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SULF

#### On Academic Freedom (Om akademisk frihet)

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The author is personally responsible for the content of this article. The opinions expressed here do not necessarily reflect the views of SULF but serve as a basis for discussion on this important issue for our members.

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### **Foreword**

Academic freedom in both research and education is a prerequisite for good societal development. History has taught us that new knowledge emerges when researchers are allowed to follow their own ideas, thoughts and objectives. The concept of academic freedom includes the ability for all researchers to freely choose a subject area, to decide on their method of research and to publish wherever they wish.

Academic freedom is essential for democracy because it enables open and critical discussion. Research and teaching that is free from religious, political or economic influence also helps to increase the general public's understanding of complex issues and contributes knowledge that people need in order to make informed decisions in democratic processes.

The democracy aspect is the reason why SULF promotes the reinforcement of constitutional protection for the freedom of higher education, which is currently lacking in Sweden's Instrument of Government. Strong legal protection is important. But it is not sufficient. Education must also have constitutional protection, as must research.

In addition to the obstacles highlighted by Professor Shirin Ahlbäck Öberg in this article, SULF believes that one of the biggest obstacles to democracy and the free dissemination of knowledge is the high rate of precarious employment in the higher education sector. This applies both to the many early-career fixed-term positions and to the fact that even permanent jobs are insecure in practice. When the money runs out, so does the employment. The fact that employment is insecure to such a great extent for the people who are society's disseminators of knowledge is a major obstacle to the exercise of academic freedom.

When researchers and university teachers are afraid to challenge the status quo for fear of losing their jobs, the capacity to find new and innovative solutions to problems shrinks. This uncertainty can also impact people's willingness and ability to speak out in the workplace and can lead to a culture of self-censorship and fear of reprisals. It can silence the free and independent academic transfer of knowledge. That would be a serious blow to social development.

That is why academic freedom is important.

Sanna Wolk, President of SULF

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# On academic freedom

Freedom in research and training is the fundamental principle of university life, and governments and universities, each as far as within them lies, must ensure respect for this fundamental requirement. from the Magna Charta Universitatum, 1988

## Introduction

Academic freedom has rightly become an increasingly burning issue.¹ The discussion about what academic freedom means, how it should be secured and what constitutes a threat to it is important and requires careful consideration. This article is an attempt to bring clarity to these questions and to provide a basis for discussion. Simply put, we can say that the free search for knowledge and the free transfer of knowledge at our universities are essential for the social, cultural, economic, medical, technical and scientific development of the world. By "free", I mean free from undue control by, for example, politicians, the market or other ideological organisations, i.e. actors in whose interest may be to draw attention to or describe the world or phenomena in a way for which there is no scientific evidence. At our universities and colleges, we must be able to freely research and teach about things that outsiders may perceive as unimportant or downright controversial without concern for possible consequences.

The 2008 Swedish Higher Education Institutions Autonomy Inquiry stated that academic freedom means extensive scope for independently conducted research and higher education: "Securing such room for manoeuvre is far more than a special interest for academics and intellectuals. Freedom of knowledge is an essential prerequisite for the cultural climate, for the health of democracy, for the dynamism of the economy and for the whole of society's

<sup>1~</sup> I would like to express warm thanks to senior lecturer Johan Boberg, Professor PerOla Öberg, Professor Sverker Gustavsson and Professor Mikael Börjesson for valuable comments on drafts of this text.

ability to develop" (Swedish Government Official Report SOU 2008:104, p. 65). Sweden committed to protecting the freedom of research by signing the legally binding United Nations International Covenant on Economic, Social and Cultural Rights in 1967. Through this, Sweden undertakes "to respect the freedom indispensable for scientific research and creative activity" (UN 1966, article 15:3). Since then, Sweden has signed a number of other international agreements and legal texts on academic freedom. We can thus conclude that the issue of the content and conditions of academic freedom in Sweden is both central and binding. But the question is to what extent we live up to this.

The climate issue and how best to handle a pandemic or deal with organised crime are clear examples of subjects that should be researched in a way that does not tie approaches, methods and results to any individual interests. If we take a slightly broader view, we can also state that democracy and freedom are under pressure in a global perspective. The research programme Varieties of Democracy (V-Dem) states in its democracy report for 2022 that 2.5 billion people live in countries where democratic rights have declined in the past 10 years. The report also shows that the level of democracy enjoyed by the average citizen worldwide in 2021 was down to 1989 levels, meaning that the past 30 years of democratic progress has now been erased (V-Dem Institute 2022). The dismantling of democracy is often carried out by right-wing populist forces and follows a recurring pattern: First the media faces restrictions, then the judiciary, culture, academia and the rights of individuals (V-Dem Institute 2020; 2021; 2022).

What bearing does this have on the Swedish context? I believe that it would be a mistake to assume that we in Sweden are immune to such forces. It must be emphasised that it is not only illiberal forces that pose a threat to academic freedom. It can also be threatened by excessive control from both politicians and public administration or by a lack of understanding or boundary setting from within higher education itself. Regardless, the starting point should be that society's central institutions must be designed to withstand the toughest possible tests. The constitutional principle regarding state sector activities that

<sup>2</sup> In the Government bill to the Swedish parliament on the approval of the Covenant, the proposing minister writes that with regard to Article 15 "it can be stated that the attitude to cultural life and science reflected therein is consistent with the prevailing view in Sweden on these issues" (His Majesty's Bill 125, 1971, p. 29). However, that statement does not reflect the actual situation of state universities and colleges in Sweden then or now, as is evident from what follows in this article. It can be added here that the ratification was approved by the Riksdag (Standing Committee on Foreign Affairs report 1971:UU13, parliamentary communication 1971:132, Section 14).

require independence comes from a more consensus-oriented era and is not robust enough when there is increasing disagreement about what constitutes accepted practice and whether it should be followed at all (see e.g. Beckman 2021). There is therefore every reason to reflect on the state of academic freedom in this country and whether the safeguards for this freedom are sufficient.



### The dimensions of academic freedom

As can be understood from the introduction, the idea of academic freedom is a recurring and positively charged concept in the world of higher education, and this freedom can be seen as the very prerequisite for academic activity.<sup>3</sup> Detta märks också i den politiska retoriken. This is also apparent in the political rhetoric. It is not uncommon for various governments' higher education policy bills to include the word "freedom" in their headings, such as e.g. *Higher Education Institutions – Freedom for Quality*, (Government bill 1992/93:1), *Academia for our Time – Greater Freedom for Higher Education Institutions*, (Government bill 2009/10:149), and the latest research policy bill, *Research*, *Freedom, Future – Knowledge and Innovation for Sweden* (Government bill 2020/21:60).

The question, however, is what kind of freedom is actually intended. Who should be given freedom? University management, higher education teachers or someone else? And what does the balance look like between formal and real freedom? I will return to these questions. But first, let's clarify what the concept of academic freedom itself includes.

Although there may be some agreement on the core meaning of the concept, there are very large variations in how it is interpreted and applied (Kallerud 2006). I will not go into the many shifting meanings that have been given to academic freedom throughout history and in different contexts here. As a general point of departure, however, I would like to emphasise the great importance academic freedom has in ensuring the ability to seek knowledge freely at higher education institutions - that is, as a prerequisite for free search for and dissemination of knowledge to be able to occur regardless of how such knowledge is received by political, economic or other interests.

This is well captured by a frequently cited definition which states that academic freedom is "the freedom to conduct research, teach, speak, and publish, subject to the norms and standards of scholarly inquiry, without interference or penalty, wherever the search for truth and understanding may lead", (UN Global Colloquium of University Presidents 2005). In this definition, academic freedom is linked solely to the individual level, i.e. to the individual researcher

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<sup>3</sup> The following reasoning is a continuation of Ahlbäck Öberg, Börjesson & Boberg's discussion on this subject (2022).

or teacher, but there should also be a focus on the institutional level. In the literature, the meta-concept of academic freedom is linked partly to higher education institutions and partly to individual academic researchers and teachers (Karran et al. 2017; Nokkola & Bladh 2014). The former refers to the institutions' scope for self-governance – for example in relation to the government, the parliament and the market – while individual academic freedom refers to the right to professional self-determination in teaching and research that is assigned to the individual teacher and researcher.

Several major international agreements and conventions on academic freedom also emphasise the importance of both institutional autonomy and individual academic freedom. One example is the Magna Charta Universitatum, which was signed when the University of Bologna celebrated its 900th anniversary in 1988. (A new version was adopted in 2020.) Both versions underline the importance of both institutional autonomy and individual academic freedom; that both research and teaching must be free from political, ideological and economic interests; that teaching and research must not be separated; and that both universities and state authorities have an obligation to respect these basic requirements (Jonsson Cornell & Marcusson 2022).

In the 1997 UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel, a clear distinction is made between institutional autonomy and individual academic freedom (UNESCO 1997). Institutional autonomy is defined as the self-governance required for effective decision-making in higher education institutions regarding academic activities, standards and management principles in a manner consistent with legitimate claims with regard to accountability if the institution is publicly funded, as well as respect for academic freedom and human rights (paragraph 17).

Furthermore, the Recommendation expresses in paragraph 18 that such autonomy is the institutional form of academic freedom and a necessary condition for higher education teachers to be able to fulfil the tasks with which they are entrusted. Paragraph 19 states that UNESCO member states are obliged to protect higher education institutions from any threats to their autonomy, regardless of where these threats comes from. The Recommendation also states that such institutional autonomy should not be used by higher education institutions as a pretext to limit teachers' and researchers' individual academic right

to self-determination (paragraph 20). This internal perspective on academic freedom presupposes self-governance, collegiality and an appropriate academic leadership (paragraph 21) (Jonsson Cornell & Marcusson 2022).<sup>4</sup>

From the above it appears that individual freedom must be understood in its institutional context. Academic freedom is not a private privilege for individuals. It involves researchers and teachers submitting themselves to scientific values and norms in their activities in order to contribute to good research, teaching and other forms of knowledge dissemination (see Norwegian Government Official Report NOU 2006:19). Furthermore, institutional autonomy and individual academic freedom are generally understood as interdependent: "Institutional autonomy is a necessary, but not sufficient, condition for academic freedom" (Tight 1988, p. 123). Simply put, a university or college can restrict the freedom of its employees in ways that violate the idea of the academic freedom of the individual researcher and teacher.

What institutional arrangements are then required to ensure real independence for academic activities? Two critical parameters for institutional autonomy are that the activities have support in law and sufficient financial resources (Ahlbäck Öberg 2011). This is also emphasised in several overarching policy documents on the status of universities and colleges. In 2006, the Parliamentary Assembly of the Council of Europe adopted a recommendation on academic freedom and the autonomy of universities, in which it is emphasised that the academic freedom of teachers and researchers and the institutional autonomy of universities should be established and guaranteed by law, preferably in national constitutions (PACE 2006: Recommendation 1762, item 7).

A recommendation from the Council of Europe's Committee of Ministers states that public authorities should provide a framework for academic freedom and institutional autonomy and continuously monitor the implementation of these fundamental rights (Council of Europe 2012). This recommendation also emphasises that financial autonomy is an important prerequisite for institutional autonomy.

<sup>4~</sup> See Jonsson Cornell & Marcusson (2022) for an excellent summary of the legal aspects of academic freedom from a Swedish perspective.



# Institutional autonomy and individual academic freedom in the Swedish context

It is important to point out here that while distinguishing between *institutio-nal* and *individual* academic freedom is essential, this is not enough for an analysis of the current situation.<sup>5</sup> We must also make a distinction between what is *formally* prescribed, (if such regulation exists at all), and the *actual* scope of the freedom (Norwegian Government Official Report NOU 2006:19; Spannagel & Kinzelbach 2022). It is thus not enough for politicians to talk about – or in words defend the idea of – academic freedom if real reforms to support this freedom are not forthcoming or if the content of central reforms in reality pushes in the opposite direction.

Based on this reasoning, we can identify some interesting questions of principle. At both institutional and individual level, it is important to distinguish between freedom as a *formal* right to self-governance and freedom as *genuine* scope to act freely. A lack of key resources, (e.g. time to conduct research), often limits a researcher's (actual) capacity to utilise their (formal) right to choose subjects and methods and to present results. On the other hand, there may be laws, regulations or research ethics standards that exclude projects that a researcher otherwise has the necessary resources to conduct (Norwegian Government Official Report NOU 2006:19).

Table 1 captures the different dimensions of academic freedom by distinguishing between the freedom of the institution and the freedom of the individual, and by differentiating between the formal right to self-governance and the real scope for academic freedom. In what follows, I will discuss the current situation in Sweden with regard to what is formally prescribed and what the actual scope to act freely looks like.

Table 1. Freedom as the formal right to self-governance and freedom as real scope to act freely (the Swedish context)

	Formal right to self-governance	Actual scope to act freely
For higher education institutions	Not protected by law.	Depends on resources available, organisation, management model, decisions at central level etc.
For individuals	Regulated with regard to research in the Instrument of Government (IG) and the Higher Education Act (HEA).  Not regulated as regards education in the IG, and very weakly regulated in the HEA.	Depends on resources available, organisation, management model, decisions at central level etc.

Source: Adapted from Norwegian Government Official Report NOU 2006:19, p. 13.

### Institutional autonomy

With regard to the formal right to self-governance, we can already see that support in Swedish legislation is very weak, i.e. there is no formal regulation when it comes to institutional autonomy - which refers to the relationship of higher education institutions to the state and society - for state sector higher education institutions. This was highlighted in a study in which the legal regulation of the institutional autonomy of higher education institutions in all EU countries, (including the United Kingdom), was compared and where Sweden ranked in 26th place out of 28 (Karran et al. 2017, table 12, "Institutional autonomy in legislation"; see also Nokkola & Bladh 2014).

Although higher education institutions as *organisations* have been given an increasingly prominent role in Swedish higher education policy – through various decentralisation reforms – we can see that this has not been accompanied by corresponding guarantees regarding the institutions' autonomy (see

Marcusson 2005). We find such explicit regulation in the Norwegian University and University Colleges Act, for example, which describes the universities' "academic freedom and responsibility" (LOV-2005-04-01-15, Section 1–5). Finland's new constitution of 2000 stipulates the freedom of science, art and higher education, and it also guarantees the independence of universities (FFS 731/1999, Section 16, Section 123). The Finnish constitutional guarantees are not only rhetorical, but are also said to have had a significant impact on other legislation relating to universities and their activities (Holmén 2022, p. 156; cf. Universities Act FFS 558/2009, Chapter 1, Section 3).

A complicating factor in the Swedish context is that higher education institutions that are currently run under the auspices of the state, which is the majority, are formally part of the Swedish public administration system and are thus state agencies. This is precisely what stands out in international comparisons, and it provides an important partial explanation for why Sweden ranks poorly in terms of institutional autonomy compared with other EU countries.

A state agency under the government is in a subordinate relationship to the government, (Swedish Instrument of Government 12:1), and is normally tasked with carrying out the duties determined by the parliament and the government, which are communicated through regulations, instructions, appropriation documents and specific assignments (Instrument of Government 11:6). This also means that the government can decide on the organisational framework and conditions for its state authorities through regulation. It is easy to see that this stated subordinate relationship to the government does not chime well with ideas regarding autonomy for higher education institutions (cf. Swedish Government Official Report SOU 2008:104). Although it is reasonable that publicly funded research and education is conducted responsibly and thus subject to transparent examination, the activities of free academia require a clear dividing line in relation to the state, not a subordinate relationship.

This has also been raised by several inquiries and actors over the years (see e.g. Swedish Government Official Reports SOU 1996:21 and SOU 1997:57; The Association of Swedish Higher Education Institutions (SUHF) 2021b; The Swedish Association of University Teachers and Researchers (SULF) 2021). These views have not received the support of the parliament and the government. In several parliamentary bills, proposals for a new organisational form

for state higher education institutions have been explicitly rejected by governments (see e.g. Government bills 1996/97:141 and 2009/10:149), and a recurring argument is that the state authority operational structure is perceived as sufficiently "flexible" for university activities that require autonomy.

The above discussions contain a central question that has not been sufficiently addressed: How is it that the absolute majority of Swedish higher education institutions have fallen into the category of state agency, that is, given the same legal entity as the state? This in many ways strange state of affairs that is never the subject of proper discussion, and on closer inspection it does not appear to be the result of a thoroughly considered principled based decision by our ruling politicians. An important point is that, historically, Swedish universities have always been in some sense part of the public domain, the state, ever since Archbishop Jacob Ulfsson, with the aid of the Pope, managed to obtain privileges and founded Uppsala University in 1477. But as Marcusson points out, the concept of the state was different then, and the properties that King Gustav II Adolf donated the university in the 17th century are now regarded as property of the university foundation (Marcusson 2005, p. 17). However, this general relationship does not explain how and why universities and colleges in Sweden have been assigned the status of state administrative authorities. On closer analysis, however, what emerges is that over the course of more than 150 years, the state has gradually transformed free academies into administrative authorities (see Terms of reference (of a commission of inquiry) 2007:158, p. 3; Frängsmyr 2010). Uppsala and Lund universities have a long tradition of considerable self-governance, including in the past as their own legal entities with ownership rights to properties donated to the universities. After a decision by the state, these properties are owned today by foundations managed by the universities.

At the end of the 19th century, non-state higher education institutions were established in Gothenburg and Stockholm, and these formally became universities in 1954 and 1960 respectively, and as a result were taken over by the state. The nationalisation of these institutions took place without much debate. In the background, there was increased government funding and subsequent

6 Government bill 1953:122 report of the State Committee of the Riksdag 1953:137, and Government bill 1959:106, report of the State Committee of the Riksdag 1959:103.

demands for government influence over their activities (Gribbe 2022, p. 125).<sup>7</sup> In other words, the basis for the organisational form of state universities has never been properly examined. There has never been a decision in principle that universities should be state agencies, but this has simply been a "logical" consequence of a series of other decisions, for example the cessation of academic jurisdiction (in 1852, see Frängsmyr 2010), financial grants from the state (from the end of the 19th century onwards, see Frängsmyr 2010), and the introduction of a common university charter (Government bill 1964:50; report of the State Committee of the Riksdag 1964:119).

The diffusion of the unique status of higher education institutions among state administrative authorities continued with decisions on matters such as representation on university boards (Government bill 1975:9, Standing Committee on Education report 1975:UbU17, parliamentary communication 179), external majorities on faculty boards (Government bill 1986/87:127, Standing Committee on Education report 1987/88:UbU1, parliamentary communication 1), external chairs of boards (Government bill 1996/97:141, Standing Committee on Education report 1997/98:UbU3, parliamentary communication 12), the deregulation of faculty boards (Government bill 2009/10:149, Standing Committee on Education report 2009/10: UbU23, parliamentary communication 337) etc. Previously, professors' powers of attorney were an important instrument for maintaining academic freedom against demands from external sources such as the government, but this power was abolished in 1993.8

The fact that the state higher education institutions' status as state agencies is not the result of clear and transparent political considerations is troubling. It shows that the academic activities at our universities and colleges that require independence have been allowed to slide into a relationship of subservience to the state without any discussion of the principle, and where the political and

As Sunnqvist & Wenander note, universities were long considered to be independent legal entities (2018, p. 567). This was because the universities in their statutes, and even in the 1956 joint university statutes (Swedish Code of Statutes 1956:117), were declared "under His Royal Majesty's patronage" and enjoyed "uninhibited the property and the income, rights, benefits and freedoms" that legally accrued to them (Section 2). This changed with the 1964 university statute (Swedish Code of Statutes 1964:461), where this wording was removed without great discussion on the part of the investigator or the government regarding the fundamental consequences of such a decision. However, the question was addressed and problematised by a small number of referral bodies, such as the Finance Committee at the University of Uppsala, the Greater Consistory in Uppsala and the Teachers' Association at the Karolinska Institute (see Government bill 1964:50, pp. 29, 30 and 35).

<sup>8</sup> Government bill 1990/91:150 part II appendix 7, Standing Committee on Education report 1990/91:UbU21, parliamentary communication 389. I would like to express particular gratitude to the university historian Carl Frängsmyr, who confirmed this development via email correspondence with me on 24 January 2023. For a more detailed account of this development, please see Carl Frängsmyr's book Uppsala University 1852–1916 (2010) regarding the beginnings of this development.

bureaucratic understanding of the real meaning of what free academia is has been gradually overshadowed by this institutional weakness. This has had both structural and cultural consequences. This can be seen in Marcusson's analysis of the legal position of universities, where she writes that even if the special nature of universities and colleges is emphasised rhetorically in various contexts today, it is clear that according to existing law, universities and colleges are subject to the general regulatory framework which is specifically intended for state administrative authorities, and that they are expected to fulfil the overall objectives of public administration in general.

In law, state agencies are part of the legal entity that is the state and do not have their own legal capacity (Marcusson 2005).9 This was confirmed in a special issue of the journal Statsvetenskaplig tidskrift, where after reviewing the special issue's empirical contributions, the other two guest editors and I wrote that Swedish governments over the years have addressed universities and colleges as a *public administration* policy problem. That is to say that the prevailing ideas about the governance and organisation of authorities were highly prominent in the policies that governed the relationship between the government and higher education institutions. No distinction has thus been made regarding the special status of state higher education institutions, despite all the international agreements and legal acts that have been signed. In short, Swedish state universities and colleges are in reality wide open to political control. This relationship also impacts the self-image of some universities and academic colleagues in an unfortunate way, I believe. It is not uncommon that the management of a higher education institution primarily presents the institution as a state agency, (rather than a higher education institution), and this kind of language is also allowed to shape the self-image of the academic profession, for example though introductory training where the agency perspective is highlighted.10

Another interesting observation on this theme can be found in the most recent government bill on research policy. The government at the time put forward a proposal that, as a general principle, academic freedom should be promoted

<sup>9</sup> The fact that state universities do not have their own legal capacity means that they cannot own assets, enter into binding national or international agreements, manage their capital freely etc.

10 See, for example, how Stockholm University, Södertörn University College and Dalarna University College

<sup>10</sup> See, for example, how Stockholm University, Södertörn University College and Dalarna University College present themselves as organisations on their websites (as of 2023-02-05). In essence this is not wrong, but does not reflect free academy, but rather subordination in relation to the state. No such impression of subordination is apparent when, for example, Gothenburg University, Lund University and Umeå University present their organisations on their respective websites.

and protected in the activities of higher education institutions (Government bill 2020/21:60). The parliament approved the proposal Standing Committee on Education report 2020/21: UbU16, parliamentary communication 254), which means that the wording is now part of the Higher Education Act (Chapter 1, Section 6). Here, higher education institutions are charged with the task of promoting academic freedom, while the state makes no such commitment towards higher education institutions. What is interesting in this context is that the report that forms the basis of the government's proposal explicitly proposed the introduction of a provision that both the higher education institutions and the state as principal should promote and protect academic freedom (Swedish Government Official Report SOU 2019:6, p. 160). But the government's proposal did not contain any self-binding commitment, and the weak regulation regarding the institutional autonomy of higher education institutions vis-à-vis the state thus remains.<sup>11</sup>

Here, however, it should be added that the legislator – at least previously – has emphasised that state universities and colleges are not like other agencies, which is made clear in the Higher Education Ordinance, which states that state higher education institutions are exempt from the provisions of the Government Agency Ordinance with regard to their management and its responsibilities (Higher Education Ordinance 1: 5). The appointment of vice-chancellors and university boards follows a different procedure than that of other state authorities (see Ahlbäck Öberg & Sundberg 2017). However, this exemption from the Government Agency Ordinance does not amount to much when the institutional autonomy of Swedish higher education institutions is analysed in a comparative perspective (Karran et al. 2017). Furthermore, the appointment of the 2008 Swedish Higher Education Institutions Autonomy Inquiry, led by the political science professor Daniel Tarschys, is also evidence of a temporary political realisation that the state agency categorisation is not compatible with free academia. However, not much of the Inquiry's elaborate proposal was included in the government bill that followed, and this will be discussed below (Swedish Government Official Report SOU 2008:104; Government bill 2009/10:149). It has been pointed out by others that the proposals in Tarschys' report probably

<sup>11</sup> One explanation that has been given for the state's reluctance to tie itself to the mast on this point is that it would not be possible for the state to direct such legal action towards itself. This objection has no explanatory value because the Higher Education Act begins by doing just that – directing legal action towards itself – by requiring the state as principal to establish higher education institutions for education and research (see Higher Education Act 1:2).

had political support, but that the criticism from within the higher education sector was so great that the principle proposal was not tested in practice: "In a new effort to achieve greater autonomy through a changed organisational form, it must therefore be shown convincingly how increased autonomy for the higher education institution will be combined with increased individual academic freedom for teachers/researchers" (Karlsson & Casson 2019, p. 7).

The weak institutional autonomy of Swedish state higher education institutions thus shines the spotlight on another institutional aspect that needs greater scrutiny, namely the internal decision-making processes at our state higher education institutions. Internal division of power between the management (line management) and academic representatives (collegial management) has traditionally been the recipe for ensuring the self-determination of the core academic activities of teaching and research. If the institutions are state agencies, there is an even greater need for internal processes that protect decisions about the academic content of research and education from direct political control in order to ensure both institutional autonomy and individual academic freedom. However, the collegial management system has been subject to deregulation, which has further added to the institutional vulnerability of the academic activities of state higher education institutions.

### Weak institutional autonomy combined with decollegialisation

Strengthening the autonomy of higher education institutions is, as previously pointed out, a necessary but not sufficient guarantee for academic freedom to exist on the academic shop floor. Unilaterally emphasising institutional autonomy may mean freedom for higher education management, but not necessarily for those who conduct teaching and research at the institution. Karran et al. also point out that "without shared governance, institutional autonomy may easily lead to managerial tyranny" (2017, p. 215). In their comparative study, they therefore also analyse the support found in law for collegial governance at higher education institutions, and also in this regard, Sweden fares badly, ranking in joint second-last place out of the 28 countries included in the study (Karran et al. 2017, table 12, "Self-governance in legislation"). Had the matter been analysed a few years earlier, the result for Sweden would have been radically better, but with the deregulation of the Higher Education Act and the Higher Education Ordinance through the Autonomy Reform of 2011, the result is less flattering. Let me briefly explain this further weakening of acade-

mic freedom in Sweden, and how a reform based on the concept of autonomy actually resulted in the opposite.<sup>12</sup>

The central question here is who is to decide on the content of teaching and research at our universities and colleges. How can we ensure that the independent academic activities of higher education institutions are not controlled by political or economic interests? The obvious answer is that it is up to the academic teachers and researchers themselves to be responsible for their choice of research subjects and the content of their teaching. Scientific norms are what must govern the activity, and in order for this to happen, higher education institutions need to have collegial structures in which the teachers and researchers can make decisions together about the content of the activity and take responsibility for its quality. Such structures enable a kind of governance "from below", where colleagues choose their scientific representatives, and where the loyalty of these representatives is to the scientific community and its norms, not to their superiors, be they managers or bodies.

The result of the state higher education institutions' dual role as both seats of learning and administrative authorities has therefore long been that two opposing governance principles must operate simultaneously within the institutions – *collegial management* and *line management*. There has always been tension between these two management principles, and in reality, we can therefore speak of a kind of power sharing at higher education institutions (Engwall 2017). Over time, the balance of this power sharing has shifted in favour of the line management – collegial management comes increasingly into question. The belief that strong management, with generic leadership qualities, leads to both increased efficiency and better quality has slowly but surely gained ground also within the higher education sector, and these management ideas leave no room for management from below.

As previously mentioned, the legislature has recognised the dual role of state higher education institutions by exempting them from the Government Agency Ordinance provisions on management structure, but traditionally also by regulating special collegial decision-making bodies – faculty boards – with responsibility for core activities. As also mentioned, the then government dere-

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<sup>12</sup> This is based on reseach by Johan Boberg and myself, the results of which were published in the journal Statsvetenskaplig tidskrift (2022) and in the Nordic Journal of Studies in Educational Policy (2023). For a more detailed account of the assumptions, method, investigation and results, see these publications with associated appendices.

gulated the faculty boards from 1 January 2011 through its Autonomy Reform, which meant that the support that had existed in law for the collegial form of governance was lost. In the past, higher education institutions with third cycle degree awarding powers had to have faculty boards. The members of these boards were elected by the academic teachers, and they were responsible for research, third cycle education and artistic development work, as well as for first cycle education if the institution did not choose to establish separate bodies for that. Following the Autonomy Reform, the managements of higher education institutions now decide whether there should be collegial decision-making bodies and what powers these should have. At the same time as the support in law for the collegial form of governance was abolished, vice-chancellors and university boards continued to have strong positions as they retained – and in several cases expanded – their powers. The balance between the line management and the collegial management has thus been tipped constitutionally in favour of the former.

So what was the consequence of this deregulation? In a recently published study, Johan Boberg and I examine the effects of the Autonomy Reform for all of Sweden's 31 state higher education institutions (Ahlbäck Öberg & Boberg 2022). Based on the higher education institutions' internal governance documents, we have studied the distribution of decision-making authority among committees, boards and line managers before and after the Autonomy Reform (2010 and 2020). More specifically, we have investigated how the balance between the two forms of governance, collegial management and line management, has shifted as a result of the Autonomy Reform with regard to how academic leaders are appointed, whether collegial bodies remain and, if so, what decision-making power they have in matters relating to the content and quality of education from undergraduate to doctorate level and the recruitment of teachers. The results are alarming.

The study shows that the institutional expression of academic freedom and decision-making based on scholarly competence, through collegial decision-making bodies, has been significantly reduced at most of the state higher education institutions, although there are significant differences within the sector. At many higher education institutions, there are hardly any "islands of collegiality" remaining, because both the principle of power sharing and the idea of collective decision making based on subject expertise are expressed more

weakly, and in some cases not at all. Overall, we found that a reform based on a stated goal of decentralisation had actually led to greater local centralisation – the autonomy offered by the reform was autonomy for the managements of the higher education institutions.

I would like to underline in particular that the fundamental organisational vulnerability of state higher education institutions in terms of institutional autonomy, such as their status as state agencies, makes this deregulation especially imprudent. It is a fallacy that academic freedom can be expected to come into being through non-binding general statements and requires no legal protection. Such an unregulated approach has never been considered with regard to other basic individual freedoms and rights in modern democracies. This deregulation, I believe, is evidence of politicians' lack of understanding of the conditions for academia and of the importance of academic freedom as a component of a functioning democracy.

### Individual academic freedom

So far, I have focused on institutional autonomy and its importance in enabling individual academic freedom. The outcome for Sweden so far has not been encouraging, despite all the signed international legal commitments and recommendations. But what is the situation with regard to individual freedom? As Table 1 shows, only the freedom of research is currently regulated by fundamental law in Sweden, and this protection was introduced as late as 2010 thanks to Daniel Tarschys' participation in the Swedish Committee on Constitutional Reform. The chapter of the Instrument of Government that regulates individual freedoms and rights, (Chapter 2, Section 18, second paragraph), stipulates that "Freedom of research is protected according to provisions issued by law". This freedom is specified in the Higher Education Act (Chapter 1, Section 6, second paragraph [my translation]):

"The general principles of research shall be that

- 1. research issues may be freely selected,
- 2. research methodologies may be freely developed, and
- 3. research results may be freely published."

However, there is no corresponding regulation of the freedom of higher education. It may seem remarkable that such a protection for the freedom of educa-

tion did not come into being when the protection for the freedom of research was introduced. One can reasonably wonder why one of academia's main activities was omitted. The political governance of Swedish higher education is also striking in some respects in a comparative perspective. It does not seem reasonable to assume that this aspect was not regulated because higher education faces no threats. However, the question of the freedom of higher education does not seem to have been a matter for discussion in the Committee's work in this regard.<sup>13</sup>

Although the detailed governance of higher education has lessened over time, there are still several examples of different governments' clear desire to intervene. One example of political involvement at detailed level that is often mentioned in these contexts is the Swedish System of Qualifications (examensordningen). Here, the government not only determines which degrees may be issued by Swedish higher education institutions, but it also regulates which qualitative goals each student must fulfil in all educational programmes leading to each degree. While the general qualifications contain more overall goals, vocational degrees are regulated in significantly greater detail. This means that the government, through the System of Qualifications, in practice also regulates the content of the education (the Association of Swedish Higher Education Institutions (SUHF) 2021a).

Another example of political governance is provided by the Swedish Higher Education Authority (UKÄ), which in a report highlights that the government is increasingly identifying which education programmes are to be prioritised when state grants are increased, even in the case of temporary increases (Swedish Higher Education Authority 2015). In addition to the fact that this restricts the freedom of higher education institutions to plan their own education, it makes the higher education institutions - and thus those who conduct the teaching – vulnerable to political instability, which in itself counteracts long-term, and from a teacher's perspective, sustainable planning. The Higher Education Authority quite rightly points out that it takes time to build up an educational programme, both to design courses and to recruit teachers. There may also be shortages of teachers in subject areas that everyone suddenly has to prioritise. The report identifies short-term political goals, with their prioritisations of different subjects and programmes, as a particularly large problem –

<sup>13</sup> According to email correspondence with Daniel Tarschys on 28 February 2023.

and a problem that has grown over time (Swedish Higher Education Authority 2015).

We find further examples of the lack of demarcation between politics and academia when we study political agreements signed when governments were formed following the general elections of 2018 and 2022. In both the January Agreement of 2019 and the Tidö Agreement of 2022, we find wording that undoubtedly implies political control at detailed level, i.e. interference, with regard to academic freedom in higher education.

In the January agreement, the signatories, (The Social Democratic Party, the Centre Party, the Liberal Party and the Green Party), stated that teacher training was to be reformed (2019, p. 13):

"56. Reforms within teacher training. The requirements regarding the teacher training educational programme will be tightened. Admission requirements will be raised. More teacher-led hours will be introduced and the connection between theory and practice will be reinforced and the focus on methodology increased[.] The conditions for graduates to choose the teaching profession will be made simpler. The length of supplementary teacher education (KPU) programmes will be reduced and the pace of study increased. Opportunities to combine working at a school with teacher training programmes will be expanded. Sex education will be a mandatory component of teacher training programmes, as well as knowledge of neuropsychiatric disabilities."

In the Tidö Agreement (2022), the Moderate Party, the Sweden Democratic Party, the Christian Democratic Party and the Liberal Party state that "Bachelor of Science programmes in social work will be reformed to include juvenile crime as a mandatory component. Specialisation in juvenile crime will be introduced in the programme." (p. 27). This agreement also contains directives on what the teacher training programme is to include (p. 52). There is thus no reason to hope that politics will automatically maintain a respectful distance from what is reasonably assumed by the concept of academic freedom when it comes to the content of higher education. Sweden therefore also needs to

introduce constitutional protections for academic freedom in higher education, which has also been highlighted jointly by the Swedish National Union of Students (SFS), the Association of Swedish Higher Education Institutions (SUHF) and the Swedish Association of University Teachers and Researchers (SULF) (joint statement issued on 12 December 2022).

Also when it comes to this individual level of academic freedom, Sweden ranks very poorly in the table of the countries included in the Karran et al. study (2017, table 12, "Academic freedom in legislation"). Admittedly, there is a general statement in the Swedish constitution about academic freedom for research, but the overall rating suffers from the fact that higher education is not covered and the scant wording in the constitution about the freedom of research.



## Genuine scope to act freely?

After reading the above, we can see that the safeguards in the Swedish constitution for both institutional autonomy and individual academic freedom are weak. This is a problem. Successive governments have repeatedly argued that the status of higher education institutions as state agencies is flexible enough to accommodate them, but developments over time show that they have less and less understanding of the special nature of state higher education institutions. What we see instead is a gradual adaptation of the higher education institutions to the conditions that exists for state agencies in general. Despite the purported flexibility, as state agencies, higher education institutions are drawn into the general currents and trends within public administration and are thus seen in practice as a public administration problem.

This empirical finding shows that it is not sufficient to live under the assumption that politics will maintain a self-imposed respectful distance. Stronger guardrails are required. This would not mean a deviation within Swedish law or within the Swedish public administration model, as such guardrails have been assigned to other public sector activities that require independence, such as the courts and the national audit. In both of these cases, the independence of the institutions, (i.e. the courts and the National Audit Office respectively), is guaranteed in Swedish legislation, and those who perform the duties at those bodies, (i.e. the judges and the Auditor(s)-General), enjoy independence.

Admittedly, formal regulation does not necessarily guarantee that what is prescribed actually occurs, but it would still be a decisive step if the special nature of universities and colleges were more clearly established in the constitution, thus reinforcing the protection of academic freedom in Sweden. The tendency in reality of politics to limit, for example, the freedom of research is currently evident in several ways, and can be exemplified here with the impact of a shortage of resources, (e.g. research time), which limits researchers' real scope to exercise their formal right to choose subjects and methods. Another problem is the tightening of the application and supervision of the 2020 Ethical Review Act, which imposes limits on the content and methods of free research.

The report from the 2019 Governance and Resources Inquiry (*Styr- och resursutredningen*) states that the most noticeable trend in research funding

is that the funds that go directly to the universities, basic direct government funding, have declined in relative importance, from 51 per cent of all research funding in 1997 to 43 per cent in 2019 (*Swedish Government Official Report* SOU 2019:6). University teachers who conduct research have thus become even more dependent on external research funds channelled through research councils and similar. The inquiry also found that the current high proportion of external research funding has a number of negative consequences:

The most important consequence is that this makes it more difficult for higher education institutions to act independently and make strategic decisions regarding long-term direction and priorities, to develop coherent knowledge environments where research and education are interconnected, and to take strategic employer responsibility in matters of equality, organisational structure and career development. While project funding plays an important role, it is also important that scope for research can be provided in other ways than through project applications." (Swedish Government Official Report SOU 2019:6, p. 22).

Additionally, more and more of the higher education institutions' basic funding is spent on co-funding in accordance with requirements attached to external project funding. Dependence on external research funding also makes it difficult for Swedish university teachers to live up to the Higher Education Act's requirements regarding research-related teaching (Chapter 1, Section 2), because the comparatively low proportion of research time allocated in the position gives limited opportunities to combine teaching with research. Sweden differs significantly from its Scandinavian neighbours Denmark and Norway in this respect (Brommesson et al. 2016). Even if, with the help of external funding, a Swedish university teacher were to succeed in achieving an even balance of research and teaching, corresponding to the formal conditions of their Danish and Norwegian colleagues, they still have worse conditions – and the scope to conduct free research is thus clearly more conditional in the Swedish case.

External funding is increasingly targeted. It can be seen clearly when comparing state research councils' appropriation documents over time that govern-

ment steering of the content of research has increased in recent decades. It is of course not unreasonable at a general level that the government may prioritise research on matters that it perceives as important or urgent. In recent years, however, appropriation documents have contained long lists of instructions from the government specifying for what research purposes the allocated funds are to be used. In addition to this increase in the proportion of targeted research funding from the government – which in itself is a problem in relation to the concept of free research – it also logically means that the proportion of free research funding has decreased. This development therefore poses a direct threat to what we define as free research. Both the fact that Swedish university teachers have comparatively little time for research in their positions and the tendency for governments to increasingly target research funds make it difficult to live up to the conditions for free research that the existing legislation stipulates.

Furthermore, the previous government's decision on how ethical review of research is to be organized and supervised today constitutes a serious threat to the freedom of research. At the beginning of January 2020, changes to the Ethical Review Act came into force which meant clearer rules and tougher penalties (Government bill 2017/18:45; Standing Committee on Education report 2017/18:UbU12, Parliamentary communication 173). The legal definition of research and the responsibilities of research leaders were clarified. At the same time, the Ethics Review Appeals Board (Önep) was given responsibility for overseeing compliance with the law.

Let us first underline the simple fact that research must of course be conducted ethically. The only question is who has the authority to define the limits and application of research ethics. In Sweden, the government and the parliament have chosen to place this assessment and the setting of norms in an authority outside academia.

The Swedish Ethical Review Authority is divided into 21 departments, (15 for medical research and 6 for "other research"). The chair of each department

<sup>14</sup> See the Swedish Research Council's, Forte's and Forma's appropriation documents for the period 2003–2023 (www.esv.se, accessed on 8 February 2023).

<sup>15</sup> The maximum penalty was increased to two years' imprisonment for the intentional conduct of research without ethical approval, and the statute of limitations was extended to five years. It also became a criminal offence to conduct research without ethical permission through gross negligence.

must be or have been a permanent judge in a Swedish court, while ten members of each department have research expertise and five represent the interests of the public.

In an international context, it is unusual to place ethical review of research outside academia and in the hands of people who are not active researchers themselves. (I am thinking here mainly of the chair of the department and the representatives of the general public). Norm setting in such an important issue as research ethics has thus been "outsourced". This arrangement has had very far-reaching consequences. The purpose of ethical review is to protect individuals, their integrity and human dignity. This does not only apply to physical interventions and risks for research subjects, but also to research that involves processing sensitive personal data. In the criticism that has followed the 2020 tightening of the ethical review system, the question of where the limit for sensitive personal data lies comes up frequently.

A telling example is that ethical approval is required to use the Swedish parliament's open data or debate articles written by representatives of political parties, as these contain sensitive personal data in the form of political opinions. For instance, you need to submit an application for ethical review if you wish to conduct a discourse analysis of Prime Minister Ulf Kristersson's public speeches, (an analysis that any journalist can do without ethical review). From a jurisprudential point of view, there is also criticism that researchers in criminal law need to apply for ethical review if they wish to analyse guiding and published verdicts to find out how a provision in the Criminal Code is to be interpreted (cf. Cameron 2019).

Submitting an application for ethical review involves extensive administration, a fee of SEK 5,000 and delays to research activities because of the processing time for the review of applications. Anyone who has managed to acquire ethical approval for a research project must also stick to their plan to the letter, which in many cases is impossible due to unforeseen practical difficulties or simply because of discoveries during the research that lead to new questions.

In the event of a "substantial change", the plan must be submitted to the Ethical Review Authority again. There is no information on exactly how a significant change is defined, for example how many questions in a questionnaire

may be changed or how many more interviewees than originally planned may be interviewed. What came out of the debate was that each researcher simply has to make their own assessment of what is a significant change in their research, with the risk of facing prosecution if their interpretation is too narrow (Danielson & Bennich-Björkman 2022).

Central to the ethical review process is whether the benefit of a planned project exceeds the risk that study participation entails. That such an assessment contains pitfalls is evident from the Ethical Review Authority's instructions to its members, which state:

"The Authority's assessment of the benefit of a project must begin with an assessment of the scientific viability of the research, i.e. whether the study will be able to answer specified scientific questions and whether it is meaningful and expected to generate important knowledge." (The Swedish Ethical Review Authority 2022, p. 7 [my italics]).

This sentence is telling. The task of the Ethical Review Authority is not to assess the scientific viability of the research. That is the responsibility of the scientific community. The quote shows that the authority has expanded its mission to an area that lies outside its mandate, and which is also contrary to what is stipulated in the constitution regarding the freedom of research (cf. Persson 2015). It is clear that the current order inhibits free research.

Through extensive bureaucratisation and - I would argue - overinterpretation of the mandate, we today have an ethical review system that curtails free research. Such a system can only occur in a context where higher education institutions are treated as ordinary state administrative authorities. It is thus a logical conclusion that legislators deem it reasonable that research activities are regulated by law and supervised by other authorities. Not surprisingly, there have been widespread protests against the current system (see e.g. Svensson 2022; Danielson & Bennich-Björkman 2022; The Association of Swedish Higher Education Institutions (SUHF) 2022; Widmalm 2023; Strömbäck 2023; Almqvist et al. 2023). The former social democratic Minister for Education has also acknowledged the problem (Ekström 2022).

In summary, in the column for real scope to act freely (Table 1 above), we can thus add that the structure of research funding and the ethical review system, together with other reforms (e.g. decollegialisation as a result of the Autonomy Reform and the regulation of higher education programmes) *de facto* limit and counteract the institutional autonomy of higher education institutions and individual academic freedom. The lack of a formal right to self-governance is thus not balanced by genuine protections for the academic activities conducted at our higher education institutions.



## **Conclusions**

In my introduction, I stated that it is not enough for politicians to talk about – or in words defend the idea of – academic freedom if concrete support for this freedom is lacking or if the content of central reforms actually ends up pushing in the opposite direction. Unfortunately, what I have presented here shows that there is insufficient protection of academic freedom in Swedish legislation, and that this has paved the way for reforms that undermine rather than support the institutional autonomy of state higher education institutions and the academic freedom of teachers and researchers. The fact that state higher education institutions are state agencies is a problem, and also a situation that is highly questionable given that a thorough and proper decision on this operational structure has never really been made.

The operational structure that has nevertheless come to be applied to an ever-increasing degree for state higher education institutions – that of a state agency – has assumed a constitutional praxis that recognises their unique nature within the category of administrative authorities. Gradually, this understanding of the unique nature of higher education institutions has been blurred by a long series of decisions. This shows a change of perspective from governing politicians and leading civil servants. Today, university and college vice-chancellors are seen as heads of state agencies, and the Government Offices' training for members of the boards of state agencies makes no distinction between board members of regular authorities and those who sit on the boards of higher education institutions, just to name a couple of examples. It is clear that, over time, higher education policy is increasingly treated as a public administration policy problem rather than a policy area that requires sector-specific insights regarding its organisation and conditions.

Some might object that, from a global perspective, Sweden must still be regarded as enjoying a high degree of academic freedom. The question is whether we can settle for that. Academic freedom in Sweden rests on the assumption of the self-restraint and moderation of politicians rather than on robust institutional structures. This is not enough these days. Institutions must be built to withstand difficult tests and trying times. Regulation is required in order to reinforce the guardrails that protect academic freedom, with regard to both

institutional autonomy and individual academic freedom. It is high time for Sweden to live up to the international agreements and legal texts it has signed for almost half a century.



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Freedom in research and training is the fundamental principle of university life, and governments and universities, each as far as within them lies, must ensure respect for this fundamental requirement. from the Magna Charta Universitatum, 1988

Academic freedom has rightly become an increasingly burning issue. The discussion about what academic freedom means, how it should be secured and what constitutes a threat to it is important and requires careful consideration. This article is an attempt to bring clarity to these questions and to provide a basis for discussion. Simply put, we can say that the free search for knowledge and the free transfer of knowledge at our universities are essential for the social, cultural, economic, medical, technical and scientific development of the world.