censorship imposed by the scientific community itself. As illustrated by Benoit Frydman, the academics' freedom of expression may be seriously impaired by an "esprit de corps", an expectation of loyalty towards a department or a corporation that silences dissenting voices.

Gilbert Eggermont added a distinct point: a sense of loyalty to the group — say, the community of nuclear physicists —, more or less spontaneously internalized, may be reinforced by a process of reduction of "cognitive dissonance": what one wishes to believe out of collective interest ends up shaping what one says (or fails to say) because it affects what one genuinely believes.

5. Censorship by specific institutions

As regards the various threats to the academics' freedom of expression listed so far, there should be an easy consensus that they are illegitimate and must be fought. But what about fully transparent and explicit contractual obligations imposed by specific institutions of higher education whose founders, owners or leaders are committed to a particular religious or ideological stance? For example, one of the regulations that applies to the professors of my own university (article 48 of the *Statut administratif des membres du corps académique de l'Université catholique de Louvain*) stipulates that they must "respect the catholic character of the University". Clearly, this could be interpreted so as to seriously restrict our

freedom of expression. But if it ever was, it certainly no longer is. Even stating in print what good reasons there may be for dropping “catholic” from the name of the University [Van Parijs 2004] has little chance of prompting anyone among our (internal) University authorities to suggest that some institution-specific restriction of free expression has been breached. But whether loosely or strictly interpreted, would such a restriction be legitimate?

When tackling this question, Matthias Storme suggested that there was a crucial difference, in this respect, between, say, the American and the Belgian situation. If there is a large number of diverse universities by which academics could be employed, the restriction any of them might make is less damaging for the individual academic concerned, as there is a good chance that if a particular job in a particular university is unavailable to her (or unacceptable by her) for this reason, she should be able to find another one in another region of the same market. Moreover, precisely because of the realistic fear of losing good brains for this reason, it will be in the vital interest of the quality of the universities concerned not to impose such restrictions or to interpret them very mildly. In countries (let alone sub-countries) in which the market for academic jobs is much smaller, by contrast, universities are monopsonists (or oligopsonists), and therefore in a position to wield their power to hire and sack in a way that can threaten academic freedom. Self regulation, therefore, is insufficient, and a legal framework is needed. On this sort of ground, Matthias Storme wants Belgium’s private universities to be subject to the same requirement of non-discrimination as if they were public institutions. Note that this line of argument affords the members of private universities only a contingent protection against the contractual restriction of their freedom to speak out. As the internationalization of European higher education proceeds, it entails that Belgian universities should legitimately enjoy greater legal leeway for imposing such a restriction (while admittedly becoming increasingly reluctant to do so).

However, a shift that took place in the US between 1940 and 1970 suggests another, less contingent way of protecting the free speech of all academics, whatever the status of their institutions. In 1940, the American Association of University Professors and the Association of American Colleges, adopted a *Statement of Principles on Academic Freedom and Tenure*, which stipulates that “limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment”. In 1970, however, the following “interpretive comment” was officially appended to this clause: “Most church-related institutions no longer need or desire departure from the principle of academic freedom implied in the 1940 Statement, and we do not now endorse such a departure.” The reason for not endorsing departure from the principle of academic freedom must be that there is something in the mission of academics — in what it is important that society should be able to expect from them — that trumps their contractual freedom. This takes us from the rights of academics in the public debate to their responsibilities.

II. SPEAKING OUT RESPONSIBLY

1. Refraining from squandering our collective credit? Yes, for two reasons.

To judge by the exchanges at the forum, there seems to be a wide consensus both against the imposition of specific legal restrictions on what an academic can say, over and above what applies to all citizens, and in favour of some moral duty to make a responsible use of the freedom they enjoy. Article c of the *1940 Statement of Principles on Academic Freedom and Tenure* puts the matter as follows: "College and university teachers 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, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution. »

In Europe, I am not aware of any analogous statement. The *Magna Charta Universitatum* signed in Bologna in 1988, for example, forcefully asserts "freedom in research and training" as "the fundamental principle of university life", but says nothing about freedom of speech in the public debate, let alone about how it should be exercised. However, "special obligations" of the sort spelled out in the US Statement presumably feature in the regulations of most of our universities. As regards my own, article 48 of the *Statut administratif des membres du corps académique de l'Université catholique de Louvain*, the first sentence of which was quoted above, continues as follows: "Ils [les membres du personnel académique de l'UCL] s'abstiennent de tout acte et de toute manifestation publique d'opinion qui compromettraient l'accomplissement de la mission de l'Université, attenteraient à son renom moral ou porteraient atteinte à la dignité de leur fonction. »

The general notion that underlies both citations can, I conjecture, be restated as follows. A significant part of any weight our words may carry when reaching a lay audience they owe to the credit attached to the institution to which we belong, to Universities in general and indeed, as Fabienne Brion pointed out, to what has gradually evolved in Western civilization as a special and prestigious type of discourse called "science". By speaking out irresponsibly, we run the risk of damaging not only our own personal credibility, but also that of the particular institution that employs us, of universities in general and of science itself.

Doing so would be wrong for two distinct reasons. Firstly, it is unfair to our colleagues. We benefit from a credit they have been working hard to establish, strengthen and maintain. When speaking out irresponsibly, we squander it. Like parasites, we destroy the very substance we feed on. Secondly, whether unfair or not to our colleagues, speaking irresponsibly is bad for society as a whole, more than ever in the complex, fast-changing, over-informed world we live in, in which clear, competent and un-self-interested guidance is a vital public good.

2. Listening to others ? Yes, but not only.

It is of course important to be more specific about what this “responsible” use of our freedom to speak out might consist in.

One aspect of it, explicitly mentioned in relevant passage of the American *Statement of Principles*, is that we must “show respect for the opinion of others”. In some areas, such as the debate on our multicultural societies, it may even be a central part of the academic’s responsibility, as Fabienne Brion put it, to make sure they themselves hear all the voices involved and to make them audible to their audience.

Needless to say, however, it remains the academics’ prime responsibility not just to report on what other people think or say, but to express their own convictions.

3. Sticking to one’s expertise ? Certainly not.

These convictions must be more than sheer opinions. They must be “well-founded”, Alain Eraly says. Herman De Dijn warns that not all convictions which it is defensible to express must be sustainable by a rational argument. Yet, in one way or another, it is no doubt an important aspect of a responsible use of our freedom to speak out that what we say should draw on the professional competence we are meant to possess. Edwin Zaccai recommends drawing a clear distinction between interventions inside and outside one’s field of expertise. Along the same line, the UNESCO (1997, article 34k) enjoins academics not to mislead their audience into believing they are experts when they are not. Does it follow that responsible academics should intervene exclusively in the narrow domain of their academic expertise? By no means.

It is of course easy enough to put together anthologies of pompous yet imprudent and sometimes plain silly statements by self-confident academics speaking about matters they hardly know, and probably even about matters they are supposed to be experts of. Some relish in drawing up such inventories (see, in quite different registers, Bricmont and Sokal [1998] and Posner [2001]). Yet, let us beware of being irresponsibly self-restrained. As Alain Eraly forcefully pleaded in the light of his first-hand experience as chief of cabinet of a head of government, good collective decision-making is poorly served by lengthy inconclusive scholarly reports that state large number of relevant facts in their authors’ domains of expertise, without coming up with any policy advice. When asked to be more forthcoming, we are told, academics tend to self-righteously respond that drawing up a policy conclusion would require venturing beyond their safe territory into neighbouring factual realms in which they are no experts and, worse still, making value judgements they have no quality to make. This would amount to usurping a function that is not worthy of a true scholar. So they think.

My own personal conviction, further strengthened by some of what I heard at the Forum, is that the opposite is the case: our duty is to define and practice some form of *inexpertise reponsible*. We do not live up to what society can legitimately expect from us, in this dimension of our job, if we limit our interventions in the public debate to the ever shrinking portion of worldwide knowledge that can truthfully be regarded as our area of expertise. For we cannot reasonably leave

whatever else is needed to meaningfully feed public discussions and guide public decisions to journalists and politicians, hard pressed by emergencies and a tactical concern for their image. We must dare to provide our own critical synthesis of the relevant available knowledge in fields, often even in disciplines that are not our own.

Risky business no doubt, to be conducted, as Gilbert Eggermont stressed, with the appropriate humility. But made considerably less risky by the crucial fact that we are not alone, that our universities provide a fabulous concentration of competences, of colleagues on whom we can count to guide, correct, criticize us as we unavoidably touch on many subjects that are more familiar to them than they are to us. Especially in a small country in which no expert is available on many issues in urgent need of open discussion and intelligent decision, sticking strictly to one's expertise is far more likely to prove irresponsible than reaching with due caution far beyond its narrow borders.

4. Adopting a neutral stance ? Yes and no.

Indeed, I am convinced that we must stick our necks out even further by daring to say what we believe must be done. Responsible academics do not pretend nor attempt to be "neutral". Aiming impartially at the truth, and nothing but the truth, in any factual statement they make should by no means prevent them from spelling out the value judgements which they believe must guide public policy and indicate on this basis, combined with their critical synthesis of what the facts of the matter are, what should be done.

Of course, it will be for the democratically elected authorities to take the ultimate decision, but they will be greatly helped in this difficult task, not prevented from discharging it, if academics of all disciplines pause to think about the principles that should legitimately guide public policy in the area they are active in and formulate their advice by appealing to such principles in fully explicit fashion.

5. Minding the consequences ? Not at the expense of the truth

Thus, a responsible use of one's freedom to speak out involves neither sticking to one's expertise, nor refraining from making value judgements. Rather the contrary. Could it be further characterized as minding the consequences of what one says? Certainly not in the most straightforward interpretation of what this may mean.

Think of the following two examples. When presenting his analysis of the working of Belgium's political establishment, Alain Eraly was repeatedly accused, he tells us, of boosting support for the far right. In a different vein, as Yugoslavia was falling apart, a Slovene economist was beaten up in a park because he had challenged the ruling view, in local media, about the extent of the implicit financial transfers from Slovenia to the Southern Republics, and was thereby damaging, his assailants felt, Slovenia's public interest. Should the wish to avoid undesirable consequences for one's people have priority over the commitment to say the truth?

Certainly not, it seems to me. If Galileo and his like had adopted this ranking, we might still be believing that the sun is gravitating around the earth: it was such a cruel act to unveil the sad truth that we were not at the centre of the universe. Taken one by one, many research results, when thrown into the public debate, may have undesirable consequences, not only by hurting our narcissism, but also by feeding racism, for example, or by increasing the probability of self-interested breaks of solidarity. 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 find particularly awkward to convey to audiences they much prefer to cajole, are precisely those which academics have a special responsibility to state and emphasize.

III. Implications

1. What role for academic authorities ?

In the light of the above discussion, perhaps the responsible use of our freedom to speak out can be roughly characterized as follows. Let us intervene, whether at the prompting of the media or on our own initiative, when we think we can usefully contribute, by pointing to crucial facts which may otherwise go unnoticed or by explaining relevant connections which may otherwise be given inadequate attention, or in any other way that may help avoid errors and confusions. Let us do so without neglecting the other aspects of our jobs — teaching and research —, with an inflexible resolve never to present as the truth what we do not believe to be the truth and in the service of a conception of the public good which we must not shy away from spelling out.

Some academics, no doubt, have brought their institutions and our profession into disrepute through interventions that are not responsible in this sense. And others will do so in the future. But such irresponsible speech should not be formally sanctioned either by the authorities of individual institutions or by overarching organs that would police the speech of academics more strictly than the law does for all citizens. Substantiated refutation, well-documented criticism and, when the uttering is so crude that it does not deserve comment, sheer contempt by one's peer group should be enough to keep us in line as much and as little as is needed.

Consequently, if university authorities wish to play a more active role here, it should not be by censoring or by chastising, but instead by prompting academics to feed the public debate, in their personal capacity of course, not on behalf of their institutions, though with the unavoidable consequence that they will boost latter's image if they do it sensibly, and tarnish it if they do it foolishly. Integrating this function into the core business of academics, along with research and teaching, rather than allocating it to a separate caste (as in the French-type trichotomy between CNRS-Grandes Ecoles, mass universities and *intellectuels médiatiques*), should make it possible both to improve the quality of its performance and to generate significant economies of scope, as the same substantive competence can

be mobilized in all three functions. But it requires adjusting the assessment criteria of the academic staff so as to give due weight to this dimension of their activity [see Barnett 2003], however variable its quantitative importance in a person's professional time may legitimately be, depending on career stage, communication skills, temperament, and closeness of one's academic field to the burning public issues of the day.

2. What role for the academic community ?

More than the political or university authorities, it is of course above all up to the academics themselves to make sure they do their job as they should. In the same way as a doctor has a duty to act when he sees a person collapsing in the street — to use Jean-Pascal van Ypersele's telling metaphor —, an academic who, owing to his specific competence, is particularly well placed to detect and assess the first sign of a major danger, has a duty to speak out. Whether about the side effects of using asbestos in buildings or about the loss of biodiversity, whether about the swelling of the public debt or about the consolidation of urban ghettos, academics can legitimately be criticized for not making the effort and taking the time to warn decision makers and the general public before it is too late.

Moreover, when they intervene, whether to ward off major disasters or for any less grand purpose, their chief concern must be to say nothing but what they believe, be it conjecturally, to be the truth. Intimidation in all the shapes discussed above, legal and extra-legal, internal and external, with a gun and with a purse, can thwart this concern to a degree that greatly varies with the general social and academic context and the specific circumstances of the particular academic concerned.

To make it easier — indeed, in extreme cases, less heroic — for individual academics to discharge this part of their mission, there is a vital role to play, as emphasized in the final discussion by Dirk Voorhoof and Benoit Frydman, for the academic community as a whole. It is for all of us to affirm with due emphasis that it is unacceptable for anyone holding economic, political, academic, mediatic or just physical power to try to prevent academics from stating publicly what, to the best of their competence, they have come to believe, or to try to make them say what they do not believe. Conversely, we must make a point of publicly praising any public or private organisation involved in funding academic activities whose procedures effectively shelter academics against the good or bad consequences of saying or failing to say publicly what the leaders of those organisations would like or hate them to say.

It is also for all of us to assert, with no less emphasis, that it is despicable for any of us to say anything we do not believe — or refrain from saying what we do believe — because of benefits we may thereby be able to reap or penalties we may thereby be able to avoid. Excusable, no doubt, in extreme cases in which a person's life prospects or a whole family's material or physical security are at stake, but nonetheless at odds with the "dignity" of our function and as such liable to legitimate criticism. Conversely, of course, those who are willing to put at risk some of the comforts of their status, some enticing contracts or promotion prospects, or

even their very career, because of some well-considered yet (for some of the mighty) unpalatable conviction they feel they have the duty to publicly express, deserve more than our respect: our admiration and our praise. And we must say so even, indeed especially, when only few of us agree with the content of what is being asserted.

By taking a clear and firm collective stance, we can help spread throughout society and in our own ranks the right sort of ethos: an ethos that will inhibit third parties' propensity to use their power so as to restrict our real freedom to speak out, an ethos that will also weaken our own propensity to yield to this power. By strengthening such an ethos, in other words, we can — and must — both expand our freedom to speak out and increase the chance that we shall exercise it in responsible fashion.

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