

The Democratic Mission of Universities

By Roberto Saba, Universidad de Palermo, Argentina

After thirty years of teaching, and mainly thanks to the teachers I was inspired by, I think I know a few things about higher education. I learned those things first by observing the process I was part of as a student and by paying careful attention to what great professors used to do. I was lucky to be taught by giants as Carlos S. Nino in Argentina and Owen Fiss in the United States, who not only were amazing teachers, but they also integrated their theories about democracy and the constitution to their understandings of law and justice, as well as of the mission of universities in democratic societies. I will refer here to this mission that is not always remembered building on the lessons I learned from them.

We are all aware of how much has been written about the purposes of university education. Of course, such an old institution has undergone different historical moments and its objectives have varied in time. From a descriptive point of view, those objectives can contrast, even today, depending on the context in which the university functions. There is a strong connection, or ought to exist, from a normative point of view, between modern University and the proper functioning of the democratic regime. This relationship is not limited to an argument of political theory or institutional design, but instead rests on a constitutional argument as I will show in the next paragraphs.

Alexander Meiklejohn (1872-1964) was a philosopher, university administrator, educational reformer, who was president of Amherst College. He has been also famous for being a free-speech advocate who developed a theory of free speech as a necessary precondition to democracy. It is interesting to stress the fact that he was not a law professor but mainly an educator. He thought the most central feature of democracy was deliberation and that this deliberation takes place in the community, as well as in formal institutions such as Parliaments. He argued that we should think of the self-governed political community as a huge town meeting in which all citizens participate with the goal of reaching common

ground and making decisions together, like the town meetings of the first settlers in Massachusetts in the 17th Century.

Deliberation is impossible without free speech and for that reason this freedom was crucial for democracy to function as it should. Meiklejohn inspired many thinkers and free speech scholars that came after him in the United States and other countries, such as Professor Owen Fiss of Yale Law School. According to Professor Fiss' influential theory on freedom of speech, following the teachings of his predecessor, it is a prerequisite for the functioning of democracy as a system of citizen self-governance (Fiss, 1996). He advocates for an interpretation of the First Amendment of the Constitution of the United States as a clause that protects free speech understood on the basis of its goal which, according to Fiss, is to ensure the broadest, most diverse and robust discussion possible, as mandated by the U.S. Supreme Court in *New York Times v. Sullivan*.

In 2008, in Buenos Aires, Fiss received an honorary doctorate from the Palermo University School of Law and on that occasion he presented a brief but crucial paper titled “*Las dos caras del estado*” [The two faces of the State] (Fiss, 2010), where he provided more details of his theory of freedom of expression, this time with special reference to the constitutional obligations of the State before what he called managerial censorship. In 2011, he returned to Buenos Aires and presented an outstanding paper at the University of Buenos Aires which he called “The Democratic Mission of the University” (Fiss, 2011). Both papers were related and must be read as complemented. In the latter one, he shared his ideas on academic freedom and the relationship that exists between that freedom and freedom of expression as a prerequisite for democracy, as he's been advocating for decades.

Many of the ideas expressed in his work on freedom of expression, in which he referred particularly to the exercise of freedom of press, have become the central arguments of his defense of academic freedom, University autonomy from state authority and the obligations of institutions regarding the quality of democracy. In that sense, Fiss (2011) says that, with no intention of underestimating the important role the press plays in the process of informing the public, he would like to drive our attention to “the role the university plays in this educational process and explaining how the principle of academic freedom –which for a long time

has protected free university—can be rooted in the Constitution” (Fiss, 2011).

Fiss assures that all areas of university contribute to the quality and robustness of the democratic debate. The departments of political science, economics, sociology and law, for example, are dedicated to the discovery and dissemination of knowledge related to public policy, to analyzing the proposals of candidates for public office and studying how these policies are implemented by the democratic government. He also affirms that the departments of philosophy, literature and humanities in general play a fundamental role for the proper functioning of democracy, because they contribute to the formation of the moral and political values that guide decisions in society. He also directs our attention to the contributions of scientific knowledge, and physical and biological sciences to the democratic system of government, allowing individuals to understand themselves and the world around them. Another key feature of modern universities in democratic contexts is the generation of social leaders. In that sense, Fiss (2011 p. 272) assures that

“the knowledge generated by universities constitutes a public resource, a natural treasure, available to all those involved in the public life of the country. Similarly, critical perspective will be inculcated through university education. Not everyone will be able to access it, but the hope is that those who do have access will influence public opinion and become leaders of the nation.”

In short, Fiss (2011 p.) closes with the thought that “[a]t the heart of the university is speech.” Lectures, classes, interviews and articles in the mass or specialized media, student opinions both inside and outside the classroom, examinations, papers, research by professors and students, are forms of expression that constitute modes of generation and dissemination of knowledge, which Fiss calls “core activities of the university,” which in his view are protected by the Constitution and principle of academic freedom. Research, communication of results and even student and faculty selection are thus protected by the First Amendment of the Constitution of the United States. The academic freedom that Fiss refers to as “external” operates as a form of protection against anyone who attempts to control the curriculum. Control of university activity would be admissible only in the form of academic discipline standards, but never in the form of government

regulation. It is also accurate to say Fiss argues that this protection of academic activity does not prevent *any kind* of government intervention, but does call for strict scrutiny, in the sense that it is assumed that the interference is invalid unless the state demonstrates an urgent interest and the mode of interference is the least intrusive.

In addition to this external academic freedom against undue interference by the government, there is, according to Fiss, such a thing as internal academic freedom, which refers to the protection of professors and students from undue interference by university authorities. The latter may wish to silence a member of the university's community for different reasons, such as external pressure upon the university, or may simply disagree with what the professor or student are expressing for political, moral or religious reasons. However, such interferences are inconsistent with the foundations of autonomy that the university requires, as they contradict the very *raison d'être* of the institution.¹ The only legitimate interference by university authorities is that which is based on academic criteria. Internal and external freedom pursues the same goals; are founded on the same principles; and are protected by the First Amendment to the extent that it is interpreted as protecting a robust democratic debate (Fiss, 2012). Fiss concludes that a free society requires free universities. I would add that those free universities have the duty to commit to the democratic debate. There is no such thing as a robust democratic debate without research or production of knowledge by Universities.

We as teachers have the tremendous responsibility of contributing to this democratic mission of universities from the classroom and through our research without losing sight that our work consists, among other goals, in building a strong democracy through teaching our students. Their development as critical thinkers and possible future leaders of their communities is at the center of our work. Let me finish by sharing a short story. Once, after class, a group of students went for coffee with Professor Fiss. They were having an interesting conversation when one of them asked him what was his proudest achievement. The professor paused for a second, maybe, as he himself described that situation, long enough to start scrolling in his mind's eye his list of publications, and then he suddenly

¹ Here Fiss quotes Robert Post C., *Democracy, Expertise, Academic Freedom: A First Amendment Jurisprudence for the Modern State*, 2012. See also Matthew W. Finkin and Robert C. Post, *Para el bien común. Principios de la libertad académica en Estados Unidos*, Colección de Ciencias Jurídicas, Universidad de Palermo, Buenos Aires, 2012.

realized that the answer lay in an entirely different domain. Finally, Fiss firmly replied: “You, yes you, are my proudest achievement. You [my students] have been at the center of my professional life. You are the ones for whom I write. You are the ones I have in mind as I sit in the library each morning preparing for class. You are the ones with who I am in conversation in the still hours of the morning as I lie half-awake imagining how the class that is to be held later in the afternoon will unfold. You are the ones I am often thinking about, sometimes even when my children or now my grandchildren pull on my sleeves. You are the ones I count on to realize my deepest dreams and hopes for the law”, and law, for him, is basically the expression of justice.

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Professor Saba has published on a wide variety of subjects, including deliberative democracy, judicial review, constitutional theory, freedom of expression, freedom of information and, most recently, structural inequality. He is member of the board of directors of the Kettering Foundation, a research foundation with offices in Dayton, Ohio, and Washington, D.C.