

# WHAT CAN WE LEARN FROM JÓZSEF EÖTVÖS'S "UNIVERSITY CONSTITUTION"

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There is no exact telling how universities can influence public thought in the 1990s, yet it is safe to say that representatives of nearly all disciplines that are taught at the faculties of law have taken an active part in legislative work in recent decades. We have every reason to believe that the universities have made a worthy contribution to the progress of Hungarian intellectual life and public thought. The universities play an essential role by supplying society with successive generations of scholars and scientists but they have not been able to retain their former rights related to the conferral of scientific degrees. Hungarian universities, which are becoming so-called "knowledge factories," have been forced to hand over that function to scientific qualifications committees. Such division of labour has made the scientific qualifications system better organized and more compatible with the nearly uniform practice of neighbouring countries, however, compelling justification is still missing why universities and some colleges had to renounce their right to confer scientific degrees. The universities' right to confer titles of university doctor does not compensate for that loss. The fact that universities have become knowledge factories has made it inevitable that the universities should get equal rights related to the conferral of scientific degrees with those of the competent institutions of the Hungarian Academy of Sciences (Hungarian acronym: MTA). Domestic and international experiences indicate that scientific qualifications committees need to cooperate with universities in evaluating doctoral dissertations. It has proved to be impractical to remove doctoral thesis examinations away from universities because they should take place on the premises of the principal bases of the disciplines concerned.

Having said that, possession of academic doctor's degree could once again become a decisive factor in professorial appointments. (Note that nowadays professorial appointments have become instruments of quality assurance for universities.) That development has reduced the prestige of the universities' habilitation process and preserved the practice of appointments on the basis of unequal criteria. Overall, that change, just as other compromise-ridden transformations, has produced good and bad results alike.

Another problematic practice, the so-called *venie legendi*, derives from the historical experiences of some prestigious universities. Nowadays the title of associate professor is often conferred on those who possess a PhD degree without carefully considering whether or not the appointee has the necessary didactic skills. This is in contradiction with the historical experiences of the nations (including us, Hungarians) that have experimented with the third university model. These nations should know that university educators need systematic training in didactics if well-known anomalies are to be avoided. There has recently been a (justified) governmental requirement that noted experts of academic research institutes should play a greater role in university education. It is problematic that this way a large number of researchers who lack systematic training in didactics and education do educational activities.

No doubt, the theory of didactics and certain skills can be learned in intellectual fields other than teaching, but it would be useful if those eminent experts proved in practice that they possess the necessary skills for conducting lectures and hands-on practical courses. In the recent university practice it is inadmissible that those seeking appointment as university lecturers are ready to conduct public lectures but are unavailable for a public polemic discussion of the strengths and weaknesses of their lectures. Centuries of practice have shown that public discussions (*disputationes*) are sources of new scientific ideas and they ward off charlatany. We are not simply calling for a return to an inadequately utilized institution of the freedom of education. We assert that methods that have proved their use over centuries should not be discarded.

A similar conclusion can be drawn if we consider anomalies of examinations. We disagree with the view – which follows from a mistaken interpretation of the combination of the fourth university model (that is, the knowledge factory) and the freedom of education – that whoever possesses some university lecturer's title, can sit on (practically) any examination panel. Let us add in this connection that we have striven (in vain) to convince universities to move away from their present examination-centred model.

How could a university lecturer evaluate student performance impartially if he lacks proper training? For a Juris Doctor the answer to this question is evident, and yet how often do university lecturers in Hungary conduct examinations without even knowing the basics of teaching. Fortunately, apt people learn conducting examinations by doing it. But however fast they learn, chances are they make a number of mistaken decisions before doing it right, which undermines students' confidence in the examinations' ability to shape their character. The author of this essay is convinced that concrete didactical requirements should be asserted when organizing examinations in the various disciplines. Revenues from the tuition fee, the introduction of which has caused so much

controversy, could also be used to reduce anomalies in the conduct of examinations.

It is in society's interest to encourage students both to attain interdisciplinary knowledge and pursue specialization, especially if that coincides with the interests of the individuals concerned. Universities should therefore make it possible for ambitious students to cross-register even if in certain cases that inevitably involves additional financial sacrifices from the students. However, it is unfavourable if students obtain a second or even a third diploma just because that is what society expects them to do. Also, it is undesirable if financial considerations compel university lecturers to take in work on the side. Specialization in a single field and obtaining interdisciplinary knowledge are equally valuable career strategies, and the universities should make cross-registration as simple as possible.

*Lehrfreiheit* and the freedom of research are traditionally inseparable. No modern university should ignore such traditions. Universities that seek modernity should not sacrifice practicals, where instructors have interactive, hands-on opportunities for teaching a small group of students. No knowledge factory can be effective if education and training go without developing the students' character. Besides, character development can also ensure that what the students learn at university should not become dogmas.

Overregulation of the work of universities hinders the freedom of research. Excessive emphasis on administrative work is largely derived from overregulation. That explains why during the 1980s students ignored both the bylaws that governed the life of universities and the laws and decrees that governed the educational system as a whole. It is therefore justified to ask whether or not the recurrent waves of reform of the Hungarian educational system over the past decades are too much talk and too little action.

Organizing the life of a modern university requires concentrated intellectual activity, and the way modern universities are run is due also to historical circumstances. Bearing that in mind, we have shown stages in the evolution of a modern knowledge factory. It would be misleading to state that what has taken place in Hungary in this field can be called an era of permanent reforms.

When using the expression in a disparaging sense, it is possible to refer to the evolution of the 21st-century model of a modern university as a series of permanent reforms. That process has included formal, bureaucratic and voluntaristic decisions and has resulted in overregulation. Fortunately, the spontaneous growth of a new university system pushed much of that to wayside. Those phenomena are just teething troubles of the fourth university model: the integrated knowledge factory, but cannot have a lasting impact on what this era

requires. By way of an example, it is sufficient to mention here that enormous efforts were repeatedly wasted on rewriting university constitutions but those reformulated constitutions could only reflect institutional changes that had taken place anyway. The foundations of a genuinely new university model were laid down in Hungary in the 1945-48 period, when Hungary had a multi-party system.

Time and again the ministry of education of the time issued new guidelines for curricula but the results achieved were not impressive. The successive waves of reforms of university models only bore a semblance of a real transformation. However, the fundamental social changes of transition brought about tangible changes to the universities. That has illustrated that only a thorough social transformation can bring about a radical change in educational institutions. Although the 1945-48 period saw important changes in the lives of universities, elements of social injustice survived. The educational monopoly of the pre-1945 ruling classes was only broken in 1949-50. As could be seen on the university constitution of 1950, by that time universities had achieved a genuine freedom of education inasmuch that students from all social strata could apply. What is more, the relationship between students and university lecturers has also changed. A well-functioning university model supposes a meaningful relationship between lecturer and student. Unfortunately, there are instances when a fruitful working relationship between them is absent or when that relationship is merely formal. Nowadays formalism is a real danger because there is excessive emphasis on the role of examinations.

There is a formal approach to comparing universities of old and new: measuring the number of lecturers and support-staff members and collating them to the number of students. The process of the modern universities becoming knowledge factories has confirmed the impression that the new model is suitable for an intensive scientific personality formation. Actually, most of those expectations have remained unfulfilled. In some faculties there were just one or two students per each lecturer but that failed to turn education intensive. Indeed, social demand for certain disciplines quickly decreased. There have been instances of megalomania and the voluntaristic enlargement of certain educational institutions. A small country like Hungary cannot afford having universities of excessively large sizes. In some cases higher tutorial performance could not be rewarded financially because too much money had to be spent on paying the salaries of the oversized staff. Another danger is that in certain institutions the students are absent from classes to such a degree that their student status becomes formal. The call for changing those anomalies should come from below, from institutional levels.

### Reflections on József Eötvös's "University Constitution"

The organizers of the most recent reform efforts in Hungary refer to Bologna, the examples of the third university model: the British and American colleges. But it should be borne in mind that originally the organizers of British and American universities also had previous historical examples to rely on. The British college system has become known by the modern world as a system suitable for the education of genuinely erudite people, a system that was based on time-honoured traditions. (Modelli di Università, Perugia, 1975). Consequently, Newton's university (Oxford) and the later British universities were institutions that evolved in the course of history. In the modern era, just as in previous centuries, those persons could become Bachelors of Art – that is, persons versed in the seven liberal arts – who, under the supervision of their teachers, excelled with their English gentleman's erudition during the public discussion of certain topics. Even the forerunners of today's universities, which were maintained by wealthy foundations, honoured the autonomy of universities and developed the rich community traditions of university life. As Rezső Del Adami has aptly written: "that model has developed along an exceptionally impressive course, and the wealthy bourgeois society of the United Kingdom could ensure the requisite financial basis."

The North American version of that university model also has its historical antecedents. Both the University of Boston (1869) and that of Baltimore (1867) were established on the pattern of English colleges (L. Lóczka, 1937). The system of wealthy foundations (see the two Morrill Acts, 1866 and 1890) also had historical antecedents. Evident is the question whether or not Hungary today has such wealthy foundations that could guarantee the autonomy of universities and prevent universities from direct political interference (the inalienability of the assets of universities).

The Magna Charta of University and the Bologna Declaration list the following indispensable conditions:

- universities are autonomous institutions in the heart of modern society;
- the key tasks of universities (teaching and research) have to be independent of political interference;
- the dual historical mission of universities is inseparable;
- the competent state agencies must ensure the material conditions for the secure operation of universities.

Unless those requirements are met, it is senseless to speak of university autonomy. The universities have to be owners of their assets, especially because decision-making power usually changes hands after parliamentary elections. During the transition [which took place in 1989-90] measures should have been

taken to settle the question of the ownership of university assets. As for university assets, which universities own nowadays – they only secure a poor condition; they need to be restored in their original shape. In that case Hungary's educational institutions could implement the Bologna recommendations and they would be protected from the ebb and flow of political changes. Whether reform legislations follow the British-American, the classical French or the Prussian-German model, they should be implemented with the modesty and responsibility that once marked József Eötvös [Hungary's Minister of Religion and Education in 1848 and in 1867-71]. Let me refer to his treatise of 1848, entitled: "Constitution of the Hungarian University." He meant that document to promote the implementation of Act 19 of 1848, which enunciated the freedom of science and education. Eminent contemporaries of Eötvös participated in its drafting. It was permeated by the ideas of the freedom of education (*Lehr- und Lernfreiheit-System*) of the continent and recommended that Hungary should utilize the internal democracy of the *universitas*, for instance, the experiences of student juries of England.

This draft constitution recommended that university students should take an active part in public life and that democracy should mark the internal life of universities – as patterned on historical forerunners. Let us consider some noteworthy parts of that draft constitution. The chapter, entitled: "Disciplinary Bodies of the University," has firm foundations in legal dogmatics but it does not go into unnecessary details. This well-structured section opens by defining the role of the student overseers and the acts that fall within the competence of the 24-member student jury. The document defines eligibility to the student jury, the entering of the names of new members in a public register, which applicant may be rejected, and oath taking. Article 190 of the draft constitution gives a detailed description of the procedure of approving or rejecting new student jurors.

As for the work of the student jury, the draft constitution calls for public and oral deliberations and the several stages of procedure have to be clearly separated. Article 198 clearly witnesses the English example of this jury system. "After the deliberations are ended, the chair sums up the main points and he formulates the questions that the jury is supposed to answer so clearly that all the jurors need to do is to say yes or no." Then the chair hands over to the jurors the questions that have been put on paper by the notary. The chair warns the jurors that they should fulfil their duty conscientiously. The jurors then withdraw to another room and avoid communication with any outside persons before their decision is announced.

Before beginning their deliberations behind closed doors, the jurors elect a jury foreman, who reads out the questions to the jurors after they have withdrawn to a separate room. Decisions are made by majority vote. After the members of the jury have returned to the trial hall, the jury foreman declares the “guilty” or “not guilty” verdict. If the jury passed down the “not guilty” verdict, the presiding chair acquits the accused from the charges against him. If the verdict is “guilty,” the court – as defined by Article 183 – decides about the punishment by majority vote. What we see, then, is a typical Anglo-American jury procedure, which in the middle of the 19th century was highly respected by Hungarian politicians and legal practitioners.

As could be seen, progressive minds of Hungary considered the jury-type, lay courts as an indispensable requisite of a modern, non-feudal society. That is why the draft constitution is so precise in describing the above procedure. (The document treats students as mature adults. In addition to defining the procedure of formulating a sentence, it says how the verdicts can be annulled in justified cases.) The draft constitution of József Eötvös is a logical description of a university disciplinary system. If it had been implemented, it would have acquainted university students with the most progressive principles of penal law of the era.

I explored the history of this draft constitution by stumbling into the diary of Tivadar Pauler, who in his later years became a respected professor of penal law. I quote from his diary: “Eötvös summoned and commissioned me to work out the jury [...] Eötvös has approved what I wrote.” The quotes are from 6 and 9 of July [1848].

It would be a pleasant task to continue a detailed discussion of Eötvös’ draft constitution, but that would divert the readers’ attention from the present-day reforms of universities. Before going on, it can be concluded from the above passages that Eötvös’ draft university constitution showed how progressive Hungarian intellectuals strove to promote the country’s political transformation also by advocating the freedom of education and its modern disciplinary system. If Hungary’s advanced, non-feudalistic cultural policy had had the chance to develop unhindered, it would have never needed to rely on the educational reforms of Baron Leo Thun-Hohenstein, who had been under the influence of reactionary members of the Habsburg court. Indeed, Act 19 of 1848 was not the only accomplishment of progressive members of the Hungarian intelligentsia. The desired forthcoming renewal of universities in Hungary will require an equally steadfast and ingenious attitude.

Nowadays it makes our work easier that Hungary, having learned from tragic historical experiences, adopted the Universal Declaration of Human Rights (1948) in 1988. Article 26 of that document connects education with the asser-

tion of cultural rights. It says: education “shall promote understanding [...] among all nations, racial or religious groups.” By adopting that Declaration into domestic legislation in the form of a law, Hungary confirmed its commitment to cultural rights. Article 4 of the International Covenant on Civil and Political Rights stipulates that only “in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation...”

Today, at a time when progress is extremely slow in the field of promoting the freedom of education and science, it is justified to remember that Hungary has committed itself to ensuring conditions under which each of its citizens may enjoy cultural rights, which in every respect are of the same importance as civil liberties and political rights. It is therefore more than just a modest desire to call for legislative acts that ensure the freedom of education that is indispensable for creative (scientific and scholarly) activities. Hence it follows that Hungary should deploy constitutional and other legislative safeguards to protect the freedom of education and research in full conformity with the spirit of the Covenants, which have been promulgated in Hungary as laws.

Today the Hungarian law on the Universal Declaration of Human Rights is a special source (guarantee) of the series of reform-minded legislative acts that aim at ensuring the freedom of culture and science. Generations are watching us with justified expectations to proceed in educational reform, legislation on universities and the autonomy of educational institutions. Hungarians, who underwent so much frustration in the past, are asking whether or not at long last there will be freedom of science in the modern sense, whether university autonomy is possible under the present, modern conditions, whether it is realistic to hope that habilitation will be future-oriented, whether Hungarian diplomas will have international equivalence, whether ideas and scientific results will move unhindered, and whether state supervision of the work of universities will be kept within rational limits. It is regretful that in the period since the transition (1989-90) affairs of culture and science have been in such disarray that they have degenerated to instruments of political voluntarism. As long as fundamental accomplishments of cultural history are downgraded to the level of empty (political) slogans, that confusion and insecurity will not disappear. Only under such conditions is it possible that the need for enforcing market considerations onto the universities and science are justified with reference to non-existing European Union requirements for the approximation of laws. (It is common knowledge that the European Union has never obliged the Member States to adopt the recommendations of the Bologna Declaration. See Joachim HOEFELE on the effects of globalization. Cf. *VALÓSÁG*, June 2005).

The domestic mass media – which are mere mouthpieces of certain political circles – serves a wrong cause when they write that universities should become profit-making institutions. Such an attitude suggests that there is no return to the venerable historical examples. That explains the feverish haste to give legislative fiat to voluntaristic goals. However, we are justified to declare that it is *communis opinio* that the freedom of science should not be expected from above and especially not from Parliament. What we need instead is moral and financial reward for creative efforts done from below upwards: at institutional level and in cooperation with the students. False ideas of the past should not obstruct the free movement of scientific results and the need for renewal. It is in this sense that our university has committed itself to the service of social solidarity and the common good (*Sollicitudo Rei Socialis*, 1988) – quotes with justification an apostolic statement (of Pope John Paul II), entitled: *Ex corde Ecclesiae*. It is the founder's responsibility to commit himself without reservations to the cause of truth. It is a hallowed heritage, which also involves that we should have the courage to announce even those things that the general public finds inconvenient. Bearing those ideas in mind, we can better understand the country's complex problems. We are calling for regional, national and international cooperation for these purposes in science, education and the other aspects of university life in order to promote the freedom of science and social progress.

## SUMMARY

### **What Can We Learn from József Eötvös's "University Constitution"**

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The essay enumerates the problems that architects of successive waves of educational reform have faced in Hungary in the period since the middle of the 19th century. During the 1840s, at a time when economic and political conditions were obsolete in Hungary, intellectuals showed a fine example of progressive thinking in higher education. Act 19 of 1848 – which could not be implemented because Hungary's revolution and war of independence were put down in 1849 – envisaged the introduction of the freedom of education. The first Hungarian Minister of Religion and Education, József Eötvös, compiled and in part wrote a document, entitled: "Constitution of the Hungarian Univer-

sity," which was meant to assist the implementation of that law. His constitution included the establishment of a student jury to deal with disciplinary cases at the university. The essay also carries evidence on the fact that the eminent criminal law professor Tivadar Pauler took an active part in defining the functions of the student jury.

## RESÜMEE

### **Was können wir von der „Verfassung der Universität“ von József Eötvös lernen**

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Es war ein bezeichnendes Merkmal der verspäteten geschichtlichen Wandlung, dass der wirtschaftliche bzw. politische Aufbau, die fehlenden Möglichkeiten vom geistlichen Gedankensystem ersetzt werden mussten. So ist es auch bei der Einführung der Lehrfreiheit passiert, was das Gesetz Nr. 19 aus dem Jahre 1848 ermöglicht hat. Der Plan mit dem Titel: „Die Verfassung der ungarischen Universität“ übernahm die Verpflichtung ein modernes Universitätssystem (das sogenannte Lehrfreiheit-System) gesetzlich lückenlos zu verwirklichen. Bei diesem Bestreben zog Eötvös, der erste ungarische Kultusminister die universitären Reformpläne in Betracht und plante auch die Bildung eines Studentenjury's nach englischem Muster. Die Abhandlung leistet auch einen Beweis dafür, dass bei der präzisen juristischen Abfassung des Studentenjurus der berühmte Kriminalist Tivadar Pauler mitgewirkt hat.