

LEGAL AND JURISPRUDENTIAL ASPECTS OF MANDATORY 'ENVIRONMENTAL LITERACY' PROGRAMMES IN TERTIARY EDUCATION

C. Warnock

University of Otago (NEW ZEALAND)
ceri.warnock@otago.ac.nz

Abstract

There is a significant and growing body of literature that considers how Universities might act as a catalyst in fostering sustainability from the perspectives of management and administration, promoting research into sustainability issues and developing curricula that enables students to acquire 'environmental literacy' and to explore sustainability values. However, an emergent theme in the international research is that, "Universities, expected to be at the cutting edge of thought and practice, are behind the curve on this trend – far behind". Focusing upon curriculum development, many Universities around the world have considered how programmes of study might adequately equip students to develop the necessary literacy that would enable them to explore present and future concepts of sustainability in its many guises. In certain forms this has included mandatory requirements; students must take particular papers or must include a set numbers of select papers within their degree structure regardless of the subject of their major. The present paper analyses this approach from within a legal and jurisprudential framework. The first question to be addressed is whether Universities should promote 'environmental literacy' to all students. Much of the existing literature automatically assumes that this is invariably 'a good thing' but certain factions in society would counter-argue that particular philosophies should not be imposed upon all. In addressing this initial hurdle the paper considers whether 'environmental literacy' addressing concepts of sustainability should be afforded privileged treatment in tertiary education. Thereafter, using New Zealand as a case study, consideration is given to the interplay between Universities role as 'critic and conscience of the nation' and academic freedom (prescribed by Education Acts) and how various curriculum initiatives fit within these concepts. The concept of academic freedom for students is an important consideration and laws guaranteeing human rights might be pertinent in assessing the validity of mandatory courses or components of programmes. The paper considers whether compulsory courses or programmes transgress academic freedom or flout legal rights.

Keywords: law, jurisprudence, 'environmental literacy', sustainability, mandatory papers, academic freedom.

1 INTRODUCTION

If we are to safeguard the health of the environment for present and future generations, the leaders and policy makers of the future have to be educated in a radically different way to their forbearers. This conclusion has been reached, and is being advanced, not only by individual academicsⁱ but by international organizations and university leaders from around the world. The United Nations Educational, Scientific and Cultural Organization has declared that "[e]ducation, in short, is humanity's best hope and most effective means to the quest to achieve sustainable development"ⁱⁱ and to date 423 presidents, rectors, and vice chancellors of universities from all regions of the world have signed the Talloires Declaration confirming that university leaders "are deeply concerned about the unprecedented scale and speed of environmental pollution and degradation, and the depletion of natural resources". As a consequence, those leaders have agreed to "Foster Environmental Literacy For All [and to] create programs to develop the capability of university faculty to teach environmental literacy to all undergraduate, graduate and professional students".ⁱⁱⁱ Such concerns and commitments have been echoed in a number of other international agreements^{iv} and evince a promise to reform education to equip *all* students with the critical thinking skills necessary to meet the challenges of a marginal environment. Clearly, curricula development will be an important factor in achieving this goal. This paper considers whether universities could, from a legal and jurisprudential basis, require all students to take papers that would educate them as to such issues and further, whether Universities should. It will use New Zealand as a case study primarily because whilst one might expect New Zealand universities to be at the "cutting edge of thought and practice, [they] are behind

the curve on this trend – far behind”^v and there is growing pressure for reform from both within universities and externally.^{vi} At the outset, the author should declare that it is not her intention to enter the debate as to whether such a mandatory paper ought, as a preference, address ‘sustainable development’ or ‘ecology or ‘environmental literacy’ although she has chosen to refer to ‘environmental literacy’ in order to render the arguments less amorphous

2 JUSTIFYING MANDATORY PAPERS IN ENVIRONMENTAL LITERACY

Many academics have justified the introduction of mandatory papers addressing environmental literacy (or sustainability) from a moral perspective arguing that such measures are becoming necessary in order to safeguard the earth for the wellbeing of present and future generations.^{vii} Critics on the other hand have challenged such suggestions by accusing the proponents of pushing their own political agendas. They argue that to allow an elite, or even a misguided majority, to impose their preferences on others has proved disastrous throughout history (Nazi-ism or the Taliban’s version of Islam provide examples) and is an inherent threat to fundamental liberties. There is little scope for common ground between such polarised camps but it is possible to adopt a jurisprudential approach to this question. In contrast to Nazi-ism, for example, the imperatives of environmental protection and restoration are well established in international law. There are numerous treaties, soft law political declarations and United Nations General Assembly resolutions that address various facets of environmental protection. Many treaties have almost universal state support.^{viii} In addition, one can trace the flow of this international law down into regional agreements and further into the constitutions and / or domestic law of most states. Whilst existing international law does not comprehensively protect all parts of the natural environment, the importance of environmental protection is clearly evidenced in this sphere. Given Universities role as a critic and conscience of society^{ix}, academics should be vigilant in ensuring state compliance with these laws and should equip their students as citizens to do likewise. There is a clear pedagogical reason for including environmental literacy programmes in the curriculum and from a jurisprudential basis Universities would have a valid basis for including mandatory environmental literacy papers in degree programmes. The question may arise however as to why preference should be given to environmental literacy as opposed to, for example, insisting that students learn principles of equality and justice or human rights. Such ideals are also protected by numerous international and domestic laws. Similar justifications would apply to those already proffered in relation to environmental literacy papers. A University may well decide to prioritise human rights issues by imposing mandatory requirements and that decision could also be justified on a jurisprudential basis. It must be acknowledged that the fact that other ideals are deserving of particular attention will make decision-making for the particular university more difficult^x but it does not undermine the jurisprudential basis for mandatory environmental literacy papers. If a University decides to prioritise environmental literacy, it can be justified, jurisprudentially, for doing so.

Another important point needs to be addressed. Pressures to reform tertiary education may come from within the institution itself or may come from external bodies. In addressing the issue of mandatory papers, it is important to consider the source of the pressure for reform. If universities themselves decide to introduce mandatory papers, the focus of legal legitimacy will be upon the relationship between the student and the university. If however, the state or other external bodies seek to control or manage universities curricula either directly or through the provisions of targeted funding, the focus of the inquiry must be upon the relationship between the university and those external bodies. This latter scenario, whilst proving interesting and raising numerous complexities is not the subject of this short paper. Accordingly, the following discussion will focus upon the status of students to influence or challenge the decision of a University to impose mandatory papers.

3 COULD STUDENTS LEGALLY CHALLENGE THE IMPOSITION OF MANDATORY ENVIRONMENTAL LITERACY PAPERS?

It is not impossible to imagine a scenario whereby a student or body of students is unhappy with any mandatory requirements. Whilst many degrees have mandatory paper requirements, mandatory papers that are unrelated to a chosen discipline may add to the expense or length of time taken to complete a degree. Students may have philosophical objections to undertaking papers concerning environmental issues or may simply object to the university dictating what extraneous papers they must take. If internal negotiations between students and the university foundered, would students be able to legally challenge the imposition of the mandatory papers?

3.1 Judicial Involvement in Students' Disputes with Universities

Traditionally, courts in common law jurisdictions have been reluctant to interfere in disputes between students and universities but that is not to say that they will not do so in appropriate circumstances. The legal relationship between a fee-paying student and a university may be both contractual and, depending upon the legal form taken by the University, governed by public law principles.^{xi} The Court of Appeal of England and Wales has addressed the special circumstances occasioned by student-university disputes in the case of *Clark v University of Lincolnshire and Humberside*.^{xii} In his judgment, Lord Woolf MR stated that, "A university is a public body ... [g]rievances against universities are preferably resolved within the grievance procedure which the universities have today. If they cannot be resolved in that way, where there is a visitor, they then have to be resolved by the visitor^{xiii} (except in exceptional circumstances). The courts will not usually intervene. While the courts will intervene when there is no visitor this should normally happen after the student has made use of the domestic procedures for resolving the dispute. If it is not possible to resolve the dispute internally, and there is no visitor, then the courts may have no alternative but to become involved. If they do so, the preferable procedure would usually be by way of judicial review. If on the other hand, the proceedings are based on the contract between the student and the university then they do not have to be brought by way of judicial review."^{xiv} Thus, the Court of Appeal confirmed that the courts could as a last resort intervene in disputes between students and universities. Alleged breaches of contract may be justiciable by the courts in appropriate circumstances but the preferable route to challenge is via judicial review of the decision made by the public body.^{xv}

Would the decision of a university to require all students to take mandatory environmental literacy papers be justiciable by the courts or not? Clearly, a student would have difficulty arguing breach of contract if there had been clear written notice of the requirement at the time she enrolled and in those circumstances any court based challenge would have to rely upon judicial review.

3.2 Judicial Review

In its simplest terms, a court in a common law jurisdiction will review a decision made by a public body if that body abuses its statutory powers. In New Zealand, and in common with a number of other jurisdictions, the Court may review a decision if the public body acted outside the ambit of the statute conferring the power, came to a decision in a manner that was procedurally unfair or if the body acted unreasonably in the exercise of that power. In general, the thresholds for successful review of administrative decisions are set purposefully high because judges are not politicians or policy makers and accordingly, it is not the judicial role to replace a valid administrative decision with one the court would have particularly favoured. When consideration is given to cases concerning the decisions of Universities, the bar for intervention appears to be raised even further. One example relates to procedural fairness; all of the usual demonstrations of procedural fairness may not be required in cases concerning academic judgement. In *R v Higher Education Funding Council*,^{xvi} another English case, the court found that it would not automatically amount to procedural unfairness (and therefore a ground for review) if reasons were not given to explain an academic judgement. Academic judgement, or rather a judgement exercised for pedagogical reasons, appears to attract a special protection from judicial scrutiny.

Returning to the imposition of a mandatory environmental literacy paper, it is difficult to envisage a scenario whereby the University would have acted outside the ambit of its statutory powers unless it was regulated by an unusual, highly prescriptive statute. Further, if a university followed all appropriate internal procedures for introducing a mandatory paper, it would be difficult to challenge the decision on the basis of procedural impropriety. The major remaining ground for review would be a challenge to the reasonableness or otherwise of the decision or academic judgement. Whilst the Court of Appeal in *Clark* initially stated that, "the court will not involve itself with issues that involve making academic judgements", it seemed to leave open the prospect of reviewing a substantive decision in some cases by refining that comprehensive statement: "*there are issues of academic or pastoral judgement which the university is equipped to consider in breadth and depth, but on which any judgement of the courts would be jejune and inappropriate*".^{xvii} There can however be little doubt that such incidents would be rare.

It is entirely foreseeable, particularly given the discussion in section 2 above, that a University would be able to justify environmental literacy papers as part of the curriculum. Any challenge would be to the universality of the requirement. How would a student challenge the reasonableness of the imposition? Might a student argue that the decision to impose a mandatory environmental literacy

paper upon them breached their rights to academic freedom? To answer this question requires some examination as to the meaning of academic freedom and specific consideration as to whether students can claim a right to that freedom.

4 ACADEMIC FREEDOM FOR STUDENTS AS A HISTORICAL AND PHILOSOPHICAL CONSTRUCT

As a philosophical idea what then does the concept of academic freedom connote? Does academic freedom incorporate both the freedom to teach and the freedom to learn and, rather than granting a privilege to an elite group in society, does academic freedom imply a right to all to pursue free academic endeavours? The historical origins of the idea suggest a coming together of the diverse concepts of privilege and universal rights.^{xviii} Conrad Russell writes that academic freedom originated from ecclesiastical privileges.^{xix} The elite of the medieval Catholic Church were protected by papal degrees against the vagaries of the monarchs and in an effort to resist state intervention into its affairs the Church naturally extended ecclesiastical privileges to the church-established Universities. One suspects however that the need for inculcation with the teaching of the Church lead to a situation far removed from our present understanding of academic freedom. A clear break from the ecclesiastical privileges came with Campanella's defence of Galileo (1622) and his argument in support of *libertas philosophandi*.^{xx} This plea for liberty was used to protect individual academics but by the eighteenth century the German research-orientated Universities of Halle-Wittenberg and Gottingen had firmly established concepts of *libertas philosophandi* that underpinned the entire research endeavours of the institution.^{xxi} Importantly, the concept achieved greater definition within the era of Humboldt when *Lehrfreiheit* and *Lernfreiheit* (the freedom to teach and to learn) became the hallmarks of the German Universities.^{xxii} Might one argue that, from this point on, student academic endeavours fell within the general protection afforded by academic freedom?^{xxiii}

In a parallel development, a wider human rights-based approach to freedom of expression can be traced back to works such as Milton's *Areopagitica* and Mill's *On Liberty*.^{xxiv} With modern day hindsight, the universal right of free expression provides a clear and equitable justification for academic freedom as a valid subset of this right and removes it from the category of privilege for an elite group. The Supreme Court of the United States has stated that academic freedom is a "special concern of the First Amendment" that is, the constitutional right to free speech that applies to all citizens.^{xxv} Certainly, adopting a rights based approach lends greater credence to the interpretation of academic freedom as encompassing both the freedoms of academia and students.

Today, a proliferation of soft-law, political declarations support the notion that academic freedom extends to students. The Lima Declaration states that, "all students of higher education shall enjoy freedom of study, including the right to choose the field of study from available courses"^{xxvi} and the Joint Statement on Rights and Freedoms of Students reflects a similar position in paragraph 1 on Protection of Freedom of Expression, "Students should be free to take reasoned exception to the data or views offered in any course of study and to reserve judgment about matters of opinion, but they are responsible for learning the content of any course of study for which they are enrolled".^{xxvii} Modern pedagogues often point to the inseparable nature of teaching and learning; academics are continually learning and it would be an ineffective professor indeed who decried the contribution that student insights might make to their own professorial knowledge or even the subject as a whole^{xxviii}. As a consequence, one can argue that students should also be protected by the ideal of academic freedom. But what specifically does this mean? Academic freedom is a rather amorphous concept in general and this is especially so in relation to students rights; what is meant for example by the "freedom of study"? Does it for instance permit a student *carte blanche* in relation to paper choice?

Returning to the historical origins and untwining the intermingling of two distinct though related ideas may provide some clarity. It seems clear that the term 'academic freedom' has been used to describe two concepts. The first, concerning a narrower definition of academic freedom, addresses the right of individual scholars to challenge conventional wisdom without fear of reprisal or repression and arguably this freedom should apply to students. The second, wider definition, addresses institutional autonomy, perhaps best described by Frankfurter J. in the 1957 US Supreme Court case of *Sweezy v New Hampshire*.^{xxix} The Justice, in a concurring opinion, referred to the necessity for "the exclusion of governmental intervention in the intellectual life of a university" and described "the four essential freedoms' of a university – to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study".^{xxx} Institutional autonomy is not meant to address student rights and in determining the application of academic freedom to students it

is important not to merge the two ideas. Accordingly, whilst there appear to be good grounds for including students within the rights protected by a narrow definition of academic freedom, there appears to be no historical, hitherto philosophical or political basis for including students in decisions as to "... what may be taught, how it shall be taught, and who may be admitted to study". This corresponds with the soft law documents mentioned above that assert a student's rights to challenge data or views offered and even to select a field of study but, in contrast, do not suggest that a student should have the freedom to reject papers required for the completion of a degree course.

5 ACADEMIC FREEDOM FOR STUDENTS AS A LEGAL CONCEPT

However, it is also important to distinguish between the concept of academic freedom as a philosophical construct or a rhetorical ideal as opposed to a working, defined legal right. Has the dual freedom, encompassing the freedom to learn, been reflected in the law? And if it has, what exactly does that freedom entail? Clearly, the answers to these questions will depend upon the jurisdiction concerned and even a review of states that inherited a British tradition shows a divergence of modern day approaches to academic freedom in general. In the United States in particular, the issue is controversial.^{xxxii} This paper however will address the legal situation in New Zealand for students.

New Zealand is a unitary state. The human rights of all persons legally in New Zealand are protected by the Bill of Rights Act 1990 ('BORA') and in particular, section 14 concerns the freedom of expression: "everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form". The Bill of Rights Act does not have the status of a constitution but all statutes must be interpreted in a manner that accords with the rights set down in the Act. As a result, any legislation must be interpreted in a manner that accords with section 14, *if possible*; an important caveat on this protection is to be found in section 5. Section 5 of BORA states that, "the rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". Whilst a student may point to their right to free expression as supporting a freedom to reject mandatory papers, section 5 supplies an important dampener to this assertion particularly when one considers the specific legislation governing the tertiary sector.

In New Zealand academic freedom is guaranteed by statute. The Education Act 1989 attempts a definition of academic freedom, provides a legal right to that freedom and also addresses the status of students:

s 161(2) ... academic freedom, in relation to an institution, means –

- (a) the freedom of academic staff and students, within the law, to question and test received wisdom, to put forward new ideas and to state controversial or unpopular opinions:
- (b) the freedom of academic staff and students to engage in research...

Thus, students are guaranteed their freedom to research, to critique and evaluate what is taught and to act as heterodox albeit within the specific confines set down in the Act. This directly accords with section 14 of BORA. But, student choice is absent from freedoms concerning curricula and the Act expressly refers to,

S 161(2)(c) The freedom of the institutions and its staff to regulate the subject-matter of courses taught at the institution

It is not possible to interpret this section in a manner that would accord with section 14 of BORA and a court would not attempt to do so: the Education Act makes ample provision for addressing BORA within section 161(2)(a)(b) and section 5 of BORA would operate to prevent a perverse interpretation of section 161(2)(c) of the Education Act. Further, there are no affirmations in any other statutes or case-law permitting students freedom as to paper choice in a degree programme.

Within other common law jurisdictions, what few cases there are on the rights of students to determine curricula, also suggests that this is not a freedom open to students. In the US, for example, a federal

court rejected a Mormon theatre-studies student's assertion that requiring her to speak words that she found offensive or that took the name of God or Christ in vain violated her First Amendment right to free speech or a right to religious freedom.^{xxxii} The student did not want to follow the set curriculum that, she argued, would have breached her legal rights. The court, in part, used counterfactual reasoning and opined that if they found for the student then a believer in creationism could not be required to discuss and master the theory of evolution in a science class and a neo-Nazi could refuse to discuss, write or consider the Holocaust in a critical manner in a history class. Essentially, as the court found, curriculum choice fell within the judgement of faculty. The appeal court agreed that courts should defer to faculty judgement as long as that curriculum requirement reasonably related to pedagogical concerns.^{xxxiii} To do otherwise would in the words of Ebel J, "give each student veto power over curriculum requirements, subjecting the curricular decisions of teachers to the whims of what a particular student does or does not feel like learning on a particular day".^{xxxiv} The student's constitutional right to free speech did not prove determinative. The legal basis for this decision differs from the law in New Zealand but the counterfactual reasoning is directly transferable. Clearly, from a practical perspective, it would make the management of degree programmes extremely difficult if students were able to reject mandatory papers on the basis of personal beliefs or choice.

6 CONCLUSION

It is possible to support the calls of academics for mandatory literacy papers in tertiary institutions by using jurisprudential reasoning. Whilst it is possible to argue from a philosophical, and in New Zealand from a legal basis, that students' have a right to academic freedom, that freedom guarantees the right of the student to test and openly critique received wisdom. It does not permit a student the freedom to reject mandatory papers that may be justified for valid pedagogical concerns. Further, in New Zealand the domestic law would support the imposition of mandatory papers on environmental literacy if that curriculum decision was to be made by a University and the courts would be likely to protect the reasonableness of any such decision from challenge. It is likely that the law in a number of other common law jurisdictions would mirror this result although specific attention would have to be paid to the statutes, charitable documents or contracts establishing and governing the University before a categorical answer could be given.

REFERENCES

ⁱ For some of many examples see Filho, W L (Ed) *Teaching Sustainability at Universities: Towards Curriculum Greening*, Peter Land, Frankfurt am Main (2002); Tilbury, D et al (Eds) *Education and Sustainability: Responding to the Global Challenge*, IUCN, Switzerland (2002); Orr, DW *Ecological Literacy: Education and the transition to a postmodern world* State University of New York Press, US (1992); Sterling, S *Sustainable Education: Re-visioning learning and change*, Green Book for the Schumacher Society, UK (2001); Blewitt, J and Cullingford, C (Eds) *The Sustainability Curriculum: The challenge for higher education* Earthscan, London (2004)

ⁱⁱ UNESCO (1997) *Educating for a sustainable future: A transdisciplinary vision for concerted action*, UNESCO Paris available at http://www.unesco.org/education/tlsf/TLSF/theme_a/mod01/uncom01t05s01.htm

ⁱⁱⁱ Association of University Leaders for a Sustainable Future *The Talloires 10 Point Action Plan* available at http://www.ulsf.org/programs_talloires.html

^{iv} For example see UNESCO-UNEP *The Tbilisi Declaration* (1978) ED/MD/49, Paris. Further see CRE, *CRE - Copernicus Charter: The University Charter for Sustainable Development*, Geneva (1994) available at <http://www.iisd.org/educate/declarat/coper.htm> that states in "Principles of Action: Programmes in environmental education "Universities shall incorporate an environmental perspective in all their work and set up environmental education programmes involving both teachers and researchers as well as students – all of whom should be exposed to the global challenges of environment and development, irrespective of their field of study"

^v A criticism levelled at universities worldwide by Newport, D, Chesnes, T and Linder, A "The 'environmental sustainability' problem. Ensuring that sustainability stands on three legs" (2003) *International Journal of Sustainability in Higher Education* Vol 4 No 2 pp 357, at 361. For New Zealand in particular, see Stone, LJ and Baldoni MJ *Progress and Pitfalls in the provision of tertiary*

education for sustainable development in New Zealand, Parliamentary Commissioner for the Environment, Wellington (2006)

^{vi} In 2007, the New Zealand Government amended the *Education Act 1989* with the aim of aligning the tertiary education sector more closely to the social, economic and environmental interests of New Zealand. The aim of the legislation is that the planning for, funding and monitoring of Universities will reflect the goals as stated in government policy documents. Essentially, the Tertiary Education Commission will assess whether to approve a university's three yearly plan against published criteria and allocate funding to support delivery of the approved plans. External from government, groups such as Sustainable Aotearoa New Zealand have established a working group with representatives from universities, polytechnics and wananga with the aim that by "2014, sustainability is embedded into all tertiary education programmes" see Sustainable Aotearoa New Zealand UN DESD NZ Tertiary Sector Forum *Navigating Towards Sustainability 101 Meeting Notes*, 18 November 2008, Wellington, at page 15 (on file with author)

^{vii} *Ibid*, note 1.

^{viii} See for example there are 194 parties to the United Nations Framework Convention on Climate Change 1992

^{ix} In New Zealand this objective for Universities is established in the Education Act 1989.

^x The author's admittedly simplistic personal belief, is that the preservation of the earth's carrying capacity is pre-eminent; if that is not secured then issues such as human rights and equality become irrelevant (although the author fully accepts that others may disagree).

^{xi} In contractual terms, the university agrees to supply educational services to the student and the student agrees to pay the fees and comply with all relevant regulations. As Davis writes "the express terms of such a contract would appear to comprise not only the various charters, disciplinary codes and other college regulations usually referred to explicitly (and in writing) at the time that the student enrolls, but also prospectuses and other pre-course guides indicating the nature of the service to be provided" see Davis, M "Students, academic institutions and contracts – a ticking time bomb?" *Education and the Law*, Vol 13, No 1 (2001), 9, at page 15. All universities in New Zealand, whether established by charter or statute are considered public bodies.

^{xii} *Clark v University of Lincolnshire and Humberside*. [2000] *All ER* 752

^{xiii} Charitable entities receive the attentions of a 'visitor'.

^{xiv} *Clark v University of Lincolnshire and Humberside*. [2000] *All ER* 752 at paras 29 – 32.

^{xv} *Clark* concerned the breach of student regulations by the university and the Court determined that given the specific facts, this case was within the sphere of contractual arrangements between the student and the university that the court could intervene in.

^{xvi} *R v Higher Education Funding Council* [1994] 1 *All ER* 651

^{xvii} *R v Higher Education Funding Council* [1994] 1 *All ER* 651 at para 12 (my emphasis).

^{xviii} It is important to distinguish between the universal right to education in this regard which is most clearly a twentieth century development.

^{xix} Russell, C. *Academic Freedom* Routledge (1993), at page 2

^{xx} Karran, T "Academic freedom in Europe: Reviewing UNESCO's Recommendation" *British Journal of Educational Studies* (2009) Vol 57, 2, 191

^{xxi} *Ibid*, Karran, note 15 and also Altbach, P "Academic Freedom: International realities and challenges" *Higher Education* 41: 205-219, 2001

^{xxii} Altbach, P "Academic Freedom: International realities and challenges" *Higher Education* 41: 205-219, 2001

^{xxiii} There are differing interpretations of *Lernfreiheit*. Some academics have suggested that it connotes a wide of definition; others have pointed to a narrow, specific definition that meant a freedom to attend or absent oneself from lectures in particular (for the latter see Standler, RB *Academic Freedom in the USA* (2000) available at <http://www.rbs2.com/afree.htm>)

^{xxiv} Milton, J *Areopagitica, A Speech for the Liberty of Unlicensed Printing to the Parliament of England*, Clarendon Press, Oxford, (1644); Mill, J S 'On Liberty' in *Three Essays*, Oxford University Press (1859)

^{xxv} *Keiyishian v Board of Regents*, 385 U.S. 589, 603 (1967) per Brennan J.

^{xxvi} The Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education 1988, Sixty Eighth General Assembly of the World University Service, meeting in Lima from 6 to 10 September 1988 available at http://w2.eff.org/censorship/academic_edu/caf/academic/?f=academic-freedom.wus

^{xxvii} American Association of University Professors *Joint Statement on Rights and Freedoms of Students* (1991) available at <http://www.aaup.org/AAUP/pubsres/policydocs/contents/stud-rights.htm>

^{xxviii} Compare this approach with the arguments made by Byrne, J P Byrne, J P "Academic Freedom: A Special Concern of the First Amendment" (1989) *Yale L.J.* 99, 2, 251, at page 263.

^{xxix} *Sweezy v New Hampshire, by Wyman, Attorney General* (1957) 354 U.S. 234

^{xxx} *Ibid*, *Sweezy*, note 29 (quoting from The Open Universities in South Africa, a statement of a conference of senior scholars in South Africa) quoted with approval in *Regents of the Univ. of California v Bakke*, 438 U.S. 265, 312 (1978), *Widmar v Vincent*, 454 U.S. 263, 276 (1981).

^{xxxi} *Ibid*, Byrne, note 28. Byrne argues that the US Constitution does not afford students any rights to academic freedom.

^{xxxii} *Axson-Flynn v Johnson*, 151 F. Supp. 2d 1326 (2001)

^{xxxiii} *Axson-Flynn v Johnson*, 356 F.3d 1277(10th Circuit 2004). For further examples in the US see *Yacovelli v Moeser*, Case No, 02-CV-596 (M.D.N.C. Aug 15 2002), Case No. 02-1889 (4th Circuit, Aug 19 2002); *Linnemeir v Board of Trustees, Indiana University-Purdue University, Fort Wayne*, 260 F.3d 757 (7th Circuit, 2001). Although note Byrne J. Peter "Academic Freedom: A Special Concern of the First Amendment" (1989) *Yale L.J.* 99, 2, p 251, at 263, arguing that the US Constitution does not afford students any rights to academic freedom.

^{xxxiv} *Ibid*, *Axson-Flynn*, note 33 at 1292