

The 'Ombudsperson' institution as a key feature regarding the reinforcement of universities' autonomy, as well as the human rights' promotion in higher education institutions. A perspective from Latin America.

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Ombudsperson

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Introduction.

This work addresses the next three main topics. The first of them, the importance of universities' autonomy regarding the public higher education institutions in Latin America; the second one, the fact that the university rights are the expression of diverse human rights which have an impact on the public universities' indoors; and the third one, that the ombudsperson's guarantee of human rights inside universities is a path in order to reinforce them and, simultaneously, strengthen those universities which own autonomy either.

I. Public higher education institutions' given meaning to the concept of 'autonomy'.

Higher education institutions in Latin America by the mid-nineteenth century were understood as belonging to the education ministries (perception which was linked to the idea of the secular political liberalism); influenced as well by Auguste Comte's positivism, autonomy was conceived as a piece of independence, determined by Law towards the governmental bodies, and whose immediate authority ought to respond to the head of state. By the beginning of the last century, in response to the appearance of new tendencies willing to explain the role and contribution of education as a matter of investigation, apart from the rising conception of The State as an agent directed to alleviate both social and economic inequalities, the concept of University stops being understood as a mere body belonging to the political organisation and hence, an insisting conception of a role which was closer to civil society, as well as a development and ideas' discussion engine, emerged.

Such task could not be totally achieved without granting a larger degree of independence and decentralisation towards power, which brought law's definition of the autonomy's sense and scope, and thus establishing the own bases of organisation and governance of public institutions concerning research and teaching.

Nowadays, Latin American public universities' operation could not be understood without referring it to their status of autonomous institutions; *id est*, as teaching and research centres whose performance, though belonging to the State's sphere, must be protected from any attempt of political power fluctuation.

Why the fact of speaking about the Latin American public universities' autonomy is a recurring and sensitive topic may be explained due to episodes in which some governments have perceived universities as critical reflection and thought currents, as well as opposition, in several cases, to certain policies and to the *status quo*, therefore the existence of governmental attempts so as to control or influence universities' job.

In order to comprehend universities' autonomy nowadays, four identifying aspects must be met:

1. **Faculty of self-regulation**, which consists of enabling public universities to internally approve the legislation and ordinance that standardise their inner relations, as long as they accomplish the national legal framework.
2. **Faculty of self-governance**, in order to establish mechanisms so as to design their own authorities and, hence, govern themselves.
3. **Faculty of self-academic organisation**, which implies that public universities set their teaching, research, and cultural diffusion plans and programmes; as well as the register, promotion, and attendance terms for their academic staff, applying this idea to the *alumnii* either.
4. Finally, **faculty of self-administrative running**, which corresponds to freely managing the budget assigned by the Congress, as well as their self-earned income; despite the fact that they ought always to accomplish the transparency and accountability regulation, both internally and externally. Such is precisely universities' autonomy, expressly recognised by laws or even by the Constitution -as it happens in Mexico and other Latin American countries- a way to ensure teaching and research liberties, besides representing a decisive feature towards the higher education centres' governance. Autonomy allows the better achievement of higher education essential objectives, some of which consist of raising people who are committed to society, producing knowledge, and contributing to solve huge problems and inequalities that affect us.

II. University rights and human rights.

Educative institutions are spheres that are influenced by administrative, academic, and *alumnii* activities, among others, which have got a hugely varied scope, for instance, the working ones between educative authorities and professors, researchers, or administrative staff; the academic ones between professors and *alumnii*; between research centres' authorities and academic staff, assistants, and

interns; or the academic ones between academic authorities and alumni regarding the varied workpaper that ought to be done throughout the alumni's stay, such as register or degree examinations, among others. From another perspective, there is also a relation field among the academic staff itself, or the alumni among themselves.

The aforementioned activities and relations are given by means of a coexistence scenario, power relations, and legal rules, which may be external to educational institutions or even created by them, particularly when they are given autonomy. In this vast field of external legal rules, a nucleus of rights and obligations has been being shaped, which might be named as "rights and obligations in education", and that are linked and are part of a huge and important human right, that is, education.

Such rights and obligations, whose holders are alumni and academic staff, are called *university rights* when talking about higher education institutions. University rights are, from a particular perspective, expression of diverse human rights and obligations; amongst them, general equality, gender equality and equity, non-discrimination, the fact of someone being treated without any sort of violence or harassment, lecture and research freedom, freedom of expression, privacy, fair trial, handicapped people's rights, and children's rights, all of which are bent on creating an obligation, freedom, and rights sphere inside universities, that permits accurately achieving the aims of teaching, learning, and research at a superior level.

The rights which are provided by the inner university rules may be plentiful, as in those countries that follow the civil law tradition, or codified rules –at UNAM there exist 54 different pieces of regulation that order its daily life, starting by the Federal Law which regulates its creation and basic organisation- that is why the principle of legitimacy, as well as the fair justification based on express rules, is a constant and generalised requirement. This sort of rights, codified in university rules, are added to those from other national and international sources, such as the ones established by the Constitution itself, or the ones in international human rights treaties, ratified by the corresponding country.

In that sense, university rights comprise a huge spectrum that includes both the administrative rights, within the diverse workpaper and procedures held inside universities, and basic rights reflected on the university regulation, which are echo of the current human rights in a determined country. Moreover, as strange as it might be, it is not common to find complete catalogues of rights inside universities, since they are regularly scattered in the university regulation that is continuously being created in the higher education institutions.

In Latin America, the State universities are public entities, administrative authorities whose actions must become attached to human rights, even when they are not explicit or established by the internal educational institutions, in everything that is applicable at hand. This link between the rules sourced by universities and the

standards of human rights which come from other sources, that may even be the Constitution or international treaties, is precisely the opening to a vast and important panorama in order to reinforce the universities' *ombudsperson* as a guarantee of the inner human rights, at least, in public higher education institutions.

III. The human rights guarantee inside universities, as a reinforcement path for universities and universities' *ombudsperson*.

The problems that do not encounter any course or direction towards solutions inside universities, with no doubts will find echo through other paths, either national institutions which protect the human rights, official administrative authorities, or judges. In Mexico, for instance, there are situations that reach the federal justice and even the Supreme Court of Justice in order to find a definite legal solution. Undoubtedly, this undermines autonomy, since university rules, policies, and practices are shaped by external bodies, that generally observe cases as topics based on the legal rules' application, leaving aside the university educational context that, on the other hand, ought to be considered by the *ombudsperson* or justice university entities that correspond.

In this sense, the universities' *ombudsperson* must be active promoters of human rights' standards and guarantors of their observance inside universities either, when so is required. For that purpose, it is important to consider the national Constitution and the international treaties that have been ratified by our countries, as well as the international background, produced by specific cases in international entities, such as the European Court of Human Rights, Inter American and African Human Rights Court and Commission, the Committees of United Nations whose duty is to invigilate the accomplishment of treaties, or the rapporteurs and working groups in the United Nations within topics related to education, or the documents and standards created by UNESCO. See the attached document entitled as *vademecum* about international standards towards the education right.

In order to carry out this huge and relevant task in a better way, it is important that universities' *ombudsperson* search their constant perfection towards the main guidelines of the general concept of ombudsman, of course adapted to the university field, as the ones stated in the Paris Principles, adopted by the United Nations General Assembly on its resolution 48/134, on December the 20th, 1993.

Up to now, the university *ombudsperson* institution has got an important dissemination throughout Latin American countries such as Mexico, Honduras, Brazil, Peru, Colombia, Panama, El Salvador, and Argentina; in many cases, there is more than one institution of this kind at the existing universities (public or private). It is well known that some of these universities have begun to incorporate, apart from the traditional legitimacy protection, the human rights of constitutional and international sources on their regular basis, which undoubtedly strengthens their determinations, but what is more important, it motivates the respect culture towards human rights amongst the university community.

The panorama that has barely been exposed in this brief paper is considered to be the path worth to be headed in order to reinforce the institutions we represent and, thus, the universities themselves for the alumni and academic staff's benefit, taking into account the several constant and changing challenges that they cope with whilst they are in the higher education institutions.

By and large, it is a great pleasure to share with you the fact that UNAM has been given a UNESCO lecture, so as to develop a model to defend the academic rights in Latin American higher education institutions, which creates an additional place - where all of you are invited- in order to continue sharing ideas and experiences towards the reinforcement and diffusion of universities' *ombudsperson*.

Human Rights International Treaties and Standards on Right to Education

I. Universal System of Human Rights

1. *Universal Declaration of Human Rights*

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

2. *International Covenant on Economic, Social and Cultural Rights*

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

3. *Convention on the Rights of the Child*

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:
- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
 - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
 - (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
 - (e) The development of respect for the natural environment.
2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

4. *Convention against Discrimination in Education*
(Specific international instrument on regard to education)

5. *Convention on Technical and Vocational Education*
(Specific international instrument on regard to education)

II. European System of Human Rights

1. *Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (Paris, France, April 20th 1952)*

Article 2. Right to Education

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

2. *Charter of Fundamental Rights of the European Union*

Article 14 – Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

III. Inter-American System of Human Rights

1. American Declaration of the Rights and Duties of Man

Right to education

Article XII. Every person has the right to an education, which should be based on the principles of liberty, morality and human solidarity.

Likewise every person has the right to an education that will prepare him to attain a decent life, to raise his standard of living, and to be a useful member of society.

The right to an education includes the right to equality of opportunity in every case, in accordance with natural talents, merit and the desire to utilize the resources that the state or the community is in a position to provide.

Every person has the right to receive, free, at least a primary education.

2. Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights ("Protocol of San Salvador")

Right to Education

1. Everyone has the right to education.

2. The States Parties to this Protocol agree that education should be directed towards the full development of the human personality and human dignity and should strengthen respect for human rights, ideological pluralism, fundamental freedoms, justice and peace. They further agree that education ought to enable everyone to participate effectively in a democratic and pluralistic society and achieve a decent existence and should foster understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups and promote activities for the maintenance of peace.

3. The States Parties to this Protocol recognize that in order to achieve the full exercise of the right to education:

- a. Primary education should be compulsory and accessible to all without cost;
- b. Secondary education in its different forms, including technical and vocational secondary education, should be made generally available and accessible to all by every appropriate means, and in particular, by the progressive introduction of free education;
- c. Higher education should be made equally accessible to all, on the basis of individual capacity, by every appropriate means, and in particular, by the progressive introduction of free education;
- d. Basic education should be encouraged or intensified as far as possible for those persons who have not received or completed the whole cycle of primary instruction;
- e. Programs of special education should be established for the handicapped, so as to provide special instruction and training to persons with physical disabilities or mental deficiencies.

4. In conformity with the domestic legislation of the States Parties, parents should have the right to select the type of education to be given to their children, provided that it conforms to the principles set forth above.

5. Nothing in this Protocol shall be interpreted as a restriction of the freedom of individuals and entities to establish and direct educational institutions in accordance with the domestic legislation of the States Parties.

IV. African System of Human Rights

1. African Charter on Human and Peoples' Rights

Article 17

Every individual shall have the right to education

Every individual may freely take part in the cultural life of his community.

The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.

V. Decisions, resolutions and other standards of interpretation

- ❖ Committee on Economic, Social and Cultural Rights, *General Comment 13, The Right to Education*, 8 December 1999.
- ❖ Committee on the Rights of the Child, *General Comment 1, The Aims of Education*, 17 April 2001.
- ❖ Special Rapporteur on the Right to Education, *Preliminary report of the Special Rapporteur on the right to education, Ms. Katarina Tomasevski*, 13 January 1999.
- ❖ Special Rapporteur on the Right to Education, *Progress report of the Special Rapporteur on the right to education, Ms. Katarina Tomasevski*, 1 February 2000.
- ❖ Special Rapporteur on the Right to Education, *Annual report of the Special Rapporteur on the right to education, Ms. Katarina Tomasevski*, 11 January 2001.
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- ❖ Special Rapporteur on the Right to Education, *The Right to Education. Report submitted by the Special Rapporteur, Ms. Katarina Tomasevski*, 15 January 2004.
- ❖ Special Rapporteur on the Right to Education, *The Right to Education. Report submitted by the Special Rapporteur on the Right to Education, Mr. Vernor Muñoz Villalobos*, 17 December 2004.
- ❖ Special Rapporteur on the Right to Education, *Girls' right to education. Report submitted by the Special Rapporteur on the Right to Education, Mr. Vernor Muñoz Villalobos*, 8 February 2006.
- ❖ Special Rapporteur on the Right to Education, *The right to education of persons with disabilities. Report of the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos*, 19 February 2007.
- ❖ Special Rapporteur on the Right to Education, *Right to education in emergency situations. Report of the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos*, 20 May 2008.
- ❖ Special Rapporteur on the Right to Education, *Right to education of persons in detention. Report of the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos*, 2 April 2009.
- ❖ Special Rapporteur on the Right to Education, *Right to education of migrants, refugees and asylum-seekers. Report of the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos*, 10 April 2010.
- ❖ Special Rapporteur on the Right to Education, *Sexual Education. Report of the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos*, 23 July 2010.

- ❖ Special Rapporteur on the Right to Education, *The promotion of equality of opportunity in education. Report of the Special Rapporteur on the Right to Education, Kishore Singh*, 18 April 2011.
- ❖ Special Rapporteur on the Right to Education, *Interim Report of the Special Rapporteur on the Right to Education, Kishore Singh*, 5 August 2011.
- ❖ Special Rapporteur on the Right to Education, *Normative action for quality education. Report of the Special Rapporteur on the Right to Education, Kishore Singh*, 2 may 2012.
- ❖ Special Rapporteur on the Right to Education, *Justiciability of the right to education. Report of the Special Rapporteur on the Right to Education, Kishore Singh*, 10 May 2013.
- ❖ Special Rapporteur on the Right to Education, *Post-2015 Development Agenda. Report of the Special Rapporteur on the Right to Education, Kishore Singh*, 9 August 2013.
- ❖ Inter-American Commission on Human Rights, *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, 3 November 2011.
- ❖ Inter-American Commission on Human Rights, *Report on Justice for Women Victims of Sexual Violence: Education and Health*, 28 December 2011.
- ❖ European Commission of Human Rights, *Case Jordebo and others v. Sweden*, 18 September 1992.
- ❖ European Court of Human Rights, *Case Folgerø y otros v. Noruega*, 26 June 2007.
- ❖ European Court of Human Rights, *Case Murat Korkmaz v. Turquía*, 6 January 2009.
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- ❖ European Court of Human Rights, *Case Catan y otros v. Moldova and Russia*, 18 September 2012.
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- ❖ United Nations Educational, Scientific and Cultural Organization, *Revised Recommendation concerning Technical and Vocational Education*, 2 November 2001.
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- ❖ World Conference Education for All, *Framework for Action to Met Basic Learning Needs*, March 1990.