



# Powerful and vulnerable

Academic freedom in practice

Investigation report, recommendations and reflection following a whistleblower report to the University of Amsterdam

A non-binding translation of the report *Krachtig en kwetsbaar*

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## Foreword

A university should be a place where innovative and controversial questions are asked, studied, answered and taught. In Amsterdam, since 1632. To be such a place, freedom of thought, speech, debate and publication are crucial. The university lives on debate; academic freedom - powerful and vulnerable at the same time - is its oxygen.

Universities, in addition to the executive, legislative and judiciary, and together with the free press, should be a reliable pillar of democratic society and a well-functioning rule of law.

And as a *community*, the university should be an example to society and the world. An example of how people deal with each other when they disagree. An example also of how differences of opinion can be made productive.

Within the university, the ideal of diversity & inclusion is as powerful and vulnerable as the ideal of academic freedom. In the course of its work, the committee has become convinced that academic freedom and diversity & inclusion are not opposed to each other, but desperately need each other. Besides all dimensions of diversity such as gender, skin colour, age, sexual orientation, and experiences and perceptions, diversity of political views and of academic perspectives is also an essential part of inclusive diversity at the university.

The committee thanks the Executive Board of the University of Amsterdam for its trust and for the broad assignment it gave the committee with respect to the whistleblower report. A task that, the committee hopes, will yield results that are also useful for universities other than the UvA.

The committee thanks all those with whom it has spoken over the past three months: the whistleblower and the dean of the faculty, students, teachers, researchers and support staff. It also thanks those who provided information in writing.

The committee felt a great openness and commitment from all with whom it met, not only with the ISW programme, but also with the wider UvA. In the committee's view, the university and faculty have everything they need to actively promote academic freedom.

In doing so, the committee wishes everyone within the University of Amsterdam much tolerance, wisdom, collegiality, good manners and community spirit.

Janka Stoker, Carel Stolker, Berteke Waaldijk

# Table of contents

<b>3</b>	<b>Foreword</b>
<b>7</b>	<b>Summary of the report</b>
7	Part 1: The investigation by the commission
7	Assignment
7	Conclusion regarding the whistleblower report
8	Part 2: Recommendations to promote academic freedom
8	Ten recommendations
9	The duty of care for academic freedom
9	Academic freedom as a core value (recommendations 1 and 4)
10	Academic freedom as a mission for all (recommendations 2 and 5)
10	Academic freedom and diversity & inclusion (recommendations 3 and 6)
10	Academic freedom and regulations (recommendations 8 and 9)
11	Academic freedom and freedom of expression (recommendations 7 and 10)
11	Part 3: The background reflection
<b>12</b>	<b>1. The investigation into the whistleblower's report</b>
12	1.1 Lead-up and assignment
13	1.2 Preliminary question: procedural admissibility
13	1.3 Method and justification
13	Site visit
14	Confidentiality of the report
15	Deliberation by the committee
15	1.4 The concepts of academic freedom, wokeness, safe spaces, trigger warnings and fear culture
15	Academic freedom
16	Wokeness
16	Safe spaces and trigger warnings
16	Culture of fear
17	1.5 The whistleblower and his report
17	The whistleblower
17	The whistleblower report
18	Opinion in Folia
19	1.6 The assessment of the whistleblower's report
20	1.7 Assessment of the content of the whistleblower's report
20	Findings relating to faculty and programme
22	Findings relating to the whistleblower's experience
24	1.8 Is there nothing going on? Some observations drawn from the interviews
25	Threats
25	Group processes and psychological safety
26	Education
26	Academic freedom and freedom of expression

## 27 2. Recommendations to promote academic freedom

- 28 1. Demonstrate that academic freedom is a core value in the university
- 28 2. Involve students in the discussion about academic freedom
- 29 3. Invest in a community that can sustain academic freedom
- 30 4. As administrators, keep a distance from the content of research and teaching
- 30 5. Provide leadership that monitors and promotes academic freedom
- 31 6. Incorporate academic freedom into the various internal university processes
- 32 7. Talk with each other about the relationship between academic freedom and social debate
- 33 8. Professionalise internal handling of complaints, in particular with a view to academic freedom
- 34 9. Limit possible communication asymmetry in procedures
- 34 10. Keep away from woke/anti-woke fights and combat the cancellation of colleagues and guest speakers

## 36 3. Background reflection: on academic freedom, wokeness, safe spaces and trigger warnings - following a whistleblower report to the University of Amsterdam's Executive Board

- 37 1. Academic freedom embedded in the sphere of fundamental rights
- 37 Academic freedom is loosely regulated but is embedded in the sphere of fundamental rights
- 38 The explanation of the WHW
- 39 Academic freedom and institutional autonomy are inextricably linked
- 40 An appeal to academic freedom requires quality and integrity in research
- 40 2. For which concerns is academic freedom crucial?
- 40 The nature of innovative research and teaching
- 41 The importance of increasing understanding
- 41 The importance of societal trust in science
- 41 The importance of research independence
- 41 The importance of independent science education
- 42 The importance of science as a pillar of the democratic rule of law
- 43 3. Why is academic freedom so topical?
- 43 Pressure on free speech
- 43 Growth of international cooperation and exchange
- 44 Geopolitical tensions
- 44 Emancipation movements
- 45 Free speech on campus (controversial speakers)
- 46 Temporary employment contracts
- 46 4. Academic freedom: frameworks and professional and institutional responsibilities
- 46 The legal and administrative frameworks
- 47 The employment relationship
- 47 Choosing cooperation partners
- 48 The steering effect of funding
- 49 Freedom, academic community, and security
- 49 5. Who must observe academic freedom and what does this duty of care entail?
- 49 Duty of care of government and politics
- 51 Duty of care of board and executives
- 51 Duty of care of colleagues among themselves
- 52 Position of students
- 54 Position of commissioners and subsidisers
- 54 6. Academic freedom and freedom of expression: differences in nature and scope
- 54 Where academic freedom and freedom of expression differ
- 55 What academic freedom adds to freedom of expression

55	7. Academic freedom and the public sphere (extra-mural free speech)
56	Expressions within one's expertise
56	Expressions outside one's expertise
58	Limits to freedom of expression for the scientist
58	The emeritus professor
59	The role of administrators
59	8. The concepts of woke and anti-woke: thou shalt not cancel
60	9. <i>Safe spaces, trigger warnings</i> and 'decolonising the curriculum'
61	Safe spaces
61	Trigger warnings
62	'Decolonising the curriculum'
62	10. External speakers, demonstrations, flyering
64	Demonstrations and flyering
65	Appendix 1: Terms of reference
70	Appendix 2: Whistleblower Regulations University of Amsterdam
75	Appendix 3: University of Amsterdam Code of Conduct
79	Appendix 4: UvA Social Media Comment Policy
80	Appendix 5: Policy on free speech and safe space FMG
83	Appendix 6: Organisation chart FMG
84	Appendix 7: FMG newsletter with invitation
85	Appendix 8: The committee
86	Appendix 9: Documents and literature consulted (a selection)

# Summary of the report

## Part 1: The investigation by the commission

### Assignment

On 16 December 2022, the Executive Board of the University of Amsterdam received, through the Complaints Committee, a report of suspected institutional wrongdoing. The Executive Board decided to ask an external committee to investigate the report. The committee, consisting of three members, was established on 8 February 2023. Its terms of reference fall into three parts.

First, the investigation into whether there are, as the whistleblower's report states, "serious institutional abuses at the Faculty of Social and Behavioural Sciences (FMG) of the UvA, leading to an acute and fundamental threat to academic freedom and the quality of teaching and research". In his report, whistleblower speaks of a "culture of fear" in the faculty in this regard. The results of the committee's investigation can be found in Part 1 of this report.

Second, the committee was asked to make recommendations for strengthening academic freedom in policies and practices mentioned in the complaint, regardless of whether they qualify as wrongdoing. These could benefit the entire UvA. Those recommendations, which turned out to number ten in total, can be found in Part 2.

And third, the committee was asked to give further consideration to academic freedom and wokeness, safe spaces and students' demands on higher education. These can be found in Part 3. In that Part, the committee discusses the nature, content and scope of academic freedom, including its relation to freedom of expression, and elaborates on a number of areas of tension.

### Conclusion regarding the whistleblower report

In its investigation, the committee has distinguished between the whistleblower and his complaint as carefully as possible. Where the two meet, the committee accounts for this in the text of its findings. The committee is aware that, in addition to its investigation (into the complaint), an employment law procedure is ongoing.

In accordance with the agreed terms of reference, the committee has assessed the admissibility of the whistleblower, delved into the statements in the complaint, taken note of all information submitted and, in interviews with 53 people (students, teachers, researchers, support staff and administrators) from the Faculty of Social and Behavioural Sciences of the UvA, has ascertained whether issues in the complaint are recognised, and if so to what extent. As such, it is a qualitative study in which the information obtained comes from interviews and written communications (in part unsolicited) with representatives of those closest related to the issues - no quantitative research was conducted among all students and staff of the Interdisciplinary Social Science (ISW) programme in which the whistleblower is a lecturer. In selecting the interviewees, care was taken to speak to the broadest possible representation of staff and students, representative of that programme and its administrative context.

In its investigation, the committee found no (as the report states) institutional abuses leading to an acute and fundamental threat to academic freedom and the quality of teaching and research.

In its interviews, the committee paid attention to signs of a culture in which people do not feel free to speak out, suggest ideas, share information and knowledge, and learn; in other words, a culture in which, as the whistleblower puts it, colleagues and students with academic and

political views that diverge from UvA norms are attacked, dismissed and/or fired. The committee did not find such an unfree culture at ISW; the interviews revealed a more open culture than the whistleblower describes. The interviewees in this investigation did not bring up any situations at ISW or FMG that the committee would class as an ‘excessively woke culture’. A few did mention serious external threats.

It should be noted that many interlocutors remarked that the covid period has greatly hampered personal contacts - in their view, this has had a negative effect on the faculty as a community. Moreover, the committee notes that in a programme such as ISW, without a disciplinary or research-defined ‘home base’, it can be difficult for those who only have a teaching role and who also often have only a part-time appointment, to feel like members of a community in which people know each other, regularly exchange views and address each other or give feedback. This is especially the case when this involves many new students and teachers as a result of rapid growth, as was the case in the ISW programme.

## Part 2: Recommendations to promote academic freedom

### Ten recommendations

No institutional wrongdoing, then, within the faculty or programme that fundamentally and acutely threatens academic freedom and thus the quality of teaching and research. However, the committee does see that the polarisation in society and the increasing grimness of the social and political debate in the Netherlands do not bypass the ISW programme. This is more generally, but certainly not only, the case in scientific disciplines dealing with social and more normative or sensitive issues. This grimness, which can sometimes be distinctly intimidating for teachers, students, researchers, and administrators, can strike at the heart of academic freedom and lead to unwanted self-censorship or other forms of undesirable restraint among researchers, teachers and students. This development requires more attention.

And there are other developments that call for more attention to academic freedom and the related institutional autonomy. For instance, the Royal Netherlands Academy of Arts and Sciences (KNAW) has repeatedly pointed to the impact on the freedoms of researchers and teachers that result from changes in funding, and the committee calls attention to the importance of academic leadership and professional handling of complaints. Academic freedom is as powerful as it is vulnerable. As a result of its investigation, the committee also has concerns - concerns which may also be applicable to other Dutch universities.

In Part 2 of this report, the committee therefore makes ten concrete recommendations to the UvA Executive Board and the wider academic community of the UvA to promote academic freedom.

1. Demonstrate that academic freedom is a core value in the university
2. Involve students in the discussion about academic freedom
3. Invest in a community that can sustain academic freedom
4. As administrators, keep a distance from the content of research and teaching
5. Provide leadership that monitors and promotes academic freedom
6. Incorporate academic freedom into the various internal university processes
7. Talk with each other about the relationship between academic freedom and social debate
8. Professionalise internal handling of complaints, in particular with academic freedom in mind
9. Limit possible communication asymmetry in procedures
10. Keep away from woke/anti-woke fights and combat the cancellation of colleagues and guest speakers

With these recommendations, the committee aims to contribute to increasing the necessary knowledge about the nature, content and scope of academic freedom, and its promotion.

### **The duty of care for academic freedom**

The duty of care for academic freedom has three dimensions:

- (i) the individual academic freedom of teachers and researchers and their responsibility to treat it with care,
- (ii) the institutional freedom (autonomy) of the university itself and (again) the responsibility to treat it with care, and
- (iii) the duty of care of governments and administrators to monitor and actively promote the academic freedom of researchers, teachers and students and the institutional autonomy of the university.

Even though, unlike in many other countries, academic freedom is not included in the Dutch Constitution, it does belong in the broader sphere of fundamental rights. In the Charter of Fundamental Rights of the European Union, the academic freedom of Article 13 stands alongside the freedom of expression of Article 11 for good reason.

This status of academic freedom as a fundamental right means that it is not negotiable. Restrictions are possible only if they (i) are laid down by law; (ii) respect the essential content of the fundamental right; and (iii) are necessary to serve a legitimate purpose in a democratic society. Any infringements of academic freedom will therefore have to be thoroughly and transparently justified.

### **Academic freedom as a core value (recommendations 1 and 4)**

Academic freedom is a core value. It contributes to the specific social responsibility of each university and faculty, a responsibility that will generally have been elaborated in a more specific university and faculty mission, vision and core values. The UvA phrases its social responsibility as a responsibility for a 'liveable, safe, just and sustainable environment'.<sup>1</sup>

More precisely, academic freedom is the principle that teachers and researchers at academic institutions can freely conduct their research, communicate their findings, and teach freely.

It is linked to an employee's position in the exercise of teaching and research. Academic freedom includes the content of academic teaching, the choice of research topics, the choice and application of one's own research questions and methods, access to information sources and the publication and sharing of thoughts and information through appropriate channels and media.

This means that administrators must keep as much distance as possible from the content of teaching and research.

Actively monitoring and promoting academic freedom is a task for universities themselves. That task cannot be separated from the institutional context in which universities operate. The academic freedom of lecturers and researchers is inextricably linked to the collective institutional freedom, i.e., autonomy of the university. The committee has the impression that (e.g., political) parties or bodies that claim to stand up for academic freedom on the one hand, all too easily advocate policies or measures that seriously curtail the autonomy of those universities, on the other. In this way, they damage the academic freedom which they claim to consider so important, rather than protect it.

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1 *Inspiring generations*, UvA Strategic Plan 2021-2026.

### **Academic freedom as a mission for all (recommendations 2 and 5)**

Rector and Deans play a prominent role as guardians of academic freedom. But there is not just work to be done for university administrators. Academic freedom demands active academic leadership by all managers and all directors of programmes. And furthermore, it is a task for everyone in the community, including students. Yes, students also share in academic freedom. Thus, in the education they receive, they are not supposed to be dependent on (as the explanatory note to the Dutch Higher Education law puts it) “certain political, philosophical or science-theoretical views”. These freedoms fundamentally make students participants of the university community. Even if the exercise of their freedoms is of a different nature from that of the lecturer and teacher, they too share in the common remit of realising academic freedom at the university.

It is the task of the teacher, trained and authorised to do so and within applicable quality frameworks, to put together the academic content of a subject and the curriculum. This does not mean that students have no influence on teaching within the programme. If students disagree with the way lecturers use their academic freedom, they can enter into a conversation with their teacher and administrators or turn to the programme committee or the student council. To effect this, they should be able to be easily heard and receive responses in a straightforward manner.

Today, students’ academic freedom must also include protecting students’ freedoms against interference from their (foreign) national governments and providers of scholarships and visas.

### **Academic freedom and diversity & inclusion (recommendations 3 and 6)**

The committee is convinced that academic freedom and diversity & inclusion are not opposed to each other, but very much need each other. Besides all aspects of diversity such as gender, skin colour, age, sexual orientation, and experiences and perceptions, diversity of political views and of academic perspectives also counts as an essential part of inclusion at the university. In this respect, worrying developments at universities in the United States and the UK in particular deserve to be followed with critical attentiveness.

Promoting diversity and inclusion and maintaining and nurturing academic freedom can and should go hand in hand, according to the committee. In management meetings, in the discussion on the work floor between colleagues, in the interaction with students in the lecture and study halls: everywhere, achieving academic freedom requires brainpower, a broad repertoire of actions and also simply tolerance, wisdom, collegiality, good manners and community spirit.

To achieve that - besides good leadership - it is important to ensure a culture of social and psychological safety, and a transparent and diversity-oriented appointment policy. Ultimately, after all, university processes must all be about respect for each other and giving space: between administrators and staff, staff among themselves, and teachers and students. The committee notes there is a lack of data on the actual state of affairs surrounding academic freedom. It therefore makes recommendations here as well.

### **Academic freedom and regulations (recommendations 8 and 9)**

Beware of taking refuge into legal rules. The tendency of organisations to seek a solution in more rules, procedures and protocols in the face of external pressure and escalating conflicts is understandable. Clear protocols that are easy to find, on how to act and who should act, are important, and the committee advises on this in its findings. But the committee also advises not to have too high expectations from these kinds of supposedly clear rules of conduct and legal concepts. It found that at the central level, the UvA has many rules of conduct, protocols, regulations, guidelines, statements, requirements, policies and codes. Sometimes, faculties and study programmes also have their own rules on the same topics. Apart from the findability and understandability of all these rules, it is good to realise that rules as such are not enough to

guide behaviour. That also requires, within the university and within the programmes, a culture of open dialogue to discuss what constitutes everyone's academic freedom within a university community.

### **Academic freedom and freedom of expression (recommendations 7 and 10)**

It is important to discuss how academic freedom relates to the freedom of speech that everyone is entitled to as a citizen in the public space (extra-mural free speech), what academic freedom means in terms of the freedom of a researcher to choose his or her own collaboration partners, and the freedom to join scientific societies. But also, for example, how free teachers and students are to invite their own on-campus guest speakers with potentially controversial topics in the context of teaching, research, student development and knowledge transfer.

A central theme in the whistleblower's report is the concept of 'woke'. This concept has evolved over a few years from a substantive appeal aimed at raising awareness of large-scale and deep-rooted racism, inequality and social injustice, to a term that is now also often used in a strongly negative sense in position statements in which users do not seem substantially interested in each other's arguments and even seem to wish to deny each other the right to speak.

The university, focused as it is on education and research and knowledge transfer, should be the last place for such dynamics. If researchers, teachers and students do not listen to each other, do not give each other space or prefer to avoid or even exclude each other, they undermine both their own message and development and that of the other. Those who cancel will at some point be cancelled themselves. In an academic environment, ill-founded ideas and unsound research and teaching should lose out to good research and good teaching - not by exclusion.

### **Part 3: The background reflection**

The background reflection in Part 3 of this report shows that the restrictions on academic freedom have been numerous and multifaceted over time. Each new limit or restriction viewed in isolation has a reason or cause, some perhaps more convincing than others. This produces new tensions each time. It leads the committee to believe that every effort must be made to continue to give substance to academic freedom in practice. The committee also hopes that its reflection, which identifies several areas of tension - some of which are still unresolved - will contribute to this.

Universities train new generations of students to be the experts and leaders of the future, indispensable for solving the major problems facing society and the world. Over the centuries, moreover, they have developed into institutions of free speech and of speaking truth to power. In this sense, universities are one of the pillars of the free democratic rule of law. As a community, a university should also be an example to society and to the larger world of how people treat each other when they disagree.

Trust in what universities do and what they stand for is therefore crucial at a time when science is 'just another opinion' for some and scientific problem analyses are easily brushed aside with observations such as 'oh well, there are so many researchers'.

So, the stakes are high. Here, the committee emphasises, lies a task for everyone within the university.

# 1. The investigation into the whistleblower's report

## 1.1 Lead-up and assignment

On 16 December 2022, the Executive Board of the University of Amsterdam (through the Complaints Committee) received a report of suspected institutional wrongdoing, accompanied by a file with substantiating notes. The Board decided to ask an external and independent committee to conduct an investigation into the report, in accordance with Article 3, fifth paragraph, of the 2007 Whistleblower Regulations of the University of Amsterdam.<sup>2</sup>

Before setting up that committee, the Board invited the whistleblower for an interview on 13 January 2023. The Board then drafted the terms of reference for the committee.

The Executive Board discussed the content of the assignment with the whistleblower in advance. The whistleblower expressed confidence in the terms of reference and the composition of the committee. Subsequently, the Board adopted the research assignment on 3 February 2023 and established the committee.

The document on the basis of which the committee conducted its investigation provides more information on the lead-up to the establishment of the committee (see Appendix 1 to this report, under sections 1 and 2).

The mandate to the committee was threefold.

- (a) The first assignment was to provide an answer to the question of whether there is wrongdoing, in the sense of the UvA Whistleblower Regulations, or as the report reads, 'serious institutional wrongdoing at the FMG (read: the Faculty of Social and Behavioural Sciences) of the UvA, leading to an acute and fundamental threat to academic freedom and the quality of education and research'. The committee was asked to focus its investigation on the admissibility and on the statements and characterisations mentioned in the complaint, to take note of the information submitted by various parties and to investigate to what extent the report is recognised by others (teachers and students) within the faculty. The results can be found in Part 1.
- (b) The second assignment was to provide, in the light of the core values of the university, UvA's code of conduct and the Netherlands Code of Conduct on Research Integrity (2018), recommendations that can usefully contribute to the broader debate on academic freedom and presumed *wokeness* of universities, including possible suggestions on how to conduct the debate in a fruitful way in an academic environment.<sup>3</sup> The results can be found in Part 2.
- (c) The third assignment was to provide a more general reflection on academic freedom and *wokeness*, and *safe spaces* and student demands regarding their education. The results can be found in Part 3.

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<sup>2</sup> The whistleblowing procedure is included as Appendix 2. The composition of the committee is in Appendix 8.

<sup>3</sup> The UvA code of conduct is included as Appendix 3.

## 1.2 Preliminary question: procedural admissibility

The committee was instructed to examine the admissibility of the whistleblower report on the basis of the 2007 Whistleblower Regulations, as well as to assess this while taking into account ‘more recent developments at national and EU level in the field of whistleblowing’. One such development is the recently introduced Whistleblowers Protection Act<sup>4</sup>. This act defines wrongdoing in such a way that there must be a suspected violation of statutory regulations or internal rules, as a result of which both a social and an institutional interest could be at stake. The new law elaborates this description to the effect that an act or omission not merely affects personal interests; there must be a pattern, a structural character, or an act or omission that is serious or extensive. The suspected wrongdoing must therefore transcend individual issues or personal conflicts between, for example, a complainant and the organisation. In the committee’s view, this is the case in this instance. The whistleblower’s report is aimed at protecting the quality of education and research and upholding the academic freedom laid down by law and internationally. The committee advises the Executive Board to therefore declare the whistleblower, an employee of the university, admissible in his report.

## 1.3 Method and justification

The committee started its work on 8 February 2023. It carried out its investigation in accordance with the modus operandi assigned to it in the terms of reference. It entered into discussions with students and teachers of the Interdisciplinary Social Science (ISW) programme in which the whistleblower is a lecturer, and with a large number of other responsible persons and stakeholders. Within the FMG, the ISW programme falls under the responsibility of the College of Social Sciences. For the organisational chart of the faculty, see Appendix 6.

### Site visit

The investigation assignment included a two-day site visit during which the committee was able, on the one hand, to discuss the report at its invitation in peace and quiet with those involved and, on the other, to give maximum opportunity to anyone in the FMG who wished to say something in relation to the report. The committee did its utmost to compose a group of interlocutors that was as relevant and representative as possible. First of all, it invited a number of people directly on the basis of their position or role, as well as a number of teachers and students. Of these, none declined; a few were unable to attend due to leave, teaching commitments or illness.

There was also room for open registration by staff and students from within or outside the faculty. Seven people took advantage of this. Furthermore, via the FMG newsletter, all FMG employees and, by e-mail, all approximately 800 students of the ISW programme were made aware of the possibility of sending relevant experiences and insights to the committee at an external e-mail address set up for this purpose (see Appendix 7). The committee received written input from over 20 people; sometimes a response led to an invitation for an interview, which was then accepted by the person concerned. The committee could also be contacted or provided information without others being able to know (*sub rosa*). The committee considered this option important in order to reduce the risk that people would otherwise not dare to express themselves or would limit themselves to socially desirable answers. Only a very few took advantage of this opportunity.

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4 *Stb.* 2023, 52.

The committee also asked the whistleblower to inform his network of the various ways to reach the committee. The committee is aware that this yielded some of the responses.

The site visit took place on 4 and 5 April at a location near the FMG. The committee first met at length with the whistleblower. This was followed by interviews with 53 people, some individually and some in groups, from all sections of the study programme and the faculty. Those who expressed a preference to come alone were given that opportunity. The committee spoke with the dean, the department chairs of the Social Sciences domain, the head of HR, the ISW programme director and the director of research. It also spoke with researchers and teachers, students, a board delegation of Pegasus (the ISW study association), members of the FMG student council and works council, members of the study programme committee and of the ISW examination committee, the ISW Diversity Taskforce, and others who, on their own initiative or invited to do so, wished to give their views on the matter under investigation. The interlocutors also included researchers and lecturers from departments other than the one to which the whistleblower belongs, namely Sociology, Anthropology and Political Science. Half an hour to an hour was allotted for each interview. The committee also met with the head of Legal Affairs at the UvA. That conversation covered various aspects of UvA's policy on codes of conduct, complaints procedures and social safety. All persons with whom the committee spoke expressed themselves based on their own observations. The committee took care in the composition of the groups to ensure that this did not create any risk of possible reticence.

Notes were taken of all interviews, in accordance with the research assignment. The interlocutors were given the opportunity to supplement and comment. These completed notes were sent in confidence to the relevant interlocutor or group of interlocutors. The committee then met again with both the whistleblower and the dean of the faculty. With both, the committee wished to test several elements from the report and from the interviews. Again, notes were taken of these interviews and those involved were given the opportunity to make changes and additions.

The committee's questions to its interlocutors aimed, on the one hand, to establish what had happened in the period prior to the whistleblower's report. On the other hand, these interviews were as open as possible, in order to give the interlocutors the opportunity to provide the committee with their views on the issues raised in the report.

### **Confidentiality of the report**

A point that requires further discussion is the confidentiality of the report. The report and the explanation are confidential and, in accordance with the university's Whistleblower Regulations, only known to the Executive Board. This fact presented the committee with the difficult question of how to deal with that confidentiality, where the whistleblower also sometimes speaks very critically in his report about colleagues personally and about events in which he believes colleagues were directly involved. When asked by the committee whether the report could be shared with the interlocutors, the whistleblower indicated that he wished to keep his report confidential. Given that the UvA's Whistleblower Regulations guarantee confidentiality of the report, the whistleblower informed the committee, would not have made his report without that confidentiality. After all, he had reported as a whistleblower to be able to talk freely about his concerns about abuses within the faculty without being sanctioned for it.

The committee respected this wish. This did mean that all those with whom the Committee spoke, had to rely on the whistleblower's opinion contribution in *Folia* of 18 January 2023 and on various other public sources (media publications and appearances, and tweets by the whistleblower) to get an impression of the main points of his report, including - and this did not always make it easy - where, for some people, the whistleblower's opinion included accusations of personally culpable behaviour. Nevertheless, for the sake of due diligence, the committee did not quote directly from the report, and referred as much as possible to the above-mentioned public sources.

### **Deliberation by the committee**

The committee also took note of a large number of written documents from the UvA, the FMG and third parties, such as the KNAW. Appendix 9 of this report lists several publications that played a role in the investigation and that could also inspire internal dialogue on academic freedom.

The committee then considered the information obtained in eight meetings and used it for two purposes: assessing the report itself and forming an idea of the culture within this part of the FMG in terms of academic freedom. This led to answering the investigative and advisory questions included in this report in Part 1 and Part 2, respectively.

After completing its investigation, it submitted the factual paragraphs of Part 1 of the draft report to both the whistleblower and the dean for a check on accuracy. The committee then finalised the report on 28 June 2023.

In the third part of its report, the committee has a freer role as it responds to the request of the Executive Board to consider in more detail the concepts of academic freedom, wokeness, safe spaces and ‘cancelling’, particularly in the context of university teaching and research. This consideration provides a background for the recommendations to the Executive Board and to the wider academic community in Part 2.

In writing its report, the committee had a lot of guidance from (partly scientific) literature on academic freedom and wokeness. Some of that literature can be found in Part 3 and Appendix 9. Furthermore, the committee took note of the answers given by the Minister of Education, Culture and Science to four sets of Parliamentary questions on the issue.

## **1.4 The concepts of academic freedom, wokeness, safe spaces, trigger warnings and fear culture**

Central to the whistleblower’s report are five concepts that require further interpretation and context. The recommendations of Part 2 and the background reflection of Part 3 of the report elaborate on them. In its interviews, the committee also consistently used the meanings below.

### **Academic freedom**

At the forefront is the issue of academic freedom and the threats facing it. The Higher Education and Scientific Research Act (WHW) limits itself to the provision that academic freedom shall be observed at higher education institutions. In its research, the committee uses a description borrowed from the Royal Netherlands Academy of Arts and Sciences (KNAW) (2021) wherever possible.<sup>5</sup> Academic freedom is part of the sphere of fundamental rights and is the principle that teachers and researchers at academic institutions can freely conduct their academic research, communicate their findings and teach.

Academic freedom is linked to an employee’s position in the exercise of their teaching and research at a university. It includes the content of academic education, the choice of research topics, the choice and application of one’s own research questions and methods, access to information sources, and the publishing and sharing of thoughts and information. Such publication may be through conferences and lectures, as well as through blogs, podcasts and other media (including social media). Academic freedom also includes inviting guests and guest speakers in the context of teaching, research, student development, and knowledge transfer and societal outreach, as well as the freedom to enter into memberships of academic societies and the freedom to choose one’s own academic and social cooperation partners. For students, academic freedom means the freedom to receive their education.

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5 KNAW (2021).

In public debate, scientists and scholars bear their own responsibility to distinguish between their scientific and scholarly perspectives and their opinions as citizens and to carefully qualify the nature of their input. When academics speak out on topics outside their expertise, they have limited recourse to academic freedom, but they do have freedom of expression. Even then, they should present their input carefully. The essence of academic freedom is that it protects university teachers and researchers from interference in their academic work (teaching, research and knowledge transfer) by external parties. But academic freedom is not absolute. Its exercise within an academic community with a legal mandate has several limits.<sup>6</sup> In Part 3, the committee explores questions about the essence of academic freedom and to whom exactly it is accorded.

### **Wokeness**

A second concept raised in the report is woke or wokeness. That concept is less easy to define, if only because it constantly changes its meaning and connotations. Initially, and still, it described raising awareness of large-scale and deep-rooted racism, inequality and social injustice in our society and in the world. Meanwhile, the term is increasingly deployed with a negative meaning; sometimes this was a result of the resistance evoked by the more radical supporters of wokeness. As such it is exploited globally, and also in the Netherlands, by various political movements. Moreover, it is noteworthy that both woke and anti-woke activists sometimes propose to exclude each other, or each other's views ('cancelling').

### **Safe spaces and trigger warnings**

Two other concepts are safe spaces and trigger warnings. The first concept is derived from psychotherapy and has now (also) taken on the meaning of places on university campuses, both physical and digital, where students (and teachers) can feel safeguarded from utterances or literature that might cause them psychological distress. According to many, however, the concept of safe spaces sits awkwardly in a university context, where people seek new insights and results in almost complete freedom, even if these confuse or perhaps even hurt. The lecture hall should also be a place where academic students can be confronted with ideas and views that are as yet unfamiliar to them. But the general opinion is that this place should be safe in the sense that everyone should be able to participate actively. After all, it is almost always about educating young, developing people. In fact, the lecture hall should be a safe place. A place where students should be able to learn fully, confront, make mistakes, and discuss freely with each other and with their teacher.

The concept of safe space also includes the concept of trigger warnings: This concept means giving students a warning in advance about a film, image, text or lecture, indicating that the viewer or reader should prepare for violence, racism or sexual abuse, which might reawaken (trigger) traumas they may have experienced. Such warnings can be a good idea under circumstances when they contribute to the sense of intimacy in the classroom.

### **Culture of fear**

A fifth concept that appears in the report is culture of fear. That term too has no single definition, but there are two useful concepts that show the opposite of a culture of fear, namely social and psychological safety.<sup>7</sup> In a recent opinion (2022), the Royal Netherlands Academy of Arts and Sciences (KNAW) uses the following definition of social safety: 'Social safety refers to those interpersonal relationships. In a socially safe learning and working environment, people do not feel threatened by the behaviour of others and can be confident that they can put forward a dissenting opinion or new facts without being insulted, humiliated, intimidated or silenced.'<sup>8</sup>

6 Isaiah Berlin (1969). Vega, J. (2020).

7 Glassner (1999).

8 KNAW (2022).

Moreover, in the context of fearless, or fear-free organisations, the term psychological safety is also often used.<sup>9</sup> The term psychological safety is similar to social safety, but goes further, emphasising as it does the ability and permission to take interpersonal risks in groups. Psychological safety is characterised by the belief that the work environment is safe enough to take (interpersonal) risks. It ensures that people feel free and invited to speak out, suggest ideas, share information and knowledge, and enable groups and organisations to learn. A lack of psychological safety can occur between (groups of) employees; and therefore also within organisations.

## 1.5 The whistleblower and his report

### The whistleblower

The whistleblower, currently a part-time (0.3 fte) lecturer in a permanent position at the Faculty of Social and Behavioural Sciences (FMG), applied to the Complaints Committee of the University of Amsterdam on 27 November 2022, invoking the UvA's Whistleblower Regulations. From 2008 to 2021 the whistleblower was a lecturer and also, for quite some time, coordinator within the 'Summer Institute on Sexuality, Culture and Society' offered by the Graduate School of Social Sciences of the FMG. This coordinator is responsible for the content of the programme. This summer school involves directing eight modules. The whistleblower was hired separately for the summer school, alongside his part-time appointment at the FMG.

The whistleblower has not (yet) obtained a PhD, and had several publications to his name at the time of his report, mainly on anti-gay violence, the legacy of the sexual revolution and gender-based inequality. Five of these are scholarly publications and they are all co-authored (2009, 2011, 2013, 2017, 2019). Furthermore, there are other types of publications as well as blogs and media appearances. At the time of his report, the whistleblower had no scientific publications to his name on non-binarity, one of the topics the report addresses. The whistleblower later sent a file containing several texts. According to his explanation, four of these concerned scientific articles, all co-authored with an emeritus professor of the UvA, which were under review. The file did not reveal to which academic journals they were under review. As far as the committee could ascertain, these texts dated from after the report. The committee took note of their content.

### The whistleblower report

Because the report itself is confidential, the committee draws only limitedly on the text of the report and its substantiation in its - public - findings, but supplements it with expressions that the whistleblower has subsequently made in the same line in the public space. The whistleblower reports "serious institutional abuses at the FMG of the UvA leading to an acute and fundamental threat to academic freedom and the quality of education and research".

In his report, the whistleblower said

"... for some years now, a worrying radicalisation [can be seen] among both students and staff, who are becoming increasingly entrenched in extremist ideology and pervasive politically-correct thinking (also referred to in the national media as *woke* thinking)."

It would involve

"... a minority of both staff and students (I estimate around 10-20%), but they are very fanatical, vocal and strategic". The whistleblower therefore "sees this small minority making an increasing mark on 1) classroom culture, 2) collaboration between colleagues and 3) the governance culture of the UvA in general and the FMG in particular."

<sup>9</sup> Edmondson (2018); Lei (2014).

This would make it increasingly difficult

“...to talk freely, think freely, teach freely and do research freely at the FMG. Although this mindset is particularly pervasive at the FMG, this is a wider problem at the university. A similar culture of fear is also gripping other faculties, with colleagues and students with academic and social positions that diverge from UvA norms being attacked, dismissed and sometimes even fired.”

According to the whistleblower, all this “now has serious implications for the quality of teaching and research, and the pluralistic scientific debate, which is a necessary condition for free and high-quality academic knowledge exchange”. He calls “for immediate action to restore academic freedom at the faculty”.

### **Opinion in Folia**

On 18 January 2023, the whistleblower published an Opinion in the university magazine Folia in which he wrote that a woke culture threatens academic freedom at social sciences. The whistleblower feels that “the teaching and research climate at social sciences is no longer tolerable under the influence of the ‘woke culture’ within the department”: “I am increasingly made to feel that I am a bad person.” Specifically, his concern and experience is:

“The diversity policy in its current form is a Trojan horse, bringing radical ‘woke’ ideology into the organisation and normalising it at lightning speed. While the UvA increasingly explicitly positions itself in communications as morally superior because of the diversity policy, academic freedom is teetering, under pressure from increasing political correctness and dogmatic left-wing ideology, particularly in the social sciences.

I experience this myself, as an interdisciplinary social scientist working on topics such as gender and sexuality, multicultural society and corona policy. Although I too identify as leftist and progressive, there is less and less room for the work I do and the positions I claim based on scientifically based argumentation.”

The whistleblower sees these developments taking place in several areas. In mid-2021, he wrote in Folia how the mainstream is dominant regarding covid policy and the measures that have followed from it, both within the UvA and in wider society. In particular, ‘banning unvaccinated people would go against the principles of good science’. Later, in a post on Facebook dated December 2021, the whistleblower made a connection between the obligatory vaccination then under consideration and ‘Mengele’.

The whistleblower recognises similar developments in thinking about gender. He wrote about this in Folia on 18 January 2023:

“For example, from my expertise on androgyny, I am critical of the phenomenon of ‘non-binary’ and its obsession with pronouns. I see this phenomenon as empty hype in ultra-modern society, with no scientific basis in biology, psychology and anthropology. There is solid evidence for the existence of masculine women, feminine men and transgender people. But emancipating a minority group entirely outside the ‘gender binary’ is, in my view, a dangerous and pseudo-scientific aberration.”

This contention about the lack of a sound scientific basis for non-binarity, and what it should lead to, the whistleblower repeated and elaborated in many tweets, interviews on radio and TV, and in opinions and blogs. While doing so, he often stressed that he was in serious danger of being fired.

Even after the committee was established, the whistleblower frequently expressed (among other things) his concerns about academic freedom at the UvA and at Dutch universities in general. The committee took note of this, but focused its investigation on the report itself and involved subsequent expressions only when it was appropriate in order to do sufficient justice to the report.

## 1.6 The assessment of the whistleblower's report

The first interview with the whistleblower was used to allow him to explain his report and to hear from him everything he felt was relevant to the report; the whistleblower reiterated the importance of viewpoint diversity as part of the quality of education and research. After all interviews had been conducted, the committee used the second interview to test the findings from the other interviews with the whistleblower as part of the adversarial process. In the interviews with administrators, colleagues, other staff and students, the committee asked all interlocutors to what extent they recognised the elements in the report, primarily the threat to academic freedom. In the interviews, this was not recognised, with many pointing to the lack of evidence to support the claim that 'academic freedom' is under threat within the ISW programme, within the wider faculty and even across the entire UvA.

However, the committee did hear some examples of a somewhat similar nature to those referred to in the report, for instance apprehension about 'wrong' choices of terminology or literature, an anti-Western basic attitude in some teachers, a dominance of woke students, or primarily 'leftist' perspectives in some working groups.<sup>10</sup> The interviews showed that such experiences are talked about among students and teachers and that ways of dealing with them are also discussed in a meetings set by the programme director. Therefore, according to the committee, these examples do not point to a structural form of exclusion of individuals or views, nor to an excessively woke culture.

In the interviews, almost all interlocutors were of the view that the whistleblower was, and had been, free to make his point, for example about the importance of diversity of perspectives, but that they were (in some cases deeply) troubled by the way he did so (and has done so in the period since filing his report). The dismissal and/or denial of the right to exist of non-binary people in particular – as is was experienced by many – also led to a mixture of hurt, misunderstanding and anger.

On the part of students who identify as non-binary, the interviews indicated how painful it was for them "to have to defend your existence and who you are, and read that the person attacking you is invoking his academic freedom". Such a denial, some felt, might be possible in a public debate, but not in a community on academic education.

The academic researchers with whom the committee spoke were critical of the fact that a fellow teacher, who did not have a PhD, was "so adamant" and "unscientific" about gender issues without having himself published scientifically on the subject. At the time of reporting, the whistleblower had published scientifically on homophobia but not on gender identification. He taught as an academic coordinator and lecturer at the Summer Institute on Sexuality, Culture & Society, and in the field of diversity and inclusion (D&I) he is in professional practice for his own company. Around gender and non-binarity, at the time of reporting, he had only written blogs, and opinions in newspapers and in the university paper. His teaching within ISW is about philosophy of science in a broad sense, and within that, *Science and Technology Studies*. Like students and fellow teachers, researchers and some department chairs said they appreciated the whistleblower's call for discussion on thinking about woke at the UvA. His contentions about woke were generally not recognised; however, they did recognise serious external threats from the anti-woke direction. Interlocutors expressed particular difficulty with the way the whistleblower takes a position: it was considered neither academic nor collegially appropriate. Some felt that in doing so, the whistleblower himself made impossible the very debate he wished to invite.

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<sup>10</sup> See Nijhoff's UvA bachelor's thesis (2022).

One of the themes in the discussions was how and to what extent academics are free to say what they want extra-murally (outside the walls of the university) - this concerns the relationship between academic freedom and freedom of expression. It was striking that many do not know what the prerogative of academic freedom entails in practice in that respect, nor that it comes with responsibilities. Not so much where it concerns the space for UvA employees to express views within their own expertise (*on-topic extra-mural free speech*), but especially what the space is for expressing personal views outside one's own expertise (*off-topic extra-mural free speech*) - and where the right of academic freedom and the (fundamental) right of freedom of expression meet and might even clash. This issue is of great importance, on the one hand because, in line with their statutory third task, universities (should) encourage their staff to contribute from their expertise to the social and political debate outside the walls of the university. On the other hand, because the distinction between scientific perspectives and personal views is not absolute and sometimes difficult to make, especially for the outside world. The committee discusses this in more detail in the recommendations of Part 2 and in the background reflection of Part 3.

### 1.7 Assessment of the content of the whistleblower's report

In accordance with the research design, the committee delved into the contentions in the report, took note of the information submitted, and checked whether these contentions in the report were recognised by teachers and researchers, students and administrators and, if so, to what extent.

The committee has come to the conclusion that there is no (as the report puts it) "serious institutional wrongdoing within the Faculty of Social and Behavioural Sciences of the UvA and in the Interdisciplinary Social Science programme, leading to an acute and fundamental threat to academic freedom and the quality of teaching and research" nor is there, as Article 1 of the recently enacted *Wet bescherming klokkenluiders* (Whistleblowers Protection Act) elaborates, "an act or omission that does not merely affect personal interests, but there is a pattern, a structural character, or an act or omission that is serious or extensive". It also did not find a widespread culture within the faculty in which people do not feel free to speak out, to suggest ideas, to share information and knowledge, and to enable groups and organisations to learn; or, in the words of the whistleblower: in which colleagues and students with academic and social views that deviate from UvA norms are attacked, dismissed and sometimes even fired. In its interviews, the committee found a more open culture than the whistleblower describes. This applied to students as well as employees and administrators.

#### Findings relating to faculty and programme

The committee bases that conclusion on the following findings:

- 1) Everyone the committee spoke to, felt that the lecture hall should provide an environment where every student feels free and safe to participate, regardless of political, cultural, religious or gender orientation; where students and teachers can learn from each other, make mistakes and change views; and where there is space to engage and debate with each other.
- 2) All interlocutors valued an environment where students learn from, and deal with, minority views. Valuing minority opinions in a fruitful way requires tolerance and an open attitude from both teachers and students. Students, once graduated, will desperately need these in their future careers as well. The committee heard of many creative, educationally sound ways to promote that.

- 3) The committee noticed that when asked, none of the students or lecturers interviewed asked for so-called safe spaces, i.e. an environment where students feel protected within the academic context from controversial scientific or social views or expressions. FMG's policy is not to work with trigger warnings as a rule.<sup>11</sup> Nor did the committee hear any pleas to change that. However, the committee did hear good examples of discussing potentially intense topics in education with students in advance. Sensing when such announcements might be useful should, after all, be left to the professionalism of the lecturer, the interviews revealed. No one advocated offering the option of leaving the lecture room or leaving literature unread.
- 4) The use of non-binary personal pronouns, with which the whistleblower feels some have an 'obsessive' relationship, generally appears to cause few problems among lecturers and researchers or students the committee spoke to. Especially as most students show understanding in case of any mistakes by or slips of the programme's staff. The committee sees that the discussion on identity sometimes requires new didactic repertoire from lecturers; as times change, so do students and lecturers. Whereas some lecturers manage to cope quite easily with the sometimes fiery discussions on identity and the desire of students or colleagues to be referred to with the correct personal pronouns, others occasionally feel somewhat out of place. Several interlocutors informed the committee that they would like to be better supported in this matter.
- 5) The political orientation of students and teachers within the programme also came up in the interviews. It was recognised that the ISW programme could be characterised as 'quite left-wing' and 'progressive'. Even so, the committee was nevertheless assured by lecturers and students, that FMG and also ISW attracts people from a broader political-social spectrum. Students and lecturers with different perspectives and social backgrounds are given sufficient space to accommodate their views and perspectives in their teaching and research. The committee spoke to some students with such an 'other' social-political orientation. They told the committee that although it takes a bit more guts from them to put forward their point of view in the study group or in the lecture hall, there is no reason for concern as long as lecturers take the importance of respecting the necessary diversity of political orientation seriously - which, according to these students, is almost always the case. It was mentioned that outside the lecture hall, in social contexts, students are sometimes less likely to give each other that space.
- 6) The ISW programme has its own advisory diversity task force. This task force, in which the whistleblower has been active for some time, was an initiative of the programme director in late 2020. In the interviews, the lecturers participating in this task force stated that they feel it is their mission not to brush away the diversity of perspectives and background that exists within the programme, but rather to make it productive. The whistleblower indicates that, especially towards the end of his membership of this task force, he no longer felt safe and heard in these discussions. The straw that apparently broke the camel's back for him, was the possible introduction of a new policy under which so-called microaggressions were inventoried and recorded. The whistleblower states that he called in vain for attention to avoid a counterproductive blaming and shaming that would be reinforced by such registration. However, the committee found no evidence of the introduction of such a policy, either in the interviews or in the written information obtained.

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11 See FMG document 'Policy on free speech and safe space' (included below in Appendix 5).

- 7) The committee further noted that the importance of academic freedom is recognised by the Executive Board. The speech on the occasion of the opening of the 2022-2023 academic year by president Geert ten Dam demonstrates this. In it, Ten Dam sought “a robust public sector” and “a safe, strong learning culture”, but also warned against protecting students too much. “Safety is a great good, and we do not tolerate disrespect and transgressive behaviour. But where feelings of insecurity are linked to the content of our education, we find ourselves on a slippery slope,” she said.<sup>12</sup>

The committee finds convincing the way the president positioned her university as a community in which there is no place for exclusion of individuals and of views. It is also consistent with the way teachers spoke about the challenge of achieving freedom and openness in education, although many interlocutors were not familiar with the president’s speech.

Peter-Paul Verbeek, the rector magnificus of the UvA who took office in October 2022, has spoken at length on the subject of academic freedom, including the various areas of tension, initially as chair of the Royal Netherlands Academy of Arts and Sciences (KNAW) Committee on the Freedom of Science, and now also as rector of the UvA.<sup>13</sup> The committee does note, however, that neither lecturers nor students referred to such pleas by Board members, although administrators did. The step from vision to implementation requires more - and the committee will return to this in its recommendations.

- 8) The committee also delved into the annual reports of the past six years of the university complaints committee, the confidential advisers and the ombuds officer. If there were a culture in which academic freedom was acutely threatened, this concern would possibly be reflected in the consulting rooms of these officers. But the topic does not come up in the reports. The concept of academic freedom does not appear; although that may be because violating academic freedom is not mentioned in UvA’s complaint mechanisms as a behaviour that can be complained about. The same applies to the diversity of viewpoints, the importance of which the whistleblower rightly stressed.

#### **Findings relating to the whistleblower’s experience**

The fact that the committee did not find any institutional wrongdoing based on the above, does not exclude the possibility that what the whistleblower himself experienced could still point to wrongdoing. Therefore, in so far as it was able, the Committee also investigated whether the whistleblower might have been structurally limited in his own academic freedom in an impermissible way or suffered from a culture of exclusion. But in the committee’s view, there are no indications of this.

The committee bases this conclusion on the following further findings:

- 1) As has been made clear above, the whistleblower has actively participated in the diversity task force for some time and, as far as the committee has been able to establish, he has been able to put forward his ideas on diversity in it. He has been free to put the topic of viewpoint diversity on the agenda within the programme and within the faculty, and he has taken advantage of this.

<sup>12</sup> Ten Dam (2022).

<sup>13</sup> Verbeek (2023). Although the date of the speech fell outside the research period, it closely follows an earlier interview of Verbeek, then as chair of the KNAW’s Committee on the Freedom of Science (HOP, 25 August 2021), and, for the committee, gives colour to the tone at the top now at the UvA.

- 2) In spring 2022, the whistleblower was not selected to teach a prospective course twice. In one case, it involved a part of the Gender & Sexuality minor. The whistleblower had been offered the chance to submit a proposal for a course after another teacher dropped out. In the committee's view, it is up to the programme director (in this case, the coordinator of the minor in question) to decide on the allocation of subjects and courses to lecturers. The opinion that the whistleblower's proposal was not in line with the state of the art in gender & sexuality studies cannot be construed as a restriction of his academic freedom, but the committee sees it as a subject-related decision by the person responsible for this minor. After this decision, as far as the committee could see, no conversation followed about what it means for the whistleblower that his expertise is no longer considered in line with the state of the art in gender & sexuality studies.
- 3) The other case did not involve a new course, but the whistleblower's long-standing teaching and coordinating role in the Summer Institute on Sexuality, Culture & Society. The whistleblower had an online discussion with its director in December 2021 about the (in)admissibility of his post on Facebook comparing a vaccination requirement against covid to the practices of Nazi criminal Mengele. To this, the director of the UvA Summer School responded, on Facebook, by saying "then this is where we part ways". The whistleblower saw this as a dismissal from his role as lecturer and coordinator of the Summer Institute. The parties interpreted the exchange of words (via Facebook) differently, it seems. But what is certain is that no more formal action followed, either to terminate the whistleblower's position as lecturer or to reinstate it. That both sides left it at that, to the committee's surprise, and that the whistleblower's long-term role at the Summer Institute thereby came to a de facto end, does not so much say something about academic freedom, but seems to indicate a (too) informal way of dealing with conflictual situations, in which the formal roles (such as those of supervisor, subject coordinator, education director, etc.) are not explicitly fulfilled. The fact that the colleagues within the group had known each other for a long time and were good friends seems to have played a role here.
- 4) Two days after the whistleblower's Opinion in Folia, the ISW programme director distanced herself from that opinion in an internal communication on the electronic learning environment. This message, apparently after being leaked, contributed to the outcry, but the dissociation by the programme director is not seen by the committee as a restriction of the whistleblower's academic freedom. In the message, the director wrote that ISW is a programme where everyone is welcome and can count on respect for their own identity. This administrative response did not make a reference to the fact that to speak out on such issues falls within the whistleblower's academic freedom. The committee believes that university and faculty administrators should keep their distance from the content of academic education and research. That is part of academic freedom. However, this act was not a restriction of the whistleblower's academic freedom; it was an understandable administrative response by the education director who wanted to indicate that students who identify as non-binary are welcome. Moreover, her response was aimed at the internal community; including the ISW students, who until the Folia article two days earlier had not known about the content of the whistleblower's report. The whistleblower himself told the committee that he should have made a clearer distinction between his freedom to ask questions about the concept of non-binarity, and the importance of students feeling welcome and respected in who they are.

- 5) Two days after the opinion in Folia, some students called on the Executive Board on Instagram, to take a stand for the inclusion and social safety of non-binary persons. They also called for the whistleblower to be suspended as a lecturer. A call to suspend a lecturer by students has no place in an academic community of students and lecturers. In the interviews, the senders informed the committee (of their own accord, and this is important to the committee) that this call was intended as a means of gaining administrative attention from the UvA, but in hindsight should not have been made in this form. The students had also been admonished internally about this by lecturers in the Gender and Sexuality department, with the result that after the initial appeal, which was since withdrawn, a modified petition was published with a more general appeal to the Board that “the UvA actively position[s] itself in support of the rights of non-binary people”.<sup>14</sup> That petition did not call for suspension and in the period thereafter, in the committee’s opinion, the students kept an appropriate distance from the case pending the outcome of the investigation.
- 6) The committee notes that the whistleblower faced a lot of opposition before and after his report. This was partly about his views on the covid-19 approach, partly about his ideas on homophobia and on the future of gender studies and emancipation movements. This pressure did not only come from colleagues and students. However, the committee was unable to verify a threat of dismissal in the run-up to the report, which the whistleblower references in his report and in many expressions afterwards. Also, the formal warning the whistleblower received in spring 2022 because of his Mengele comparison was, as far as the committee has been able to establish, not intended as a threat of dismissal. The committee understands that this pressure must have been, and still will be, very tough for the whistleblower himself. The committee suspects that this aversion within the programme and the faculty was due in part to the way in which the whistleblower sought to make his points about identity, about covid-19 policy and other social and administrative issues. At the same time, as a part-time staff member with no research time, the whistleblower has felt increasingly less valued by the groups of which he had been an active member for years.

### 1.8 Is there nothing going on? Some observations drawn from the interviews

The committee’s assessment that it found no institutional wrongdoing regarding academic freedom within the programme and the faculty, does not mean that it does not have concerns. In its assignment, the Executive Board asked the committee for recommendations for the faculty’s administration, to provide a richer ‘action perspective’ to remedy possible identified abuses. Other parts of the UvA could also benefit from this, according to the Executive Board.

To add to its opinion on the report, in this section, the committee would like to give some observations following the interviews it conducted. Based on these observations, the committee makes several concrete recommendations in Part 2. Indeed, in the course of its investigation, it has become increasingly convinced that thinking about the day-to-day practice of academic freedom for staff should be higher on the UvA’s agenda. The committee’s background reflection in Part 3 of the report shows that academic freedom in the Netherlands has been curtailed over the years; it is therefore not absolute. But *for that very reason* it deserves more attention. The inaugural address by the president in 2022, which is important in this context, seems to have had very little practical substance and follow-up within the university as yet.

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<sup>14</sup> Specifically, the students asked the Executive Board: “(i) That students who do not feel comfortable attending classes taught by Laurens should not face any consequences; (ii) That non-binary people be invited to actively contribute to the conversation about the social-safety of non-binarity at the university; (iii) That the UvA takes serious steps in implementing policy to ensure the safety and inclusion for non-binary people at the university.” See: <https://www.openpetition.eu/nl/petition/online/make-the-university-of-amsterdam-a-safe-place-for-non-binary-people>

Universities worldwide, and also at home, run the risk of losing the obvious respect they could long count on, as a result of the increasing grimness of social and political debate. This is a fate that universities share with, for example, the judiciary and journalism. Just as one must protect the independence of the judiciary and the freedom of the press, actively monitoring and promoting academic freedom and institutional autonomy is an urgent task for universities, where administrators, colleagues and students must stand firm for each other, and where diversity and inclusion must be allowed to reach their full potential in an atmosphere of good collegial relations. Reports that conclude that academic freedom is also declining in Europe and sometimes specifically the Netherlands are piling up. Besides direct interference from politics, the factors mentioned concern three aspects: research funding, temporary contracts and a lack of social safety. This development is strongly intertwined with the pressure on the institutional autonomy of universities.

### **Threats**

Firstly, the social development in which excluding each other seems to become more important than seeking each other out, may also have repercussions on teaching and research at universities. Already a major concern is the increasing aggression in society towards scholars and scientists. This aggression is certainly felt among academics in fields that deal intensively and interdisciplinarily with social, normative and sensitive issues, as several interviews revealed. Increasingly, they - often women, but certainly not exclusively - are intimidated and belittled or even physically threatened.<sup>15</sup> Apart from causing fear, this can also lead to self-censorship and other forms of unwanted restraint. Moreover, such intimidation can lead academic researchers to retreat back into their ivory towers that they have just left. The committee appreciates the increasing national focus on staff safety, but realises that this far from eliminates concerns for the physical, mental and academic integrity of staff.

### **Group processes and psychological safety**

A second development (which will be more important for one study programme or research group than for another) is of a more psychological nature. This concerns the question of whether academic freedom is not also threatened by internal group processes and group pressure; because of this, taking minority positions outside a dominant perspective could lead to a form of social exclusion. As a result, important other or divergent perspectives could disappear. In essence, this involves the tension between the concepts of academic freedom and academic community; between individual and collectivity. The committee clearly felt this tension during the discussions, and calls for this tension between academic freedom and university community to be firmly addressed. After all, an important mission of the university is precisely *not to exclude* staff with divergent views and perspectives. The whistleblower has rightly emphasised that point. In doing so, the committee is convinced that academic freedom is not opposed to the pursuit of a diverse and inclusive community, but that both are in dire need of each other. An academic community should not become exclusive in its pursuit of inclusion.

### **Choosing cooperation partners**

A third development that deserves more attention in the context of academic freedom are the discussions about with whom universities should or should not cooperate. Collaboration with other parties is necessary for universities today, and stems partly from their 'third task': transfer of knowledge and generating societal impact. External partners are also very important for research and education (think for instance of community engaged learning, but also of programmes with a strong vocational orientation).

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15 Shutter (2021).

A current discussion is the cooperation with the so-called fossil fuel industry, which for some is problematic in the light of social responsibility and the specific vision and mission of the (or of a) university. But also more broadly, there is the question on what grounds decisions are made to enter into or discontinue collaborations with governments, NGOs and action groups. In this development, too, the perspective of academic freedom and the institutional autonomy of universities still receives too little attention.

Also topical is the (apparently rather confusing) situation in which universities have found themselves in the so-called Knowledge Security Dossier. This involves cooperation with knowledge institutions and researchers from countries such as China and Iran. A possible ban on cooperation restricts academic freedom, namely the freedom of researchers and lecturers to pick their own cooperation partners. This development too requires more attention from the perspective of academic freedom.

### **Education**

A fourth development concerns students and teaching. After all, students share in academic freedom. Part of their freedom is that the education they receive should not depend on (as the explanatory note to the Dutch law puts it) ‘certain political, philosophical or science-theoretical views’. This means that students should feel free to engage in a conversation with the teacher about implicit or explicit assumptions without feeling intimidated by that teacher. These freedoms fundamentally make students a participant in the university community. How the conversations between lecturers and students should proceed back and forth from their respective freedoms requires more attention. The aforementioned speech by the president offers a good starting point, but, as noted, has as yet received little elaboration.

### **Academic freedom and freedom of expression**

Fifth, more thought should be given to how we can discuss in more concrete terms what academic freedom means in practice within a university community. For example, how it relates to the freedom of expression that is everyone’s right as a citizen in the public space (*extra-mural free speech*), but also how universities can deal with staff who are (very) politically active as private individuals (as senators, party officials or articulate party members, for example).

Consider also how free academics and students are to invite outside speakers with controversial perspectives on science. Thus, administratively refusing a speaker, just like threatening or disrupting their contributions, can signal to both inside and outside scholars to be more cautious and restrained than their academic and social position requires (the *chilling effect*). This can easily become a slippery slope for, ultimately, *all* students and *all* staff and thus requires attention.

Another worrying development is the increasing number of attempts from society (often through social media) and politics to draw university administrators into the substantive scientific debate, when it is precisely they who have no role in it. Linked to this are dilemmas for the Executive Board, deans, managers, education and research directors, namely how they should relate to the scientific and personal expressions of their staff and former staff. This development also requires more attention.

Against this background, in Part 2 of its report, the committee makes several concrete recommendations to the Executive Board and the UvA university community. And with its background reflection in Part 3, the committee hopes to contribute to the necessary knowledge about the content and scope of academic freedom and to its promotion - hopefully not only within the UvA.

## 2. Recommendations to promote academic freedom

Universities should, in the words of American sociologist Robert K. Merton, be places of *organised skepticism*.<sup>16</sup> Wanting to be such a place requires everyone in the university to exhibit more interest in question marks than exclamation marks.

So when it comes to academic freedom, there is a task not only for administrators but for everyone within the university community. Universities have a unique mission in training new generations of students to become the experts and leaders of the future, essential for solving the big problems facing society and the world. Trust in the university as guardian of science is crucial at a time when science seems ‘just another opinion’ to a growing number of people and scientific problem analyses are brushed aside with observations such as ‘oh, there are so many academics’. In this sense, universities are one of the pillars of a free democratic rule of law, and should set an example to society.

Following the Maagdenhuis occupation in spring 2015, the UvA engaged in an intensive discussion on diversity, inclusivity and social exclusion.<sup>17</sup> The perspective of academic freedom has so far been only a limited part of that discussion. The committee is convinced that academic freedom and diversity & inclusion are not opposed to each other - as it may seem at times - but very much need each other. Thereby, besides aspects of diversity such as gender, skin colour, age, sexual orientation, and experiences and perceptions, diversity of political views and of academic perspectives are also an essential part of inclusion and academic freedom at the university.

Current events raise growing concerns about academic freedom, including institutional autonomy. This makes the conversation about the practice of academic freedom and the more relevant, and certainly not only for the UvA. The committee refers, for instance, to very recent reports by the European University Association (EUA, 2022), the League of European Research Universities (LERU, 2023), the European Parliament (EP, 2023), and to the research under way in the Netherlands on self-censorship, academic freedom and limiting diversity of perspectives in teaching and research (parliamentary motion proposed by Van der Woude). The committee also calls attention to the Royal Netherlands Academy of Arts and Sciences (KNAW) report by the Ellemers Committee ‘Social safety in Dutch science - From paper to practice’ (2022) which offers numerous practical recommendations on how to get along better within universities.<sup>18</sup>

In addition to its opinion on the whistleblower report, the committee makes ten recommendations for promoting academic freedom. In doing so, the committee primarily addresses the UvA, but hopes that the recommendations will also resonate with other Dutch universities; by no means will the recommendations concern the UvA alone. The committee notes that much of what it recommends is also - *mutatis mutandis* (considering some fundamental differences) - relevant to Dutch universities of applied sciences.

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16 Merton (1973).

17 Diversity Committee University of Amsterdam, ‘Diversity is a verb’, 2016; Diversity Memorandum, University of Amsterdam, 2019.

18 A useful book is also Ellemers & de Gilder (2022).

## 1. Demonstrate that academic freedom is a core value in the university

The background reflection in Part 3 of this report shows that the restrictions on academic freedom have become more extensive over time. Each new limit or curtailment viewed in isolation has had a reason or trigger, some perhaps more convincing than others. This development has been incremental.

According to the committee, that does require every effort to continue to give substance to or redefine academic freedom in practice. After all, the essence of that freedom is that it protects teachers and researchers from impermissible interference in their teaching and research by administrators and managers, by politicians and those in power, by public and private funders, and by students and colleagues among themselves. But it is broader than that. It is important to demonstrate that breadth.

Recognise that academic freedom as a core value contributes to the social responsibility of every university. The UvA specifically, phrases its social responsibility as educating people ‘who tackle societal problems’ and thus shape ‘the world of tomorrow’.<sup>19</sup>

Also, realise that if academia is unable to conduct that conversation about academic freedom itself and does not manage to come up with a robust policy, it will become a political plaything of the polarised relationships in society, (party) politics and the (social) media. This is a threat for academics and can be damaging to the trust in university research and education. So, the stakes are quite high.

As a university community, therefore, it is important to actively discuss academic freedom - both the space it offers and the limits to it - and do so as concretely as possible; think of examples of difficult situations (*‘critical incidents’*<sup>20</sup>) or dilemmas. Bear in mind that the concept of academic freedom encompasses much more than research alone.

But good conversations alone are not enough. There is a need to embed academic freedom, as a fundamental right, more firmly in the university’s culture, in its three primary processes, namely research, teaching and knowledge transfer to society, and in the administrative portfolios of the rector (or president) and deans. The university magazine *Folia* has already provided several useful and balanced suggestions, also pointing out the major differences within the UvA when it comes to issues such as academic freedom and wokeness.<sup>21</sup>

## 2. Involve students in the discussion about academic freedom

University education should provide an environment where every student feels free and safe to participate. Where students and teachers can learn, make mistakes and change views, and where there is ample space to engage and debate with each other - an environment also where one learns from, and learns to deal with, others’ views, regardless of minority or majority. An environment, in short, of more questions than answers.

It is therefore crucial to involve students in the conversation about academic freedom. Students do not have the same academic freedom as their teachers. For students, academic freedom means first of all that they should be able to pursue academic education without being forced to accept certain political or scientific or scholarly doctrines. At the same time, they must learn

19 “Inspiring generations”, UvA Institutional Plan 2021-2026.

20 See, for example, Flanagan (1954).

21 See Schoemaker (2021). The article illustrates how far one can get if one engages in conversation. See also the article by investigative journalist Dillen (2022), with an analysis of the main points of contention. It is a report of a comprehensive analysis among 13 universities and eight colleges.

that, in practice, academic freedom also comes with the task of linking curiosity and responsibility, as UvA rector magnificus Peter-Paul Verbeek put it.

If students do not agree with the way lecturers within their study programme use their academic freedom, they should be able to speak directly with their professors and lecturers or turn to the programme committee or the student council. To do so, they must be able to easily be heard and receive a response in a straightforward manner. That is how it should be in the university. Filing a formal complaint, objection or report should not be necessary.

Trigger warnings are only useful as a conscious didactic choice by the lecturer to prepare students for topics that are potentially painful or intense for them, such as violence, racism or sexual abuse, topics that could reawaken (trigger) previously acquired traumas. In any case, they should not be intended as an invitation to leave a lecture or leave a text unread. The didactic literature provides a large number of options for teachers to discuss intense topics in the *intimacy of the classroom*. Make use of this, in the Basic Teaching Qualification (BKO) course as well.

Outside the open learning environment, the campus also has, in principle, no safe spaces where students and staff come to feel protected from expressions or literature that are controversial for them, not even within the study associations associated with the academic programmes. However, there is always room at every university for students to build their own communities of more or less like-minded people.

### 3. Invest in a community that can sustain academic freedom

Consider the media, including social media and university magazines, as tools to engage in conversation and debate with each other, but do not allow those tools to replace face-to-face conversation and debate. The covid-19 period has greatly hampered those personal, non-digital contacts, and this has had a negative effect on the university as a community, according to several interlocutors. That community does not seem to have recovered yet. So investment is needed in places and encounters where there is space to talk to each other about the values that people share, or perhaps have different ideas about.

Investing in the community also means giving staff members time to meet each other. Especially in a programme like ISW, without a physical 'home base', lecturers – and especially those with a part-time appointment consisting only of teaching – do not easily meet outside their teaching classes.

Scientific integrity and academic freedom are at risk if social safety is not in order, the KNAW's Ellemers Commission remarked in 2022. Academic freedom comes not only with privileges but also with responsibilities. For instance, within the academy, people must interact with each other in a professional and respectful manner *precisely* to be able to challenge each other on a scientific and academic level.

The committee believes that complementary to the concept of social safety, the concept of psychological safety is helpful, because the misunderstanding is sometimes that a socially safe organisation is one where everyone is mainly being nice to each other, or where people constantly agree with each other just to keep a positive atmosphere. The concept of psychological safety emphasises the importance of interpersonal risk-taking in groups.<sup>22</sup> Such a psychologically safe work environment consists of an open culture with a free exchange of ideas, where underlying premises, arguments and ways of arguing are given attention, and where space is created to make differences of opinion productive. A socially and psychologically safe environment is a prerequisite for academic freedom, according to the committee.

22 Edmondson & Bransby (2023).

Therefore, when talking about academic freedom, one must include the good manners of staff and students within the university community: how do we practice teaching and research together, how much space do we need and how much space are we willing to grant each other, which boundaries of collegiality and manners should we respect and certainly also: how do we formulate academic freedom in our university rules of conduct without these hanging over every lecturer and researcher like a sword of Damocles. The latter could, for instance, be the effect of a provision in the UvA's Code of Conduct (2020) that states that “undesirable behaviour [exists] as soon as one of those involved can reasonably perceive it to be so”. However well-intentioned, such wording in a set of rules may result in not having the conversation about academic freedom, out of fear of a complaint.

#### 4. As administrators, keep a distance from the content of research and teaching

In principle, university administrators should not speak out for or against positions in academic education and research. Clearly, *not* doing so is the essence of academic freedom. After all, the university has no corporate view of ‘the’ truth and there are divergent views on what constitutes good science. However, administrators do bear responsibility for the quality and integrity of teaching and research. So interventions may well follow from that. But content should primarily be left to teachers and researchers and to national and international systems of quality control. There is no indication that UvA administrators allow themselves to be lured into that trap, but it is important to resist the temptation at all times.

Obviously, administrators *should* act as soon as the academic or, consequently, even the physical freedom of employees comes under pressure. At such a time, there is an important obligation for administrators to visibly protect employees or the academic community.

#### 5. Provide leadership that monitors and promotes academic freedom

In professional organisations, leadership is not necessarily the topic that gets the most attention. It is not a role that professionals aspire to - one does not go into academia because one can get a good management position. In fact, it is sometimes seen as a chore<sup>23</sup> and as something one had better not spend too much time on. Additionally, it is often unclear what exactly the duties, responsibilities and powers are.

Academic leadership within the university is characterised by the fact that leadership roles are often temporary. Employees are not only colleagues (even often friends, as the committee observed in the ISW programme), but also each other's managers, with sometimes one person being the manager of another, and a short time later that other person being the manager of the first again. In such an environment, where managerial roles change periodically, it is tempting to give the role as little formal content as possible, especially when interpersonal relations are good, or vice versa: when there are problems or potential conflicts looming.

The tendency to therefore exhibit as little leadership as possible is conceivable. But research shows that such *laissez-faire* leadership (defined as the absence of leadership, where leaders aim to avoid interventions) is ineffective even in professional organisations, and is associated with lower job satisfaction and lower satisfaction with the manager.<sup>24</sup>

Even in professional organisations, such as universities, a leadership position is therefore an active role that comes with responsibilities and powers, as the UvA also describes in its Strategic Plan.<sup>25</sup> Universities themselves have not paid much attention to this topic for a long time,

23 Stoker & De Korte (2000).

24 Bass & Avolio (1990); Judge & Piccolo, (2004).

25 “Inspiring generations”, UvA Strategic Plan 2021-2026), section 6.1.

although this is now changing, partly in the light of ‘Recognition and Rewards’. Especially if more social and psychological safety is needed, managers in the workplace can and should take the lead in this.<sup>26</sup> This requires a clear profile: what does the university expect from a manager in different positions? This also has implications for the selection, development, and assessment of managers. In addition, taking the subject of leadership seriously also requires available time and proper preparation of prospective leaders for their future role.

## 6. Incorporate academic freedom into the various internal university processes

Make sure administrators and managers know if and how staff and students experience academic freedom.<sup>27</sup> To that end, employees’ perceptions of academic freedom could be included in an employee survey, for example, for several years in a row. For students, the National Student Survey would be a logical place to include questions about academic freedom.

This also allows for a more empirical, and longitudinal perspective than the committee has been able to take, at whether perceived and experienced academic freedom is going in the right or wrong direction. Moreover, in this way, the *wider* university community is surveyed, making academic freedom an increasingly common topic. Academic freedom should also be a topic in the basic and senior qualifications for teachers. In that course, participants could be asked to develop their views on academic freedom. Moreover, managers could raise the topic in annual appraisals. There are also starting points in the national programme ‘Recognition and Rewards’, for conversations about the conditions for academic freedom (via open science, teamwork, academic leadership).

And make the perceived academic freedom in education a permanent element in the quality assurance of education: the work of programme and examination committees, teaching accreditations and research assessments. Remarkably for a core value, this is not yet the case at the moment. It is good to discuss how academic freedom is safeguarded in academic education. Especially as the current Dutch code of conduct for scientific integrity provides little guidance for education in this area and only comments on scientific research by students, and remains silent on the criteria that scientific education itself must meet. The starting point could be the earlier Netherlands Code of Conduct for Academic Practice (2014). That code explicitly stated how the various principles (honesty and diligence, reliability, verifiability, impartiality, independence and responsibility) should be interpreted for academic education.

Furthermore, ensure good internal and external communication about what the university stands for when it comes to academic freedom. After all, it is important that future students, including international students who may be used to different values at home, can know what to expect. In addition, it should be an element of the recruitment of new teachers and researchers. Students and staff should be able to make an informed and wholehearted choice for the UvA, even if they have a political, cultural, religious, or social orientation that is less prevalent within a study programme. Therefore, never let communications be guided by considerations of university ‘reputation management’.

Finally, always test the introduction of new university or faculty policies against the impact on the academic freedom of employees and, the committee would like to emphasise, always conduct the discussion widely within the university. Many new policies in organisations are produced and embraced mainly by ‘believers’ and the ‘converted’. But the university community is larger. Where, for instance, one person may be very happy about more inclusive language use

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26 Edmondson (2019).

27 More data is available on experiences of academic freedom in the UK, Adekoya et al (2020). A study on academic self-censorship in Dutch higher education and research was recently commissioned by the Ministry of Education, Culture and Science for the first time, Technopolis Group (2023).

within the university, another may resent the arrival of, say, a prescriptive style guide and worry about the impact of a ‘university language police’. So make sure that new university policies can really be widely discussed and criticised beforehand, so as to create broad support. That requires that the ‘silent group in the middle’ is also involved in policymaking. In addition to the crucial example of EDI policy, this applies for instance to policy development on cooperation with external parties.

## 7. Talk with each other about the relationship between academic freedom and social debate

Expressions by university staff who wish to contribute to social and political debate touch on both academic freedom and the freedom of expression that is granted to all. It is important that they distinguish between topics that lie within and outside their scientific expertise.

When it comes to external expressions that lie within the expertise of a teacher or researcher, the Netherlands Code of Conduct for Research Integrity provides guidance, for both academic publications and output aimed at wider audiences. They should then, according to this code, make clear both the possible preliminary nature and the background of their insights.

When it comes to topics *outside* one’s expertise, things get more tense. Society will not always recognise the distinction between the researcher or lecturer speaking out on topics that concern their expertise and topics that are (perhaps even far) outside that expertise. Of course, university staff, as all other citizens, have a right to freedom of expression. But they do have an additional responsibility to bear in mind. Their title gives them status and credibility, and the reading or listening public cannot always be expected to distinguish between the opinion of a concerned citizen, scholarly and scientific insights presented by an expert, and exploratory hypotheses or research questions proposed by academics.

In other words: university employees (and former employees including emeriti) with a recognisable affiliation with academic teaching and research should, according to the committee, adopt a more cautious or nuanced stance in the public debate than ‘ordinary’ citizens could do, even where topics *outside* their own expertise are concerned. Therefore, when discussing academic freedom, its tension with freedom of expression must be engrained.

It is a good sign that the UvA has a guideline for social media use: no threatening, no bullying, no personal attacks, no foul language or swearing or libel.<sup>28</sup> In such cases, the university says it reserves the right to remove such comments or texts. Moreover, posts that are “misleading or contain falsehoods and/or incorrect information” could be removed by the university’s administration.

This document can also be read as guidance for the use of an employee’s private accounts. In the interviews, however, many lecturers and students appeared to be unaware of it. The same appeared to be true of the UvA code of conduct, although for many the importance of good behaviour is obvious. The question of how to enforce it, for example with regard to so-called ‘misleading’, ‘untrue’ or ‘incorrect information’, is much harder to answer. So talk to each other about that.

<sup>28</sup> Comment policy for our social media accounts: <https://www.uva.nl/binaries/content/assets/uva/en/uva-social-media-comment-policy.pdf>. See also Appendix 4.

## 8. Professionalise internal handling of complaints, in particular with a view to academic freedom

At the university level, the University of Amsterdam has a number of rules of conduct, protocols, regulations, guidelines, statements, requirements, policies, and codes. But the UvA is also a highly decentralised organisation without very precisely defined frameworks of that decentralisation. In addition, faculties and study programmes often have their own, decentralised, rules. There is much to be said for that choice (or at the UvA: that reality) when it comes to implementation, but academic freedom (and that also applies to policies on diversity & inclusion) must take shape across the board, under the joint responsibility of the entire university community.

By extension, for regulations regarding that freedom and also regarding complaining and reporting, there is something to be said for commonality or university-wide harmonisation. For example, when it comes to rules of conduct, diversity policy or rules and guidelines on the use of social media or ICT facilities.

But the committee also advises against taking refuge in yet more rules of conduct and legal concepts. Quite apart from the traceability, knowledge and understandability of all these rules, it is worth remembering that rules as such are not enough to influence behaviour. Jointly establishing and consistently sharing some basic university values, good leadership, prevention, a culture of jointly discussing behaviour in the workplace, but also a transparent and diversity-oriented appointment policy, are also necessary. Because in the end, it is all about respect for each other and granting space to each other: among administrators and employees, among teachers and students, and employees among themselves.

Reports and complaints about infringements of academic freedom should be taken seriously. When a member of the university community indicates that another in that community is infringing on academic freedom, take them *both* seriously and support them - at least until further clarification. This applies to staff, students and administrators. Improve the provision of information to students and staff on where to go with suggestions, comments and reports or complaints. The committee noticed that there are many rules and bodies at the UvA, the distinction and overlap of which is not immediately clear. For example, the information about the various officers and bodies on the UvA website is structured by facility, i.e. presented from the perspective of supply rather than demand. The committee recommends that this structure be transformed, starting from the perspective of the person who wishes to raise a concern, and therefore that the 'signposts' (*wegwijzers*) be leading: who is reporting (employee, PhD student, student, former student, etc.), to what kind of behaviour or actions does the report relate, and in what relationship does the 'offender' stand to the reporter or complainant. The aim is to make clearer which route to take in which situation, and to avoid shopping around in different routes for the same case.

Finally, good feedback on whether and how a report or complaint has been handled is an important prerequisite for trust in (the safety of) the system.

All this is not just a UvA matter. In general, the KNAW's Ellemers Committee (2022) shows how the reporting structure within universities is characterised by a lack of clarity about where to turn and about the ensuing procedures. It also points to inadequate support once a formal or informal report is made or during a complaints procedure. Sustainable improvement of social safety at the university requires, according to the Ellemers Committee, an extensive change that takes time and will never be simple to achieve and maintain. Our committee also reaches that conclusion.

It recommends working together nationally (in a UNL context) on this wherever possible. With the rapidly growing cooperation between Dutch universities, with, for example, dual appointments at different universities and institutes, and students taking courses at different universities, and with the equally rapidly growing cooperation between universities and the business community, a national UNL review and harmonisation of regulations and complaints systems might be the obvious way forward.

### **9. Limit possible communication asymmetry in procedures**

Consider the communication asymmetry between (as in this case) complainants and whistleblowers on the one hand, and administrators, managers and colleagues on the other, even in matters - such as academic integrity - that are not strictly about academic freedom.

Over time, regulations have become more protective of whistleblowers, which is a big gain. But that also does have, to some extent, a downside. Regarding the report in question, the committee has noticed a considerable communication asymmetry between, on the one hand, a whistleblower who feels free, on the basis of a report that must remain confidential, to communicate and express his dissatisfaction regarding his case on a daily basis. And, on the other hand, an Executive Board, staff members and students within a study programme, who are bound by strict rules on privacy that aim to protect the whistleblower. The committee recommends that a new version of the UvA's Whistleblower Regulations seeks more reciprocity in the degree of restraint in external communication while an investigation is ongoing.

More importantly, the committee believes that the confidentiality of the report must not be allowed to make it impossible to honour elementary principles of hearing both sides of the case when assessing the report, especially if the report involves colleagues and/or students by name. The committee struggled with this at times, in a case that at the same time was fought so publicly. That too could be a task for the joint universities of the Netherlands in UNL context.

### **10. Keep away from woke/anti-woke fights and combat the cancellation of colleagues and guest speakers**

In only a few years, the term woke has developed from a term used to describe an agenda that tries to counter prejudice and institutional exclusion, to a term that is also used in a strongly negative sense in position statements in which one does not seem to be substantially interested in the perspectives and arguments of the other. For a section of (party) politics and the media, the woke/anti-woke-frame even seems to have become a useful and mediagenic frame. But the university, focused as it is on academic education and research, should be the last place for such dynamics. It must be emphasised, therefore, that researchers, teachers and students who do not wish to listen to each other, do not grant each other space or prefer to avoid or even exclude each other, undermine both their own message and one of the university's core values.

When it comes to woke and anti-woke, it seems wiser to have a debate about it, rather than to condemn and exclude each other in advance. A potentially appropriate way to do this was found in a Comenius Project called Woke and Resistance, at the University of Humanistic Studies. In this project, students and staff come together to discover how to work together as agonists ('critical cooperatives'), rather than as 'distrustful antagonists'. In seminars, dialogue afternoons

and workshops, they try to translate difficult and abrasive issues into curriculum revision together in fruitful and concrete ways, taking into account diverse views.<sup>29</sup>

When it comes to interacting with external speakers, it regularly happens that members of the university community object to their appearance. But the importance of listening also applies towards external thinkers and speakers. They come with dissenting ideas or speak from a background that differs from the university mainstream or is politically charged. Whether their contribution is enriching is usually not known before listening to them and engaging in debate.

Therefore, continue to ensure that the debate can take place openly, substantively and safely, with an experienced moderator if necessary. It must be realised that not inviting or refusing (disinviting) an external speaker, and (threatening to) disrupt speakers' contributions, can have a chilling effect and create a slippery slope for all students and staff. If researchers, teachers, and students do not listen to each other, do not give each other space or prefer to avoid or even exclude each other, they undermine their own message and development as well as that of the other. Those who cancel will at some point be cancelled themselves. In an academic environment, ill-founded ideas and unsound research and teaching should lose out to good research and good teaching – not by exclusion.

This is not to say, by the way, that any speaker should be acceptable for invitation: the university is public but not a public space. It is a place for conversation and debate, not a speakers' corner. It can set limits where there is no relationship whatsoever with the university's core tasks or where the university will apparently be used as a platform by people who seek to actively undermine trust in scholarship and scientific research and academic education without opening themselves up to questioning. Moreover, the university can impose requirements on where a lecture takes place; not every speaker needs to perform in the university auditorium.

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29 Project Woke and Resistance with Comenius Senior Fellowship grant. The project, led by Dr Caroline Suransky, started on 1 September 2022 and will run for two years: <https://www.uvh.nl/onderzoek/leerstoeelgroepen-en-projecten/educatie/projecten/project-woke-en-weerstand-met-comenius-senior-fellowshipbeurs> Another example focusing on having the conversation is the recently launched project 'The feminist classroom: pedagogies, contestations and horizons' by the Journal of Gender Studies.<sup>29</sup> A recent US book on how to have the conversation in a meaningful way and what meaningful interventions by a college board or a dean might be is that of Ben-Porath (2023).

### 3. Background reflection: on academic freedom, wokeness, safe spaces and trigger warnings - following a whistleblower report to the University of Amsterdam's Executive Board

This third part of the report provides a reflection on academic freedom. Three preliminary remarks:

- First, while this section was partly inspired by the conversations during the site visit, it is explicitly a reflection by the committee and therefore does not reflect the views of the interlocutors or the state of affairs at the UvA.
- Second, in the allotted time frame the committee has not done a systematic review of all relevant literature on the topics mentioned. Therefore, the committee does not claim to have produced a scholarly publication on academic freedom and institutional autonomy, but rather a reflection on a number of topics and developments, which may help the university to realise those recommendations.
- Third, the committee realises that no data are available on the experience of academic freedom including self-censorship in the workplace. This is the reason why the committee states in recommendation 6 in Part 2 that universities should put more effort into collecting information on how academic freedom is applied in the workplace and is experienced in practice. However, research, specifically on self-censorship, has recently been commissioned by the Ministry of Education, Culture and Science.<sup>30</sup>

Academic freedom is both an ideal and a legal principle that grants universities, their staff and their students freedoms in conducting research, pursuing academic education and societal knowledge transfer. The term was developed in the German Enlightenment and thus has a long history. Highlights that are still referred to include the autonomy that protected German universities from interference from the monarch and government (e.g. 1737, Göttingen), the linking of free education to free research as a prerequisite for the development of students (Kant and Von Humboldt on *Bildung*), and the idea that permanent tenure for professors is a prerequisite for academic freedom (1915, at the creation of the still authoritative American Association of University Professors (AAUP), after a professor at Stanford University was fired for political reasons by university funders).<sup>31</sup>

In this reflection, we try to describe some of the areas of tension within which academic freedom must be shaped in our time.<sup>32</sup> After all, as an ideal and legal principle, academic freedom must be redefined time and again. The whistleblower report itself places 'excessive woke' opposite 'academic freedom'. The conversations we had during our investigation taught us that few

<sup>30</sup> Technopolis Group (2023).

<sup>31</sup> Brickman, *Academic Freedom* on Göttingen; Kant, *Streit der Fakultäten*, Joanna Williams, *Academic freedom in an age of conformity*; Arnold Labrie, "Einsamkeit und Freiheit" on Von Humboldt, Judith Vega, "Academic freedom?" on AAUP.

<sup>32</sup> See further in detail the volume edited by Van Berkel & Van Bruggen (2020).

people recognise this contradiction in daily practice. However, views on academic freedom do differ. This was also evident in our conversations, from the many articles that appeared in the media recently, from the debates in the Dutch parliament on science policy and in the flood of parliamentary questions.

Ironically, this range of connotations is what the term academic freedom has in common with woke: for some (at one time or still) a wonderful project, for others a pretext for unwanted interference in others' teaching or research. Much would be lost, according to the committee, if the meaning of academic freedom disappeared in the heat of such a false contradiction. Academic freedom seems to the committee a powerful ideal that can appeal to and inspire researchers, teachers, students, administrators and the non-academic outside world; an ideal also that is fragile and therefore depends on secure university communities that are willing to be accountable for their privileges.

### 1. Academic freedom embedded in the sphere of fundamental rights

Until its inclusion in the Scientific Education Act of 1985, academic freedom was in use only as an unwritten legal principle. The current Higher Education and Scientific Research Act (WHW, 1992) devotes only few words to it: "At institutions of higher education ... academic freedom shall be observed."<sup>33</sup> But it can be even shorter. As the EU Charter of Fundamental Rights has it: "Academic freedom shall be respected."<sup>34</sup> But exactly what academic freedom means, who must respect it, who can invoke it and what obligations are attached to it, is not regulated by law. Yet these aspects have been elaborated in several places; we discuss the most important ones:

- academic freedom as a fundamental right
- the explanatory memorandum to the WHW
- academic freedom and institutional autonomy are inseparable
- an appeal to academic freedom requires quality and integrity in research

#### **Academic freedom is loosely regulated but is embedded in the sphere of fundamental rights**

Recently, a European Parliament committee pointed out that the Dutch legislature has indeed barely regulated academic freedom.<sup>35</sup> In a way, this can be an advantage. For it offers the university community the space to give substance to the ideals of academic freedom and institutional autonomy as basic values of the university that evolve with new contexts, such as internationalisation and globalisation, digitisation, funding, quality assurance, and societal outreach and other forms of knowledge transfer.

But the largely unwritten character of academic freedom turns into a disadvantage when there is a gradual erosion of that freedom or of institutional autonomy, or when new tasks are assigned to universities and to lecturers and researchers without prior thorough discussion of how those tasks relate to academic freedom and institutional autonomy. This danger of gradual erosion is constantly looming in the current climate. Academic freedom should therefore be a permanent topic of conversation: at home in the workplace and in speeches on official occasions.

<sup>33</sup> Article 1.6 WHW. The article refers to 'institutions of higher education' and therefore includes Dutch universities of applied sciences. Where these recommendations refer to 'universities', one must therefore also read, *mutatis mutandis* (there are fundamental differences!), 'universities of applied sciences'.

<sup>34</sup> Article 13 of the Charter of Fundamental Rights of the European Union (2000/C 364/01).

<sup>35</sup> European Parliament, Panel for the Future of Science and Technology, State of play of academic freedom in the EU Member States - Overview of de facto trends and developments, para 3.22 (March 2023). This is often different abroad, although the practice there is not much different, and certainly not always better. Further, European University Association (2023). On academic freedom in international treaty law, see KNAW (2021) and LERU (2023).

Academic freedom has three dimensions, briefly: (i) the individual academic freedom of teachers and researchers and their responsibility to handle it with care, (ii) the institutional freedom (autonomy) of the university and (again) the responsibility to handle it with care, and (iii) the duty of care of governments and administrators to monitor and actively promote academic freedom and institutional autonomy.

Even though academic freedom is loosely regulated in the Netherlands and academic freedom is not included in the Dutch Constitution, unlike in many other countries, it does belong in the broader sphere of fundamental rights. The Charter of Fundamental Rights in the European Union lists the academic freedom of Article 13 alongside the freedom of expression of Article 11 for good reason.

This status means that academic freedom is not negotiable. Restrictions are possible only if they (i) are laid down by law; (ii) respect the essential content of the fundamental right; and (iii) are necessary to serve a legitimate purpose in a democratic society. Any infringements of academic freedom will therefore have to be thoroughly and transparently justified.

### The explanation of the WHW

Little interest, then, from the legislature. Yet the government has given some direction in the explanatory memorandum to section 1.6 WHW:

“We see academic freedom as a right that is closely related to freedom of opinion and expression and is specifically aimed at the position of individual teachers and researchers as well as students. Essentially, it is about their freedom to teach, conduct research and receive education respectively. They have the freedom to follow their own scientific and scholarly views and not be dependent on certain political, philosophical or scientific theories. Only if this condition is met can science flourish and the independent and critical thinking required for it be developed. Academic freedom thus has three aspects: freedom in teaching, freedom in practising research and freedom in receiving education.”<sup>36</sup>

While this explanation is not complete, it is more than is sometimes suggested.<sup>37</sup> Academic freedom is a legal principle that aims to allow university teachers and researchers to conduct their research and teach freely, and to allow them to criticise the governance of their institution. And to allow students to follow their own scientific views and not be dependent on certain political, philosophical or science-theoretical views.

In its report *Academische vrijheid in Nederland - een begripsanalyse en richtsnoer* (2021), the Royal Netherlands Academy of Arts and Sciences (KNAW) elaborates on academic freedom, describing it as the principle that staff at research institutions can freely conduct their scientific research, communicate their findings and teach. This freedom in the fulfilling of the position of researchers and teachers at a university applies, among other things, to the choice of topics to be investigated, the choice and application of one’s own research questions and methods, the access to sources of information, the publication and sharing of information through conferences, lectures and memberships of scientific groups, the choice to enter into cooperation with scientific partners, and the content of teaching.

Academic freedom only acquires meaning in the light of the duty of care of governments, administrators and managers to monitor and actively promote academic freedom and to maintain the external and internal institutional autonomy of the university. After all, pressure, be it wanted or unwanted, on that freedom of staff can come from various sides: from government and politics, from external funders and clients, from colleagues and from students.

<sup>36</sup> Fourth Letter of Amendment, 21 073, no. 17, p. 39. See more detailed comments by Kwikkers (2023), Green (2017), p. 78ff, Zoontjens (1993).

<sup>37</sup> See, for example, European Parliament 2023 report, and Beatrice de Graaf, NRC 7 June 2023: <https://www.nrc.nl/nieuws/2023/06/07/neem-de-tijd-voor-gedoe-a4166576>

Pressure on teachers and researchers also comes from society through mainstream and social media, and through social and family connections. Active protection against these pressures from both inside and outside must be expected from both the government and the university administration, as well as from colleagues.

That, at least, is the theory; there is little quantitative data on the extent to which this actually happens.

### **Academic freedom and institutional autonomy are inextricably linked**

The authoritative UNESCO definition articulates academic freedom thus:

“[i] the right, without constriction by prescribed doctrine, to freedom of teaching and discussion, freedom in carrying out research and disseminating and publishing the results thereof, [and ii] freedom to express freely their opinion about the institution or system in which they work, freedom from institutional censorship and freedom to participate in professional or representative academic bodies.”<sup>38</sup>

The addition under [ii] is important because it makes it clear that the academic freedom of the researcher and teacher is inextricably linked to the institutional freedom (autonomy) of the university.

The European Court of Human Rights put it this way:

“... the Court underlines the importance of academic freedom, which comprises the academics’ freedom to express freely their opinion about the institution or system in which they work and freedom to distribute knowledge and truth without restriction.”<sup>39</sup>

“(...) This freedom (...) is not restricted to academic or scientific research, but also extends to the academics’ freedom to freely express their views and opinions, even if controversial or unpopular, in the areas of their research, professional expertise and competence. This may include an examination of the functioning of public institutions in a given political system, and a criticism thereof.”

Thus, to keep academic work free from unwanted influences, it also extends to the institution’s administration.<sup>40</sup> This involves two things. First, *institutional* autonomy vis-à-vis the government and politics; because without it, academic freedom for researchers and teachers is hard to imagine. And secondly, about the internal organisation of the university: the extent to which the central level can intervene in the content and organisation of teaching and research. The legislator has for good reason largely decentralised powers in that area. This creates space for the freedom of employees to express their opinions on the course of the institution within which they work and to criticise its management. Staff (and students) should never feel reticence or fear in the exercise of their personal academic freedom in the content of teaching and research; and they should be able to express their opinions about university or faculty governance just as fearlessly. At stake here is the important right of lecturers and researchers of speaking truth to power, both power within the university (or within a department), and outside it.

Again, that is the theory. There is as yet little quantitative data on practice.

38 UNESCO, Recommendation Concerning the Status of Higher-Education Teaching Personnel, Paris 1997, para 27, see <https://www.unesco.org/en/legal-affairs/recommendation-concerning-status-higher-education-teaching-personnel>.

39 ECHR 23 June 2009, no 17089/03, ECLI:NL:XX:2009:BM1871 (*Sorguç v Turkey*).

40 See further Kwikkers (2023), p. 75. There is some uncertainty about the exact relationship between academic freedom and institutional autonomy, compare also Groen (2017), p. 76.

### **An appeal to academic freedom requires quality and integrity in research**

Researchers have their own standards of scientific and scholarly practice, established in the Netherlands by the profession itself with a view to good teaching and good research. For scientific and scholarly research, these standards are laid down, among others, in the five principles and (no fewer than) 61 elaborations in the Netherlands Code of Conduct for Research Integrity.<sup>41</sup>

This self-regulation is intended to ensure both the quality and reliability of scientific and scholarly research. This research has a system of quality control, that has at its core the peer review of scientific and scholarly publications and the SEP protocol for research reviews, in which the work of a research group is assessed. This system of quality assurance stems from the professional responsibility of the researchers themselves. Importantly, it is not the legislator or the board, but the community of scholars and scientists itself that sets and defines the standards for these assessments. In doing so, the profession itself develops the quality requirements that may be imposed on an appeal to academic freedom.<sup>42</sup>

Similar forms of quality assurance, accreditation, visitation, course evaluation and test quality apply to the teaching and academic freedom of university teaching staff. But the legislator leaves the assessment on the content of teaching programmes mainly to peers, and where applicable the professional body that recognises an academic degree.

In the next section, the committee discusses why this is important.

## **2. For which concerns is academic freedom crucial?**

It seems easier to point out why academic freedom is essential and why it is conditional for quality research and teaching at universities, than it is to define exactly what academic freedom is. There is no lack of reflections on this. The committee would like to explain the following concerns that require academic freedom:

- the nature of innovative research and teaching
- the importance of increasing understanding a precondition for trust in universities
- independence from the funder
- the freedom to pursue education
- scientific and scholarly research in the democratic and legal order.

### **The nature of innovative research and teaching**

The committee again quotes the Royal Netherlands Academy of Arts and Sciences (KNAW, 2021) report. Researchers and teachers should be able to conduct their research and teach without restrictions:

“Scientific and scholarly research is open-ended and it is usually not possible to predict what kind of knowledge and insight will eventually prove necessary (...). This openness and unpredictability means that researchers should be able to follow their own curiosity, creativity and critical spirit in research and teaching, in order to build a comprehensive knowledge base and broadly educate students without having to give a guarantee in advance that a scientific or societal breakthrough will follow.”

This applies to all teachers and to all researchers, from PhD students to full professors; although full professors do have a slightly different, and legally more secured, position. After all, they are

41 Netherlands Code of Conduct for Research Integrity (2018). The five principles are honesty, diligence, transparency, independence and responsibility.

42 Green (2017).

“pre-eminently responsible” for teaching and research in their assigned field of science.<sup>43</sup> Perhaps that responsibility is more ‘collectivised’ in present-day relationships within the university, for instance in research groups and programme teams; but it is still an expression in Dutch law of academic freedom. How this legally defined self-responsibility works out in practice, incidentally, has not, to the committee’s knowledge, been empirically investigated further. Additionally, the differences between fields of science and also between universities can be considerable. There is a lack of data.

### **The importance of increasing understanding**

Because academic research should be open and is unpredictable by nature, researchers should not feel any hesitation or fear in disclosing new knowledge or results of research: not if they thereby revert to earlier findings (or errors), falsify earlier hypotheses, nor if the results are of a negative or inconvenient nature (inconvenient truth) for a particular interest group or society as a whole. In an open society, academics need to be able to do their work without fear of repercussions, even if an outcome of research turns out to be socially or politically disagreeable.<sup>44</sup> It goes without saying that one cannot invoke academic freedom as a shield against non-integrated or unsound science, inflicting harm on people or making unsubstantiated statements – in short, where the predicate ‘academic’ does not apply. The freedom that researchers have is thus functional to, and justified by, the interests of high quality research.

### **The importance of societal trust in science**

The free dissemination of data and findings, and debate about them, are necessary for confidence in the quality of higher education and scientific research. They increase the reproducibility, verifiability, transparency and also the efficiency of scientific practice. Securing trust in quality is no small matter at a time when institutions are increasingly subjected to doubt. Although in the Netherlands, and worldwide, science and scholarship are still among the most trusted professions, it appears that citizens’ trust in science declines when the dividing line between science and politics becomes blurred or when politics makes science political.<sup>45</sup>

### **The importance of research independence**

The condition of academic freedom also provides the necessary protection against dependence of the content on certain funding streams, and other dependencies in science’s collaboration with companies and governments. The KNAW devoted considerable attention to this issue in its report. See also the Dutch Rathenau Institute’s study Public Trust in Science (2021). The committee pays somewhat less attention to this aspect because it does not play a major role in the UvA report.

### **The importance of independent science education**

For students, academic freedom implies the freedom to study. This concerns a different interpretation of academic freedom from that of teachers and researchers. The explanatory memorandum to the WHW explicitly states that this freedom in receiving education refers to the student’s freedom not to be ‘forced to adhere to or proclaim certain academic views’. It is therefore not about the freedom to receive education without restriction according to time and place, but rather freedom from influence and indoctrination.<sup>46</sup> Below in section 5, the position of students is considered in more detail.

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43 Art. 9.19(2) WHW.

44 Popper (1963).

45 Rathenau Institute (2021); Ipsos (2019). Furthermore, the recent report by The Young Academy 2023.

46 The principles for academic practice in the previous Code of Conduct for Academic Practice (2014) offer good starting points for preventing one-sided content of academic teaching.

### **The importance of science as a pillar of the democratic rule of law**

And finally, academic freedom is essential because it is one of the pillars of our democratic legal order. Together with freedom of expression, freedom of association and assembly and freedom of conscience and religion, academic freedom contributes to a pluralistic, tolerant and open-minded society, where views can coexist, and thoughts can be developed and expressed independently of the government. Together with the free press and civil society organisations, the university plays an important role as a public watchdog. The European Court of Human Rights puts it this way:

“There is no Chinese wall between science and a democratic society. On the contrary, there can be no democratic society without free science and free scholars.”<sup>47</sup>

The Council of Europe named academic freedom, including institutional autonomy, as

“... intrinsic values of higher education which are essential to the overarching values and goals of the democracy, human rights and the rule of law.”<sup>48</sup>

Scholars at Risk, the organisation that records and publicises violations of academic freedom worldwide, puts it this way:

“... universities serve both crucial individual and social functions. They are engines of knowledge production, discovery, innovation, skills development, cultural preservation, and national progress. They model democratic discourse and international cooperation, as well as the search for self-realisation and moral truth. And they are wellsprings for other professions that are foundational to well-functioning civil society, including law, journalism, and human rights advocacy.”<sup>49</sup>

These perspectives are important when one realises that academic freedom is under pressure in more and more countries around the world. In Europe too, according to a recent report by the European Parliament.<sup>50</sup> And a similar concern exists with regard to free and unfettered journalism. A recent report by the Civil Liberties Union for Europe.

“... shows that media freedom and pluralism continue to erode across the bloc. In some member states, new trends signal threats to media freedom where it has long been taken for granted; in others, free and independent journalism is nearing its final breath.”<sup>51</sup>

47 ECHR 27 May 2014, nos 346/04 and 39779/04 (*Mustafa Erdoğan and Others v Turkey*)

48 Recommendation CM/Rec (2012)7 of the Committee of Ministers to member States on the responsibility of public authorities for academic freedom and institutional autonomy (Adopted by the Committee of Ministers on 20 June 2012 at the 1146th meeting of the Ministers' Deputies).

49 Quoted in <https://www.kuleuven.be/communicatie/congresbureau/corporate-evenementen/opening-academiejaar/speeches/speech-van-rector-luc-sels>

50 Although this has also been severely criticized. See, for example, Moors (2023).

51 Liberties Media Freedom Report (2023): [https://dq4n3btxmr8c9.cloudfront.net/files/lurkq7/Liberties\\_Media\\_Freedom\\_Report\\_2023.pdf](https://dq4n3btxmr8c9.cloudfront.net/files/lurkq7/Liberties_Media_Freedom_Report_2023.pdf)

### 3. Why is academic freedom so topical?

We see academic freedom and the space to use it coming under pressure in our age of globalisation. Worldwide, the rule of law as we know it is under pressure, and both academia and its institutions have to relate to new developments such as polarisation in society, geopolitical and societal power shifts, or the climate agenda. In this section, the committee describes the relationship between academic freedom and the following current developments:

- pressure on free speech
- emergence of global and international perspectives
- geopolitical tensions
- emancipation movements
- free speech on campus (controversial speakers)
- increasing polarisation
- temporary employment contracts

#### Pressure on free speech

Although the world has become freer compared to 50 years ago, at the same time we see that, for example, in 2022, press freedom is under pressure in at least 157 countries.<sup>52</sup> Academic freedom, too, is under pressure, in autocratic or less democratic regimes, but not only there.

Not for nothing do ‘strong’ leaders or ditto regimes look with suspicion at what happens in ‘their’ universities; after all, those universities have as part of their mission: speaking truth to power. The worrying developments that forced Central European University to largely leave Budapest and Hungary in 2019 bear witness to this. The institutional autonomy of universities does not seem to come naturally, also due to the influence of populist movements in many countries. There is growing evidence, including for Europe (in England, e.g., and even Sweden<sup>53</sup>), that the institutional autonomy of universities is under increasing pressure, pressure exerted by the government both through regulation and funding conditions.<sup>54</sup> Developments such as those in Florida, where publicly funded schools and universities are being tied to a highly conservative agenda, must also be a concern for universities here.

After all, universities are pre-eminently places where innovative and controversial questions are asked, studied and taught – and have been for centuries. For this, freedom of thought, speech, debate and publication are crucial. The university lives on debate; academic freedom is its oxygen. It forms, as said, alongside the executive, legislative and judiciary, and together with the free press, a crucial pillar of a democratic society and a well-functioning rule of law. In societies with a weaker rule of law, where freedom of expression is restricted, universities are often the last refuge for free thought and criticism.

52 Freedom in the World (2023): <https://freedomhouse.org/report/freedom-world/2023/marking-50-years>

53 For developments in England, see the Higher Education (Freedom of Speech) Act 2023, below. In Sweden, there are serious concerns about plans by the new government to limit the terms of office for external university supervisors from three to five years to 17 months. This restriction is seen as an attack on university autonomy and academic freedom, Myklebust (2023).

54 EUA (2023).

### **Growth of international cooperation and exchange**

The international dimension of academic freedom and institutional autonomy gets a boost in the form of growing worldwide cooperation and exchange of academic staff and students.<sup>55</sup> The globalisation of education and research brings with it an enriching diversity of new perspectives; it is sometimes referred to as a global curriculum. The call for more diversity, equality and inclusion is a manifestation of this. This requires more attention for forms of global inequality, racism and sexism in the world of students and teachers. This attention is reflected in discussions about ‘decolonising’ the curriculum, bringing non-Western authors into the picture, diversifying academic staff and inviting non-Western speakers. Academic freedom, therefore, can thus no longer be defined and filled exclusively within national borders.

### **Geopolitical tensions**

The international dimension also brings tensions, as geopolitical developments affect universities, and sometimes pose dilemmas for Dutch universities. Think of whether or not to cooperate with Chinese or Iranian academic partners, and of the recent sanctions against Russia. But think also of the 2014 exclusion of Switzerland from Horizon2020, because of a referendum on immigration passed in that country, or in The Netherlands and elsewhere of petitions by hundreds of scholars to boycott Israeli academic institutions (2021).

It can be said without much exaggeration that the tensions in the world are reflected in the daily reality of universities.

Yet it is precisely universities that play an important role in these global tensions by providing positive connections. Scientific and scholarly research and education have helped the world manage and resolve tensions. Where it sometimes seems that the world is breaking up into camps, one should never underestimate the vitality and unifying power of universities. Carlos Moedas, EU commissioner for scientific research from 2014 to 2019, once said that knowledge diplomacy can help us lead the way where politics and diplomacy have failed.<sup>56</sup> If even teachers and researchers, who should be good at abstracting from feelings and interests, are no longer allowed to cooperate, a last opportunity for societies at odds to keep in touch and listen to each other disappears. Academic freedom thus has a transnational value, which takes particular shape in the exchange of ideas through academic staff and students.

### **Emancipation movements**

Academic freedom as a concept has its origins in the days when universities were elitist enterprises. The freedom of education Von Humboldt talked about in 1810 was meant for young noblemen who would later hold public office. The Equality, Diversity & Inclusion (EDI) debate at universities has brought a new dimension to the subject of academic freedom. Starting with the slowness in equalising opportunities for men and women in academia, over time, diversity in terms of other dimensions was added, such as ethnicity, age, social class, religion, and physical condition.

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55 In the same sense, the ECtHR in *Telek and Others v. TR*, of 21 March 2023), para. 137: “La Cour souligne ...le rôle central que jouent aujourd’hui la coopération et les échanges entre les pays en matière d’enseignement et de recherche, notamment sous la forme de la mobilité des étudiants et du personnel universitaire, en tant que composants essentiels de l’enseignement supérieur et des recherches académiques au sein du Conseil de l’Europe” (in French only).

56 Commissioner Carlos Moedas, “The EU approach to science diplomacy”, Washington, 1 June 2015: “I believe science diplomacy is the torch that can light the way, where other kinds of politics and diplomacy have failed. A torch to illuminate how we can progress in science and innovation side by side. The torch that brightens a doorway to cooperation and communication that is never closed. I want science diplomacy to play a leading role in our global outreach for its uniting power. Certainly with our closest partners, but, even more so, where it can make an even greater difference: where the political situation is more complex.”

A policy that limits such diversity, the Royal Netherlands Academy of Arts and Sciences (KNAW) said in 2018, means missing out on diversity in expertise and background of researchers, to the detriment of the quality of research and to the extent to which that research is innovative or ground-breaking.<sup>57</sup> Diversity of population promotes diversity of perspectives, something that is at the heart of academic freedom.<sup>58</sup> In this sense, academic freedom needs EDI.

At the same time, this diversity of viewpoints can diverge from the prevailing mainstream - think, for example, of the debates about 'decolonising' research and the curriculum. For some, this is a worrying blurring of the line between science and politics; for others, hearing other voices is crucial for good scientific and scholarly research and teaching. If this conversation about science-theoretical perspectives is construed by a non-academic outsider as political indoctrination (as in the Straus/Duisenberg parliamentary motion, that caused some alarm in the university world), academic freedom demands instead that people in academia engage with each other and with the outside world.<sup>59</sup>

Initially, in its advice on this motion, the Royal Netherlands Academy of Arts and Sciences was very cautious: "encourage an open organisational climate, a culture in which differences are valued and in which there is no overly anxious reaction to research and its possible outcomes, including choice of research topics that are not immediately highly regarded politically or socially".<sup>60</sup>

But in its 2021 report, it was somewhat more explicit: after all, some sciences are by nature directly involved in politics, and some teachers and researchers are strongly politically engaged as individuals.<sup>61</sup> On top of that, many sciences also have a normative side; such as Law, after all, focused as it is on 'better law'.<sup>62</sup> Moreover, different disciplines and specialisms have different traditions in the field of public engagement, the exchange of knowledge and insight with non-academic partners, ranging from policy research for government and companies, to participatory action research for emancipation movements. This raises questions such as: what does the responsibility of teachers and researchers to be independent and honest mean? But also: might there be a more implicit dynamic at work that excludes some science-theoretical perspectives in advance? The conversation on academic freedom will have to address that too.

### **Free speech on campus (controversial speakers)**

The sometimes heated debate about free speech on campus, also makes the defence of academic freedom topical. The committee will return to this in more detail in sections 6 and 7 below.

### **Increasing polarisation**

The fact that we are witnessing social polarisation, the disappearance or at least quieting of the political middle ground and a hardening of debate styles, both globally and in the Netherlands, is related. This development also threatens our universities. An additional worrying development is the physical and emotional attacks on, and threats to, their person or family, that teachers and researchers are increasingly experiencing. Until a few years ago, serious threats were mainly seen outside the Netherlands (see the periodic reports by Scholars at Risk), but nowadays also

57 KNAW (2018).

58 See the rich report on promoting viewpoint diversity in the UK, Adekoya et al (2020).

59 See: <https://www.tweedekamer.nl/kamerstukken/detail?id=2017Z01579&did=2017D03296>

60 Stolker (2018).

61 KNAW (2021).

62 Stolker (2014).

scholars in the Netherlands do not always feel safe and in some cases they even need personal protection.<sup>63</sup> In that light, there is increasing attention for female scientists; they are particularly affected and sometimes seem to be almost outlawed.<sup>64</sup>

### Temporary employment contracts

Finally, the weak legal status of some categories of university employees makes the debate on academic freedom urgent. This concerns academics with temporary employment contracts, both in teaching (often lecturers without research assignments) and in research (PhD students and postdocs). This has been criticised for years by the academic communities, for instance under the banner of the Dutch #WOinActie.

The negative effects of these temporary contracts on the academic freedom of employees, including their right to criticise the institution's management and policies, were addressed in the recent debates with the Minister of Education, Culture and Science (OCW) in Dutch parliament. Temporary contracts in research and academic teaching can result in a breakdown of academic freedom, the minister recently said in one such debate. Although the minister added that he feels this is not such a problem in this country, the committee sees it as an important topic for the internal conversation.<sup>65</sup>

## 4. Academic freedom: frameworks and professional and institutional responsibilities

Academic freedom certainly does not give teachers and researchers carte blanche to do as they please. The same applies to the university itself in the effectuation of its autonomy. Academic freedom comes with responsibilities. First and foremost, it is obvious that freedom comes with certain restrictions placed on the freedom of every citizen, such as the prohibition of discrimination, libel, insult or hate speech.

But academic freedom is considerably more circumscribed than the constitutional freedom of expression to which everyone is entitled. To these two concepts, and in particular their differences, the committee devotes some thoughts at a later point in this report. There is no freedom without limits (or, if you prefer, restrictions) and responsibilities. In this section, we consider some limits and responsibilities, some of which come from outside and some from within:

- the legal and administrative frameworks
- the employment relationship
- the choice of cooperation partners
- the steering effect of funding
- freedom, academic community, and security.

### The legal and administrative frameworks

The university's societal mission is to provide academic education, conduct research and develop and share and disseminate scientific and scholarly knowledge in close interaction with society. Each university develops this tripartite mission in line with its own character and its own identity and can be held publicly accountable for that.<sup>66</sup>

63 A sign of things to come is the launch of the National Platform for Endangered Scientists, 7 November 2022: <https://www.knaw.nl/nieuws/nationaal-platform-voor-bedreigde-wetenschappers-gelanceerd>

64 Sluiter (2021).

65 'Debate Lower House - Temporary contracts harm academic freedom, minister believes', HOP 19 April 2023, with references to the debate: <https://dub.uu.nl/nl/nieuws/tijdelijke-contracten-schaden-academische-vrijheid-meent-minister>

66 University Governance Code (2019).

Universities are subject to the rules laid down by and pursuant to Dutch law, including how duties and responsibilities are assigned. It is significant that important responsibilities are not assigned to the Executive Board, but to the dean of the faculty (with Article 9.15 WHW at its core). In addition, the law assigns a role and thus co-responsibility for execution and quality of academic education and research to various officials and bodies inside and outside the university. This includes an extensive system of employee and student participation (including study programme committees). Two internal entities that encourage cooperation and limit individual autonomy are the programme director or programme coordinator, and the examination board. The allocation of all these responsibilities may impose constraints on the individual academic professional.

Furthermore, the instructor's autonomy is limited because (most) university education is part of a curriculum with overarching learning objectives and learning outcomes. A range of teachers take part in that curriculum, they must come to an agreement with each other (and with students in the programme committees) on how the different elements in teaching together contribute to the programme's learning outcomes. Beyond the university, there is the accreditation system with roles for the Executive Board and the Dutch-Flemish Accreditation Organisation (NVAO), and with the possibility for the Minister of Education, Culture and Science to impose funding sanctions. The minister bears responsibility for the system and, among other things, its macro-efficiency.<sup>67</sup>

### **The employment relationship**

The terms of the employment relationship also place certain limits on the academic freedom enjoyed by the academic teachers and researchers. The link between academic freedom and tenure advocated by the AAUP in the US in 1915 applied then to a relatively limited number of professors, who could hardly be removed once appointed.

The situation at Dutch universities is different. Besides professors, there is a large group of people doing research or teaching without the special responsibility of a professor. Their employment relationship is often linked to a rather specific task or assignment within teaching and within the research programme. Accordingly, the employer may set rules and expectations. Managers hold annual appraisals and assessment interviews with employees about these expectations. In extreme cases the employment relationship can be terminated in case employees do not perform or are otherwise considered unfit for the tasks assigned to them.

For a conversation about academic freedom, we encounter a potential problem here. The boundaries between 'non-performance' or 'being unfit', on the one hand, and 'taking unwelcome positions' or 'wanting to do research that does not fit into the research or educational programme', on the other, are not always clear-cut and could potentially lead to misunderstandings or different perspectives on the reasons for, say, a negative assessment of someone's performance.<sup>68</sup>

### **Choosing cooperation partners**

Cooperation with non-academic partners is often necessary and stems directly from the university's 'third mission': to develop and share scientific knowledge in close interaction with society. The choice of cooperation partners also falls within the scope of the academic freedom of faculty and the institutional autonomy of the university.

An infringement of this freedom should therefore not be made lightly. Consider for instance the current debate on scientific cooperation with the fossil fuel industry or controversial political parties, or the establishment of special or sponsored chairs funded by external parties, whether

67 See at greater length Green (2017), chapter 4; Van Gestel (2021).

68 That very aspect is currently the subject of much debate, see, for example, ScienceGuide, 6 June 2023.

for profit or not. It also includes other forms of cooperation in education and research, such as community-based research and community-engaged learning.

Top-down decisions prohibiting or halting collaboration with external parties have so far been rare, but it would soon constitute a breach of individual academic freedom and institutional autonomy if it did happen.

If a decision on whether or not to collaborate is taken, robust and transparent reasoning will be required. It seems quite possible that the outcome of a decision on whether to collaborate, may differ from university to university, in accordance with an institution's specific mission, values and vision.

A special case is knowledge security in relation to both national and economic interests. Here, too, self-regulation should play a central role, based on the institutional autonomy of universities. This means that they themselves - within the legal frameworks - monitor possible security risks, design an approach and develop instruments and thus actively invest in their resilience. Only when knowledge security has bearing on the national security of the country is there a role for the central government.<sup>69</sup> The same does not apply, in the committee's view, to possible economic interests.

### **The steering effect of funding**

Academic freedom counters the adage 'who pays decides'. Yet through the funding of research and teaching, the academic freedom of the scientist is increasingly limited; not (directly) in terms of methods and approach but in terms of, for example, choice of subject. The subject of funding education and research did not play a very specific role in the whistleblower report, but for the sake of being complete, the committee discusses it. Statements about this have recently been developed in advice papers of the Royal Academy and the Dutch Young Academy.<sup>70</sup>

Basic funding, via the so-called first revenue stream, comes to universities as a lump sum. In recent years, we have seen budget components within this revenue stream being linked to specific spending targets regarding scientific content, via sector plans and profiling agreements between universities and the ministry. However, the direction within those agreements is left to the institutions themselves.<sup>71</sup> In addition, a substantial part of research funding from the state comes via the competitive second revenue stream in which the Dutch funding council (NWO) awards funds on the basis of often thematic calls for proposals. Because NWO often does not reimburse supervision and overhead costs, this second revenue stream *de facto* also ties up part of the core funding. The relatively hefty size of the bound funding and its design ('projectification') was previously seen as worrying by the Royal Academy (2021):

"Strategic research and commissioned research are good ways to realise the social mission of science, in addition to untied research. Given academic freedom, it is important to leave sufficient room for untied research alongside strategic research (...). Also, scientists should not become too dependent on clients and cooperation partners because of the way the money flows are organised. The KNAW advice Freedom of Science Practice in the Netherlands (KNAW et al, 2018) already warned that too much dependence on project funding (in the second or third revenue stream) can lead to undesirable influence on the method, interpretation and publication of results."

69 National guideline on knowledge security - Safe international cooperation, 14 January 2022.

70 KNAW (2018), KNAW (2021), The Young Academy (2023); the DJA opinion appeared a few days before the committee's report was adopted.

71 Groen (2017), p. 16 ff. Groen is critical of the fact that these kinds of agreements take place on the basis of extra-legal performance agreements: when considering whether profiling is desirable, he believes the primacy of the faculty in the organization of scientific research should weigh heavily.

The third revenue stream includes contract teaching and commissioned research and is in line with the university's third task (knowledge transfer and societal outreach). This revenue stream has yet another relationship to academic freedom. In this revenue stream, it is not primarily the academy that chooses a research topic, but the client who is looking for answers and knowledge development in a particular field. This is where important issues regarding independence, impartiality, and transparency,<sup>72</sup> and also regarding public dissemination and intellectual property come into play. Although the question of *what* is researched is fixed in the contract, it should be contractually clear that academic freedom applies in full to the *how*. Of concern is a race to the bottom if universities adjust the conditions (or the pricing) merely to secure the contract, and if faculty join in this for fear of losing their jobs.

### **Freedom, academic community, and security**

Academic freedom is a condition for which academic teachers, researchers and students bear a shared responsibility. They constitute the university community within which agreements (rules of conduct) are made about how the members of that community should behave not only to the outside world, but also to each other.<sup>73</sup> Research and education have increasingly become collective teamwork in many areas of science and scholarship. The Code of Good Governance of Dutch universities therefore places academic freedom in the context of the university as an academic community.<sup>74</sup> We will return to this important relationship between academic freedom and community below, when discussing mutual relations between colleagues.

## **5. Who must observe academic freedom and what does this duty of care entail?**

If academic freedom is not protected and actively promoted, this not only affects the staff member in question, but also has a chilling effect on other and future faculty of a university. That affects the exercise of academic freedom and the right to criticise the institution's management. This is to the detriment of researchers and the quality of scientific and scholarly research itself. The committee sees responsibilities for the fostering and protection of academic freedom at different levels:

- the duties of care of government and politics
- the duty of care of the board and managers
- the duty of care among colleagues
- the position of students
- the position of clients and subsidisers.

### **Duty of care of government and politics**

Section 1.6 WHW has significance primarily for the relationship between the institution and various governmental bodies and politics. In it, the Royal Academy distinguishes both a restraining role when it comes to the content of education and research, and an active and facilitating role when it comes to creating the preconditions that make academic freedom possible:

“... government should respect academic freedom and refrain from interfering in aspects of research and teaching, such as subject matter, method, data collection, analysis, publication and quality assessment. The government should place restrictions on academic freedom only

<sup>72</sup> The Young Academy (2023).

<sup>73</sup> CAO Dutch Universities, Article 1.12.

<sup>74</sup> University Governance Code, 2019: “Traditionally, universities have stood for freedom of mind, thought and speech, and unfettered development of teaching and research. They are sanctuaries where any question can be asked and answered freely. Every university strives to create a safe culture and an inspiring climate in which the entire university community, including students and doctoral students who, after all, may rely on adequate training and guidance, can achieve maximum development.”

if there is a legal basis for them, if they serve a legitimate purpose and if they are necessary in a democratic society. As a commissioner, the government should not try to influence the outcomes of academic research or prevent the publication of research results that are unwelcome to it.”

“In addition, the Dutch government should create necessary framework conditions to enable academic freedom. Academic freedom benefits from a stable and reliable institutional context, without unwanted dependencies and with sufficient continuity. In its facilitating role too, the government has a responsibility to guarantee academic freedom and maintain unbounded research and education to a sufficient extent.”<sup>75</sup>

The government’s restrained role extends to the governance and autonomy of academic institutions themselves and the choices made there by directors, works and student councils, and staff:

“Furthermore, the government should guarantee not only the academic freedom of individual scientists but also the autonomy of scientific institutions. For example, it should respect the freedom of institutions to make their own choices in the internal distribution of funds from the first revenue stream for education and research.”<sup>76</sup>

It goes without saying that the minister has his own (systemic) responsibility for higher education and scientific research. Examples are accessibility, efficiency, quality assurance and knowledge security. But the minister’s options are fundamentally limited. The minister may not interfere with the content, direction and organisation of that education and research. Not with the terms of the so-called binding study advice (‘bsa’) within a study programme,<sup>77</sup> or with the appointment of professors and other faculty and staff, or with other personnel and strategic choices that university boards make in discussion with their works and student councils and under the watchful eye of the university supervisory board.<sup>78</sup>

Whether the minister has a responsibility for (the limits of) internationalisation in education, other than through funding, is a topical issue, not least from the perspective of academic freedom and institutional autonomy of universities. Parliament should also keep its appropriate distance. Institutional autonomy is not just an expression of a legal division of powers between governments and universities that could easily be changed, but an expression of academic freedom itself, as a precondition for high-quality, independent and reliable research and education.

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75 KNAW (2021).

76 Ibid. Compare also the important ruling of the EU Court of Justice CJEU 6 October 2020, ECLI:EU:C:2020:792 (*Commission v Hungary*) regarding the Central European University in Budapest. In this judgment, Hungary was condemned for violating the principle of academic freedom enshrined in Article 13 of the EU Charter of Fundamental Rights by promulgating a law that effectively prevented the Central European University from carrying out its activities there any longer.

77 The recent parliamentary letter on the subject does not say a single word about its infringement on the academic freedom of lecturers and the institutional autonomy of the institution: see Parliamentary letter on future binding study advice of 29 May 2023.

78 Incidentally, the composition of the SB is ultimately determined by the minister, at the suggestion of the university.

### **Duty of care of board and executives**

Article 1.6 WHW also addresses the universities themselves and thus the employer (the administrators) and managers. After all, academic freedom plays a role not only in the relationship between government and universities, but also in the relationship between management and university employees.<sup>79</sup> This means that a board of governors and the administration of a faculty must exercise a high degree of restraint in relation to the responsibilities of the faculty and its dean and those of the individual professor, respectively.

Maintaining that restraint is at the heart of academic freedom. This also concerns the non-substantive assessment of scholars' scientific or social expressions. After all, the academy has no corporate view of 'the' truth. The content of teaching and research must therefore be left to the teachers and researchers at the university and to their mutual conversations and debates. Administrators cannot be held accountable for that. This requires that they do not allow themselves to be lured into that trap.

The Royal Netherlands Academy of Arts and Sciences (KNAW) words it, cautiously, as meaning that university and faculty boards have a responsibility not to interfere in research and education "more than is reasonable".<sup>80</sup> However, the explanation of the term reasonable is missing, opening the door to a person's own, perhaps even opportunistic, interpretation. The committee would rather read that boards have the responsibility not to interfere in teaching and research more than their statutory duty entails.

In addition, the board should not merely respect the academic freedom of its employees, but also actively protect those employees. Regardless of pressure from inside or outside the university, the primary attitude of the board and its managers should be to stand up for its employee when pressure comes to bear on that employee's academic freedom. The KNAW says:

"Besides the duty to respect academic freedom, universities have a responsibility to protect scientists at their institution from coercion and pressure by government, funders and colleagues?"<sup>81</sup>

This therefore means that scientists, as employees of the university, must be able to feel fully supported in conducting research, teaching and in the task of transferring their knowledge to society. Employees who come under pressure because of scientific research, teaching or the transfer of knowledge to society - whether from governments and politics, colleagues, students or society - must be able to count on protection from their managers and administrators.

### **Duty of care of colleagues among themselves**

Among themselves, colleagues should also respect each other's academic freedom. After all, academic freedom does not only apply in hierarchical relationships. This is a little researched topic.<sup>82</sup> In essence, it concerns the tension between the concepts of academic freedom and academic community. Because it is precisely within the community that the academic freedom of the individual faculty member runs the risk of being limited by informal norms and values, group processes and peer pressure - in addition to the limitations from the previous paragraph. Processes that mean that adopting a minority position outside a generally accepted scholarly or scientific assumption or beyond certain social norms and values may be tolerated formally, but at the same time within the community can lead to a form of social exclusion. In such situations there is no psychological safety.

<sup>79</sup> Cf. Supreme Court 7 October 2022, ECLI:NL:HR:2022:1402 and the extensive Opinion of Advocate General De Bock, ECLI:NL:PHR:2022:231.

<sup>80</sup> KNAW (2021).

<sup>81</sup> KNAW (2021).

<sup>82</sup> See Gerards (2019).

Thus, an important task for colleagues among themselves is to not just ‘tolerate’ colleagues with divergent but scientifically defensible approaches or with controversial questions and perspectives as colleagues, but to continue to treat them interpersonally as a full member of the group.

This includes the willingness to provide a substantive response or to reciprocally help the colleague by sharpening their line of reasoning. The committee does not have a recipe for this; it is a balance that people must find for themselves. With questions such as: how important is the academic community to us - is the institute or faculty (and the university) mainly a collection of individualists or is it a community in which staff grant each other space and want to care for each other, even if opinions differ widely? And what is the role of the faculty in determining the importance of the academic community and the collective?

This issue affects not only the atmosphere within a department, but also the academic freedom of research and teaching. Ideally, colleagues should talk to each other and to their students about how publicly taking a political stand affects the content of teaching and research.

Academic freedom is a condition for which teachers and researchers bear mutual responsibility. They are part of the university community within which agreements (rules of conduct) are made about how the members of that community should behave not only towards the outside world, but also towards each other.<sup>83</sup>

The Code of Good Governance of Dutch Universities (2019) also places academic freedom in the context of the university as an academic community.<sup>84</sup> This code makes it clear that academic freedom comes with responsibilities: academics together contribute to a safe culture, to an inspiring climate, and to the optimal education and development of often young people.

For example, the collective labour agreement (‘CAO’) of Dutch universities requires them to ensure a code of conduct regarding undesirable behaviour and an ombudsman. Partly to promote well-being in the workplace, parties want to eliminate undesirable behaviour, including (sexual) harassment, aggression, violence and discrimination.<sup>85</sup> But the code of conduct must not unnecessarily curtail the academic freedom and freedom of expression of faculty and staff. This applies to the provisions of the code of conduct itself and to the uncertainty employees experience when they do not know which interpretation of those provisions they can rely on.

### **Position of students**

One of the core tasks of the university is to offer academic education. In fulfilling that mission, the university also pays attention to the personal development of students so that they learn to think independently and critically, and their sense of social responsibility is promoted.<sup>86</sup>

Therefore, students also share in academic freedom. Within certain limits, they have the freedom to pursue education and the freedom to study the subjects they wish to explore. They should not depend on (as the WHW puts it) “certain political, philosophical or science-theoretical views” in the education they receive. This means that students should feel free to engage in a

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83 CAO Dutch Universities, Article 1.12.

84 University Governance Code, 2019: “Traditionally, universities have stood for freedom of mind, thought and speech, and unfettered development of teaching and research. They are sanctuaries where any question can be asked and answered freely. Every university strives to create a safe culture and an inspiring climate in which the entire university community, including students and doctoral students who, after all, may rely on adequate training and guidance, can achieve maximum development.”

85 University of Amsterdam Code of Conduct, 27 August 2020: <https://www.uva.nl/over-de-uva/beleid-en-regelingen/gedragscodes-en-sociale-veiligheid/gedragscode-van-de-uva.html>

86 Article 1.6(5) WHW.

conversation with their teachers about assumptions in the teaching, and that students should be able to do this without being intimidated.

The (former) Code of Scientific Conduct (2014) puts it this way:

‘Scientists share in the responsibility for the quality of the educational programme in which they teach, and for the scientific and societal value of the research programme in which they participate. They follow their own preferences only to the extent compatible with that responsibility’ and ‘in information transfer in teaching, selective representation of available knowledge shall be avoided or argued. Transmitted scientific knowledge is clearly distinguishable from one’s own opinions or speculations about it.’<sup>87</sup>

In principle, this freedom makes students a participant in the university community and that comes with a certain responsibility. It is the teacher’s job, trained and authorised to do so and within applicable quality frameworks, to put together the academic content of a subject and the curriculum. But that does not mean that the student has no influence on teaching within the programme. The study programme focuses on what students will need ‘later’ and they can come up with their own ideas about this. That is why the Dutch system has student participation at all relevant levels. For instance, rules of conduct and the Education and Examination Regulations are subject to approval or advice from the student council and the study programme committees, and students are involved in regular quality assurance. UvA media studies associate professor Dr Reza Kartosen-Wong recently put it this way in the Dutch newspaper *Trouw*:

“So as teachers, we need to embrace these critical students. Together with them, we can make academia more inclusive and thus more qualitative and future-proof. They keep us on our toes and force a much-needed reflection on the curriculum, the university, the educational environment and our own role in the whole. We too have to move with the times and new insights, which is essential for academic development. We owe that to our students.”<sup>88</sup>

At the same time, the embracing of critical students does not diminish the fundamental academic freedom of the teacher to shape and teach the content of education, in collaboration with colleagues. Students have a say and influence, but the nature and degree of control thus differs from that of academic staff.<sup>89</sup> A call to dismiss or suspend a teacher for sharing or addressing certain scientific or scholarly insights is not compatible with academic freedom.

A special place is occupied by anonymous course evaluations. These are common at the UvA and at many other universities. The exercise of academic freedom should also be transparent to students. The committee therefore suggests considering whether the anonymous nature of these evaluations outweighs the resulting avoidance of an open discussion based on arguments. After all, in feedback on teaching aspects of educational content come together with personal and didactic aspects. Content-related points (e.g., asking for more attention for female or non-Western academics) do not belong in an *anonymous* survey, but should instead be a reason for discussion. The step from anonymous course evaluations to commercial websites<sup>90</sup> where students are invited to publicly and anonymously complain about teachers is small, and the distinction (see the text on polarisation above) between an online smear campaign and legitimate attention via a discussion about content is thus in danger of disappearing.

87 See recommendations 1.11 and 2.5 of that (old) code.

88 Reza Kartosen-Wong, Wed Feb 26, 2023.

89 Green (2017), p. 108ff.

90 See a website as <https://www.ratemyprofessors.com/>

Lastly, and importantly, student freedom must certainly include the protection of students from interference with their freedoms by national governments and providers of scholarships and visas.<sup>91</sup>

#### **Position of commissioners and subsidisers**

Finally, academic freedom protects against undue influence by patrons, subsidisers and donors. Citizens, companies and civil society are increasingly involved in science. For example, through research funding in the form of partnerships, co-financing or research assignments. In these relationships, private funders and commissioners have a responsibility to respect academic freedom.<sup>92</sup>

### **6. Academic freedom and freedom of expression: differences in nature and scope**

The EU Charter of Fundamental Rights lists them both: freedom of expression in Article 11 and freedom of science in Article 13. Together with the freedom of association and assembly and the freedom of conscience and religion, they contribute to a pluralistic, tolerant and broad-minded society, where views can coexist and thoughts can be developed and expressed independently of the state. These other fundamental rights, while essential to the exercise of academic freedom, explicitly do not coincide with it.

#### **Where academic freedom and freedom of expression differ**

Academic freedom has a different scope and, moreover, a different purpose and content from freedom of expression, where interests and opinions are central. Indeed, the latter fundamental right (which also has limitations) centres on free debate in which everyone is allowed to participate. It is then about the freedom of citizens to express their beliefs and feelings, without prior control by or on behalf of the state. The idea is that freedom of expression thus contributes to a *marketplace of ideas*.<sup>93</sup> The aim is to enable all citizens to participate in society; therefore, even unscientific or controversial opinions and expressions fall under the protection of this fundamental right.<sup>94</sup>

A landmark 1976 ruling by the European Court of Human Rights put it this way:

“Freedom of expression ... is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population...”

91 Sometimes students are required to keep their embassy or consulate informed of their progress. There are further persistent reports of foreign powers monitoring ‘their’ students and (PhD students) during their studies or research, pressuring them to provide information not only about their progress, but also about lecturers, researchers and fellow university students. Compare a report on the experience at Australian universities: Human Rights Watch (2021).

92 KNAW (2021) highlights the importance of having researchers and clients sign a declaration of independence when entering into a collaboration.

93 This widely used metaphor is taken from Justice Oliver Wendell Holmes Jr’s minority opinion when the US Supreme Court ruled in *Abrams v United States*, 250 U.S. 616 (1919).

94 If a person makes a factual statement, he may be asked to substantiate it. For a recent example, see *Staniszewski v. Poland*, of 14 October 2021, para. 45: “(d) the Court has held that the requirement to prove to a reasonable standard that a factual statement was substantially true does not contravene Article 10 of the Convention (see *Rumyana Ivanova v. Bulgaria*, no. 36207/03, §§ 39 and 68, 14 February 2008; *Makarenko v. Russia*, no. 5962/03, § 156, 22 December 2009; and *Rukaj v. Greece (dec.)*, no. 2179/08, 21 January 2010 (...).”

But freedom of expression is not absolute either, and not every restriction constitutes censorship:

“From another standpoint, whoever exercises his freedom of expression undertakes “duties and responsibilities” the scope of which depends on his situation and the technical means he uses.”<sup>95</sup>

The premise that anyone is free “to offend, shock or disturb” is less obvious in the context of science and scholarship because it does not fit into a safe community. In the university context, then, we prefer to speak of the academic freedom of anyone “for the new, the provocative, the disturbing, and the unorthodox.”<sup>96</sup>

### **What academic freedom adds to freedom of expression**

What is the importance or added value of academic freedom when the fundamental right of freedom of expression offers protection that is so much wider? That added value lies, at least in theory, mainly in the above-mentioned duties of care, which, in the case of academic freedom, are addressed to government, politics, employer and administration. In this, university employees differ from, say, civil servants. For university employees, civil service rules do not apply in the same way. After all, they do not speak ‘on behalf of’ their supervisor, the dean or the board of governors, but in their own capacity and as academics (see section 7).

Academic freedom, as in the UNESCO definition, also includes the freedom of employees to express their opinions about the institution in which they work and to criticise its management – as part of, or outside works and student councils. More than in many other sectors of society, therefore, university employees - including non-academic staff - and students are involved in determining the course of the university, in the design of teaching and research, in the spending of financial resources, and in the university’s strategic direction.<sup>97 98</sup>

The underlying interest of protecting the progress of science legitimises employees speaking in their own right. This changes if employees themselves explicitly choose to speak *on behalf of* the university or claim their position within it. They are ‘ambassadors of the organisation’ in a different way than other civil servants must be. Moreover, universities have a rich culture of protest against university management and administrators; university newspapers and websites testify to this on a daily basis, and this does not usually prevent ‘the proper functioning of research and teaching.

## **7. Academic freedom and the public sphere (extra-mural free speech)**

The relationship between academic freedom and freedom of expression becomes more complicated when it comes to public space. In this section, the committee pays attention to that freedom of the academic in the public sphere. It discusses:

- expressions within the expertise
- expressions outside expertise
- limits on freedom of expression for the scientist
- the role of directors.

Although the boundary between university and society has always been a contested one, the acceleration of digital communication has opened the channels wide. The outside world knows much of what goes on at the university, and conversely, staff and students know how to easily

95 ECHR 7 December 1976, No. 5493/72 (*Handyside v United Kingdom*).

96 These words come from the Report of the Committee on Freedom of Expression at Yale, 23 December 1974.

97 Cf. the report the European Parliament (2023).

98 Somewhat differently Kwikkers (2023), p. 81, who wants to separate institutional freedom and academic freedom more strictly.

find their way to the public arena. An important place where academic freedom and freedom of expression meet are those venues where scholars move *outside* the highly regulated context of their academic research and teaching.

Of course, as citizens academics have freedom of expression, just like all other citizens. The practical opportunities for researchers or teachers to make use of this extramural freedom directly, i.e., outside scientific or journalistic editorial offices, have increased greatly in recent decades: think of blogs, vlogs, podcasts, columns in newspapers and magazines, media appearances, but also think of the growing number of media platforms, sometimes even linked to political parties or certain social movements, and social media.

Universities and funders welcome this use: it is seen as an appropriate tool to disseminate results of research. As such, it also fits well with the societal role that the legislator has given universities as a third task. However, it does not suit universities to do this cheering only when the message suits interests of the university, its funders and administrators.<sup>99</sup>

### **Expressions within one's expertise**

If there is a relationship with one's own expertise - on-topic free speech - the existing rules are fairly clear. In accordance with the Netherlands Code of Research Integrity, even in a non-scientific environment, scientists must abide by the applicable rules of care and integrity. Public communication should be honest and clear about the limitations of the research and of one's own expertise and about any funders, and should only be presented when there is sufficient certainty about the results.

Moreover, when participating in the public debate, the academic may – and must - be challenged by both peers and administrators to be open and honest about the role in which that participation takes place, and about its nature and status. When it comes to research contributing to policy development, it is important to distinguish as carefully and transparently as possible between the scientific analyses, and the political choices that can be based on them.<sup>100</sup> Openness is also required about possible conflicts of interest.

So-called 'popularising publications' need not be as extensively documented as the scientific publication(s); they may be tailored to the target audience. For example, the Netherlands Board on Research Integrity (LOWI), as the highest advisory body within the academic profession in matters where scientific integrity is questioned, has determined that for a podcast, for example, not all the standards for referencing from the integrity code apply, because such a podcast is an audio product with a certain low threshold.<sup>101</sup>

### **Expressions outside one's expertise**

More difficult are expressions on topics outside one's own scientific expertise. This is known as off-topic free speech. Teachers and researchers are citizens and are therefore entitled not only to academic freedom, but also to the fundamental right of freedom of speech. Think of columnists and other 'public intellectuals'.

In such a case, it is not always clear whether the statements are made as a university teacher or researcher, or as a citizen. Moreover, the line between on- and off-topic becomes blurred in the case of interdisciplinary research.

99 Compare the decision of the European Court of Human Rights, ECtHR, 19 June 2018, no. 20233/06 (*Kula v. Turkey*). For a lucid discussion of the court's case-law, see LERU (2023), no. 59 et seq.

100 KNAW (2018); KNAW (2013).

101 Compare, for example, LOWI Opinion 2021-16 (on a podcast).

First and foremost, university employees should not be disadvantaged in their career by the exercise of their off-topic free speech.<sup>102</sup> They are then protected not by their academic freedom as academics, but by their freedom of expression as citizens.

The question is whether these off-topic activities still have certain, or perhaps additional, responsibilities for scientists. The committee believes that they do. Society is quick to see the scientist as intertwined with the university as an institution. Even if they express themselves off-topic, they should therefore distinguish their expressions as scientists and as citizens and carefully explicate and interpret the nature of their contribution to the public debate.<sup>103</sup>

Leuven rector Luc Sels, for example, trusts his colleagues in this, even when it comes to views that lie outside his own scientific expertise; but he does attach a mission to this:

“All members of the university community have the right to make their views public. Yes, even on matters outside their expertise. Most of the time it will be clear that it is their opinion, but if there can be any doubt about that, they had best make that explicit. It is about an opinion as a citizen, a point of view that neither binds the university nor represents the scientific consensus. Moreover, the university is the place par excellence where opinions should be freely exchanged. A university that restricts this or is forced to do so by a government or church body is no longer worthy of the name.”<sup>104</sup>

Whether professionals are worthy of that trust will have to be established in Leuven (and elsewhere). They may - and should - also be held accountable for this, especially by their peers. There are researchers and teachers in the Netherlands who regularly express themselves without any disclaimer on subjects that are demonstrably outside their expertise. The committee would like to hear such a disclaimer more often in public debate. The Netherlands Code of Conduct for Research Integrity (2018) also prescribes such clarity, because standard 54 says: “When participating in public debate, be open and honest about the role in which that participation takes place and the nature and status of that participation”. The committee thinks that academic freedom would benefit if academics held each other accountable for this, and that it can also have a strong formative value for students.

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102 Compare UNESCO (1997) para 26.

103 KNAW (2021); see also Van der Heijden (2003).

104 Sels (2021).

### Limits to freedom of expression for the scientist

Freedom of expression also has limits. When it comes to the freedom of expression of ‘ordinary’ employees, the European Court of Human Rights (ECHR) has ruled that expressions of opinion that might be permissible in another context are not always permissible in the context of an employment relationship.<sup>105</sup> According to the court, interference with freedom of expression does not only occur if the employer prohibits publication, but also if sanctions of a criminal, labour, private or disciplinary nature are attached to an expression. Whether there is then sufficient justification for this interference is ultimately a matter of weighing up interests.

This means that the (interests served by the) freedom of expression should be expressly taken into account when answering the question whether the measures taken by the employer in response to an employee’s expression are permissible. The manner and motives in which the expression in question took place may also play a role. The European human rights court distinguishes between criticism (which may be justified) and expressions of an offensive nature by the employee (which may not be). The European court weighs that a sanction such as dismissal may have a chilling effect on other employees within the organisation, in the sense that the dismissal or departure of a colleague discourages others within the organisation or company from exercising the right to freedom of expression.<sup>106</sup>

### The emeritus professor

The Netherlands Code of Research Integrity applies to all scientists, including PhD students and external students, guest researchers, part-time researchers, and external professionals insofar as they participate in the institution’s research or present their research under the name of the university. And also for supervisors, project leaders, research directors and managers insofar as they help determine the design and implementation of the research.<sup>107</sup>

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105 See, inter alia, ECHR 15 June 2021, ECLI:CE:ECHR:2021:0615JUD003578619, NJB 2021/2285 (*Melike v Turkey*); it concerned dismissal for posting likes to Facebook posts. See at greater length the Conclusion of Advocate General Ruth de Bock under 4.27, before HR 7 October 2022, ECLI:NL:HR:2022:1402, NJ 2023/86; that case concerned an interference with the freedom of expression in the horizontal relationship between an ROC and a teacher who had published a book that was disagreeable to the ROC. That ruling shows that in dismissal cases, where dismissal follows an expression by the employee, a causal link and thus a violation of Article 10 ECHR is quickly assumed. It is currently up to another Dutch court to assess whether the infringement complies with Article 10 ECHR, probably through a so-called necessity, proportionality and subsidiarity test. In view of the *chilling effect* of a dismissal or other sanction, the court will have to apply a strict test (cf. ECHR 15 June 2017, ECLI:CE:ECHR:2017:0615JUD002819915 (*Independent Newspapers (Ireland) Limited v Ireland - 28199/15*)). For a recent and interesting example, see *Ayuso Torres v. Spain* - Judgment 8 November 2022. The complainant is a military officer as well as a professor. On TV he makes controversial comments, upon which disciplinary proceedings follow. ECtHR: it might be understandable to punish him militarily for such remarks, but he was also a professor. Legal paragraph 56 reads, “However, the national courts did not properly take into account the applicant’s status of a constitutional law professor. Reiterating that Article 10 of the Convention also protects the form in which ideas are conveyed, the Court considers that the present application relates essentially to the exercise by the applicant of his right to freely express his views as an academic during a television programme. In the Court’s view, this issue unquestionably concerns his academic freedom, which should guarantee freedom of expression and of action (compare *Kula v. Turkey*, no. § 38, 19 June 2018, with further references).” This *Kula* case is also worth taking note of (“disciplinary sanction imposed on prof for taking part in a television programme”).

106 ECHR 5 November 2019, ECLI:CE:ECHR:2019:1105JUD001160815 (*Herbai v Hungary*). The court ruled that particular consideration should be given to (i) the employee’s motives, (ii) the nature of the expression of opinion, (iii) whether the employer was harmed by the employee’s statements, and (iv) the severity of the sanction imposed. See a more detailed case law review Let the (2023), also on the above-mentioned important Supreme Court decision 7 October 2022, ECLI:NL:HR:2022:1402.

107 Dutch Code of Research Integrity, 2018, para 1.3.

The code also applies to emeriti and individuals who have left the university, insofar as they still participate in the institution's research and teaching, supervise PhD students, or publicise their research using the institution's name.<sup>108</sup> They thus bear responsibility, even after their academic careers, to distinguish their opinions as scientists from those as citizens and to carefully interpret the nature of their input in the public debate.<sup>109</sup> As an aside, they will then also have to disclose any ancillary positions.

### **The role of administrators**

Whether the contribution is scientific or not, on-topic or off-topic, it is prudent for administrators to exercise restraint and not to take sides in order to avoid becoming arbiters in the exercise of their employees' academic freedom. Thus - except, for instance, in cases of criminal statements such as Holocaust denial or racism, and of utterances and attacks aimed at threatening or damaging persons inside or outside the university community - it is not desirable for, say, the rector or the dean to publicly distance themselves from publications or views of staff members, no matter how loudly that may be called for by the outside world.

The self-cleansing ability of science should be central, with the university's Research Integrity Committees and the LOWI as the *ultimum remedium* for the practice of science. Administrators should not be reticent in protecting their teachers and researchers, at least until further notice. A good and visible university protocol, established in cooperation with the works council, is important to make the position of the administrator clear.

## **8. The concepts of woke and anti-woke: thou shalt not cancel**

The concept of wokeness is not easy to define, not least because it constantly changes meaning and usage. Initially, within African-American cultures, it referred to awareness of large-scale, deep-rooted, sometimes centuries-old racism, inequality and social injustice in the world and in society. A catalyst for wider use of woke was the Black Lives Matter movement, with key themes of racism and colonialism and decolonisation of white Western thinking and identity. In this movement, anti-racism was explicitly linked to criticism of heteronormativity. Those who did not share this analysis, or these political views began to use woke as a catch-all term for overblown activism and political correctness that would violate both academic freedom and freedom of expression.

The use of woke as a negative term, often in the combination 'anti-woke' or 'stop-woke', gained influence recently. As a result, the woke movement seems to have to share its visibility in social and political discourse with an 'anti-woke movement'.

The reverse may even be the case: a recent network analysis by opinion weekly *De Groene Amsterdammer* shows that the term woke is hardly used anymore on social media like Twitter by the more 'left-wing activists'; at least much less than 'conservative-right' and so-called 'conspiracy thinkers', who mostly present themselves as anti-woke in the process.<sup>110</sup>

Typically, the woke and anti-woke debate is conducted at least as heatedly outside as inside the university world.<sup>111</sup> For some, woke is a veiled term to oppose what they see as overblown diversity policies; for others, anti-woke is a convenient disqualification of all questions that can be raised regarding Equality, Diversity & Inclusion (EDI) policies. This increases the risk of lumping different issues together and makes a real conversation about the interpretation of the

108 *ibidem*.

109 See Van der Heijden (2003); furthermore, de Baets de (2020).

110 Thomas (2023).

111 In the US, De Santis campaigns for the presidency referencing woke. By law, teaching on topics "that could cause anyone to feel guilt, anguish or any form of psychological distress" is prohibited there.

university playing field based on content impossible. Sometimes wokeness is used to exclude external speakers; or vice versa: anti-woke attempts to discredit university EDI programmes by invoking that same wokeness.

Universities thus face the challenge of not letting the conversation on academic freedom be hijacked by those politicised oppositions. In Florida, the conservative government is banning books from schools and the legislature is banning publicly funded universities from teaching critical race and critical gender studies. Those who make mistakes as teachers and act in violation of the law can expect dismissal.<sup>112</sup> “You can smell fear in the air” reads the report by the American Association of University Professors (AAUP), once founded to protect university faculty from being fired for political views.<sup>113</sup>

In England, too, politics has begun to interfere in what happens in universities. There, the Higher Education (Freedom of Speech) Act 2023 recently came into force. With this act, the Conservative government aims to guarantee freedom of speech and academic freedom within universities. The law also extends to students and their associations. Universities were not in favour of this legislation, with its strong bureaucratisation, the appointment of a Free Speech Director (in the jargon, the ‘Free Speech Tsar’) and the strong legalisation with which the law was designed. For where speakers are wrongfully prevented from speaking, the law provides for damages to be paid, including for any reputational damage to the speaker.<sup>114</sup> What the law will mean in practice for universities is impossible to say at this time. Some warn that the law could very well turn out differently than anticipated.<sup>115</sup> But these examples show the importance of Dutch universities taking the initiative. Due to the high-profile debates, much has already been published in the UK and US about the effects of perceived ‘excessively woke thinking’ at universities, and how to deal with it.<sup>116</sup>

The term often used in these woke and anti-woke debates is ‘cancelling’. Some call for certain views or images to no longer be given a platform in the public domain of the university. Others qualify all protests against speakers as cancelling. As a university, it therefore seems wise not to go along with the frames of woke and anti-woke, but to focus on actively combating activism that excludes people or makes conversation impossible, from whichever camp it originates. Exclusion can take different forms. Physically threatening scientists and colleagues whose views fall outside the accepted views and assumptions of academic community, is unacceptable. But making it *de facto* impossible to study or express oneself on sensitive topics, or ask controversial questions, is also unacceptable.

## 9. Safe spaces, trigger warnings and ‘decolonising the curriculum’

In the debate about academic freedom and ‘excessive woke’, one often hears three terms:

- safe spaces
- trigger warnings
- ‘decolonising the curriculum’.

112 The right of corporations to avoid unwelcome terms is also written about, e.g. Carl Rhodes, *Woke Capitalism How Corporate Morality is Sabotaging Democracy*, Bristol University Press, 2022.

113 For an overview of legislation already in place and pending, see Preliminary Report of the Special Committee on Academic Freedom in Florida, from the American Association of University Professors, 24 May 2023: <https://www.aaup.org/report/preliminary-report-special-committee-academic-freedom-florida>

114 UK Parliament, 12 May 2023: <https://commonslibrary.parliament.uk/research-briefings/cbp-9295/>

115 Malik (2023).

116 An excellent article with plenty of practical guidance is that by Suissa & Sullivan (2022). Another useful publication is Ben Porath’s book (2023).

### Safe spaces

The concept of safe spaces (or places) comes from psychotherapy and has now also taken on the meaning of places on university campuses, both physical and digital, where students can feel safeguarded from expressions or literature that might cause them psychological distress. However, the university as a place where ‘new, provocative, confusing and unorthodox things’ happen is not an environment for safe spaces. Those who want to live in their own bubble have little business in higher education. The president of the UvA made this very clear in her speech at the annual opening in 2022. The rector of Utrecht University, Henk Kummeling, spoke in a similar vein:

“This confrontation is now inherent in the mission of universities to promote independent, critical thinking and social responsibility.”<sup>117</sup>

Education minister Robbert Dijkgraaf wrote in response to parliamentary questions:

“About academic freedom at Dutch universities in general, I note that utterances by teachers or researchers on socially sensitive issues may lead to criticism, rebuttals and sometimes complaints from students or colleagues. Discomfort is allowed. Students may be confronted with uncomfortable views; and teachers and researchers may count on being held accountable.”<sup>118</sup>

The lecture hall and the classroom are the places where you are confronted with new ideas and views. This place should be safe, in the sense that it is safe for everyone to actively participate and to make mistakes. After all, it is almost always about educating young and developing people.<sup>119</sup> And the teacher, too, must be able to make mistakes and learn, without fear that a damaging soundbite or a one-liner taken out of context will circulate on social media. So the conversation between students and teaching faculty about the protection they can count on in their mutual relationship is important. In this sense, it is best to think of the lecture hall as a safe space.<sup>120</sup>

Safe spaces in the sense of places to hang out in one’s own self-chosen circle do exist at every university, by the way, but these are student associations or disputes, for example. The university has very limited control over these, and of course there is nothing against them; although one would hope that members also maintain contacts and learn from others outside their own circle.

### Trigger warnings

The concept of trigger warning (or content warning) involves giving students a warning prior to a film, image or text, which aims to prepare them for, for example, violence, racism or sexual abuse, which could potentially trigger earlier trauma. Utrecht rector Henk Kummeling writes about this:

“To call a bit more attention to so-called ‘trigger warnings’ in that context, warnings that the content of education and research can be confrontational, seems fine to me. We give those warnings in other fields too, as long as space is ensured for confrontation. In those confrontations, as mentioned, sometimes certain legally enshrined responsibilities and procedures will also have to be observed.”

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117 Kummeling (2022).

118 Minister’s answers (20 February 2023, number 1608) to questions by Member Dekker to the Minister of Education, Culture and Science on the threat to academic freedom at Dutch universities (submitted 25 January 2023).

119 See further the excellent book by US professor of educational didactics Ben-Porath (2017).

120 Plate (2019). See the illuminating ‘experience book’ by Plate et al (2019).

In this sense, trigger warnings can be used to help students delve into personal themes that are sometimes hard for them. But one should exercise extreme caution, according to the committee. A 2014 report by the AAUP identifies the risk that trigger warnings can create a repressive, ‘chilly climate’ for critical thinking in the study group and that teachers on temporary contracts are particularly at risk of engaging in self-censorship. Although the AAUP does acknowledge that there may be cases where a teacher feels it necessary to warn students about potentially psychologically charged material.<sup>121</sup> In any case, trigger warnings should not be intended as an invitation to leave a lecture or leave a text unread. Life after university certainly does not come with warnings.

### ‘Decolonising the curriculum’

The third term one hears often in the ‘excessive woke’ debate is ‘decolonising the curriculum’. The term originated from student movements in South Africa (‘Rhodes must fall’) that demanded space for non-Western perspectives in education curricula.<sup>122</sup> The term has since come into use at universities around the world, and again it is about weaving into the curriculum other perspectives and adding (or deleting) authors.

Adaptation of curriculum, of teaching, testing and didactic methods is an ongoing reality at universities. Especially programmes in the alpha and gamma domain that deal with society should ensure their relevance. The addition of perspectives and of new authors from hitherto unincorporated traditions, for example, should be a matter of course that need not wait for escalation in a battle between proponents and opponents of a term such as ‘decolonisation’, which is loaded for some. Note that, crucially, adding new material is completely different from deleting existing material.<sup>123</sup>

Students can raise wishes in this area directly with their teacher and through the study programme committees. Ultimately, the subject matter and didactics fall under the academic freedom of the teacher, obviously in cooperation with colleagues and within the established frameworks of quality assurance.

## 10. External speakers, demonstrations, flyering

One issue that is regularly divisive in practice is that of the ‘controversial speaker’. Where there is no relationship with the university and its campus, there is no problem. But usually, it will be the intention of the organisers (which may be staff but also students) to hear the speaker on-campus. Sometimes it will be a scholar with controversial scientific views or theories; but it may also be a speaker who is already under social fire because of their nationality, political colour or an identity trait. The choice of a staff member or study association to invite someone falls under the academic freedom of the organising staff or students. The speakers in their own right obviously have freedom of speech and academic freedom if they are a scientist.

The US author of a book on free speech on campus, Keith E. Whittington, rightly notes:

“Embracing free speech is easy if the speech never seems very challenging. [...] It is much more difficult to learn to tolerate those with whom we disagree and who espouse ideas we find preposterous, repugnant or even dangerous.”<sup>124</sup>

121 AAUP (2014).

122 Charles (2019).

123 Stölker (2022).

124 Whittington (2019).

If anywhere, it is true here that a university is place where the new, the unorthodox, the confusing are allowed to be heard. The Yale University report from which these three words come dates back to 1974:

“Free speech is a barrier to the tyranny of authoritarian or even majority opinion as to the rightness or wrongness of particular doctrines or thoughts.”<sup>125</sup>

Universities should be very reluctant to refuse external speakers for reasons of dissenting views, social or political orientation, or background. Willingness to listen applies precisely to external thinkers and speakers. Even, and especially, if they come to speak from a background that differs from the mainstream within the institution, their contribution can be enriching. Whether this is so is usually not known until one has heard them and been able to question them. It is therefore important that the debate is open and (physically) safe, and that an experienced and neutral moderator is provided if necessary.<sup>126</sup> At the UvA, a former Shell top executive recently turned down an invitation because of the ‘discussion climate’; it seems an example of the deterrent chilling effect, ultimately leading to a form of self-censorship.<sup>127</sup> That effect, a term regularly used by the European Human Rights Court, can result in restraint (read: self-censorship) in the exercise of academic freedom and the right to criticise the institution’s management; for instance, out of fear of legal status measures or fear of (sometimes even physical) threats.<sup>128</sup>

Practical experience shows that a ban issued too quickly usually gets a university into more trouble, than allowing someone to speak. Rejecting a speaker who has already been invited, disrupting their contribution or threatening to do so soon undermines the university’s core values. Not inviting or refusing an external speaker (‘disinviting’), just like disrupting or threatening to disrupt contributions, can have a chilling effect and create a slippery slope for all students and staff.

Those who exclude others from the debate run the risk of being excluded themselves at some point. Moreover, those who exclude others, or their opinions beforehand deprive themselves of the opportunity to sharpen their own opinions or scientific position. A clear protocol, established with the works council, is important.<sup>129</sup>

This is not to say that any speaker should be eligible for invitation: the university is public but not a public space. It is a place for conversation and debate, not a *speakers’ corner*. Therefore, invitations or events can indeed be prevented or an initial permission withdrawn, namely if such an event has apparently been organised with a view to misusing the university’s reputation to lend lustre to causes at odds with the university’s core values.<sup>130</sup> The university can set limits where it is apparently being used as a platform by individuals who wish to actively undermine trust in the value of scientific research and education. An obvious sign of this is if the speaker refuses to open up for questioning and debate or makes extreme demands on the composition of a panel or the audience. It is important to lay down in a protocol for what purposes the university’s top locations (such as the auditorium, etc.) are and are not available.

125 Report of the Committee on Freedom of Expression at Yale, 23 december 1974.

126 Stolker (2018).

127 The person concerned was allowed to come to Tilburg University to tell his story undisturbed and was not asked a critical question, which professors, in turn, criticised: <https://universonline.nl/nieuws/2023/05/23/in-tilburg-ging-de-rode-loper-uit-voor-voormalig-topman-shell/>.

128 See further the report Pech (2012).

129 Compare, for example, Leiden University’s Regulations on the Use of University Buildings, Grounds and Other Facilities, 2021.

130 Ibid.

**Demonstrations and flyering**

Something similar applies to the exercise of the (fundamental) right of employees and students to demonstrate and to distribute printed matter (flyering).<sup>131</sup> University administrators may be quick to see a demonstration as a disturbance of law and order, potentially endangering the safety of individuals and the progress of teaching and research. Restricting demonstrations may indeed be justified to protect those interests. But in doing so, do not lose sight of the fact that freedom of expression is a fundamental right which does not simply cease to exist when one passes through the university gate.<sup>132</sup> Restrictions on that fundamental right, like restrictions on academic freedom, must meet strict requirements.

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131 Ibid.

132 See ECHR judgment of 20 June 2023 in *Kaymak and Others v. Türkiye* (no. 62239/12). Academic freedom is not mentioned in so many words, but the case does confirm (in r.o. 55) that, in principle, freedom of demonstration also applies within the walls of the university.

## Appendix 1

# Terms of reference

### 1. Reason

On 27 November 2022, [The whistleblower] sent a Report to the Complaints Committee of the University of Amsterdam (UvA), having previously addressed [the] Dean of the Faculty of Social and Behavioural Sciences (FMG).

[Reporter] wrote: “Through the whistleblower procedure, I am reporting to you about serious institutional wrongdoings at the FMG.” He attached a Letter of 2 pages and a Dossier of 27 pages. The Letter details the alleged wrongdoing(s). [The whistleblower] explains these in the Dossier. The Dossier further shows that it is not only about the woke-related issues as mentioned in the Letter, but also about the scope for investigation into corona policy and the principles of other policy files.

[The whistleblower] has worked at the UvA since 2007, in varying positions within the social sciences. Since 2012, [The whistleblower] has been a lecturer in the Interdisciplinary Social Science (ISW) programme.

### 2. Procedure

#### Complaints Committee

[The whistleblower] addressed his Report to the Grievance Committee and not to his superior or the Executive Board in accordance with Article 3(1) of the Whistleblower Procedure<sup>133</sup>. The Grievance Committee contacted him about this and forwarded the Report to the Executive Board on 16 December 2022. In doing so, the Grievance Committee stated that it itself is primarily (equipped) to investigate complaints about undesirable behaviour against a particular person and the Report requires a different kind of and more extensive (cultural) investigation. It recommended that the Board compose an external committee to investigate the Report and report back to the Board. Based on this report, the Grievance Committee may issue an opinion to the College.

#### Executive Board

On the same day of receipt, the Executive Board decided, in accordance with Article 3, fifth paragraph, of the Whistleblower Regulations, to have an investigation conducted by an external and independent Committee into what was brought forward in the Letter and Dossier. Before initiating that, the Executive Board invited [The whistleblower] to a meeting with the College President, Prof G.T.M. (Geert) ten Dam. That conversation took place on 13 January 2023, in the presence of [the] Secretary of the University, and [the] Head of Legal Affairs. On 18 January 2023, Ten Dam confirmed the intention to conduct an external investigation to [The whistleblower], in response to an e-mail from him. On the following day, the Executive Board announced by email to all employees of the ISW department that an external committee for the Investigation would

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133 Whistleblower regulation University of Amsterdam and Hogeschool van Amsterdam dated 16 February 2007

be set up. In doing so, the Executive Board urged as much calm as possible in the workplace, in the interests of the Investigation.

### **Supervisory Board**

Despite the fact that both [The whistleblower] and Ten Dam found the conversation of 13 January pleasant, open and constructive, [The whistleblower] informed [the Secretary of the Executive Board] on 18 January that he would also send the Dossier to the Supervisory Board. He did so (to the secretary of that Board), writing that after the 13 January conversation, he had received two anonymous messages about the possible connections Ten Dam would maintain with scientists within that faculty through her professorship in the FMG.

The Supervisory Board does not consider that this presents facts that make the Report a matter of concern to the Board or any of its members, and therefore it does not consider that the remit for investigating the Report should lie with the Supervisory Board. The Board wrote this to [The whistleblower]. Ten Dam was chair of the Education Council from 2011-2014 and of the Board of Governors from 2016. Within the FMG, therefore, she has not played a defining administrative role for quite some time.

### **Admissibility**

According to the preamble of the Whistleblowing Regulations, attention may be called to “suspicions of illegal or immoral practices, which take place under the responsibility of the employer and in which a major social or institutional interest is at stake”. The concept of wrongdoing is formulated in Article 1(g). Based on that definition, it is not immediately evident that the current Report qualifies as wrongdoing and/or can be brought under the Whistleblower Regulation. [The whistleblower] himself speaks of violation of the rule of Article 13 of the EU Charter of Fundamental Rights, on academic freedom (which is also contained in Article 1.6 of the WHW). In announcing the Investigation, the Executive Board did not make the question of admissibility (including the applicability of the Whistleblowers’ Regulation) a preliminary, but made it part of the Investigation.

### **Term**

The Whistleblower Procedure requires the competent authority to give a position on the Report within eight weeks, or to indicate within which time frame a position can be expected. In conversation with [The whistleblower], the Board has already indicated that the investigation will take more time and the Board has subsequently confirmed this to him in writing. [The whistleblower] did not object to this. The Committee aims to deliver the Report to the Board by the end of June at the latest.

## **3. Research protocol**

### **Research design**

The Executive Board adopts the present investigation design, after notifying [The whistleblower] and [the dean] of its intention to do so.

### **Committee**

The Executive Board has prepared the following persons to conduct the Investigation on the Report as a Committee:

- Prof C.J.J.M. (Carel) Stolker, rector emeritus and chairman of the board of Leiden University (chairman of the Commission)
- Prof J.I. (Janka) Stoker, professor of leadership and organisational change University of Groningen
- Prof M.L. (Berteke) Waaldijk, professor of language and cultural studies, Utrecht University.

The Board has added to the Commission a similarly external, independent secretary in the person of Dr A.J. (Arne) Brentjes, former head of Strategy and Information at the UvA. The Committee will be referred to as the [...] Stolker Committee.

The central research question is: is there wrongdoing within the meaning of the Whistleblower Procedures or, as stated in the Report, serious institutional wrongdoing at the FMG of the UvA leading to an acute and fundamental threat to academic freedom and the quality of education and research? In the elaboration of that question further on, in view of the nature and alleged serious abuses detailed by [The whistleblower], at the request of the Board, two themes are explored in more detail, namely ‘academic freedom’ and wokeness, and ‘safe spaces and students’ demands for education’. Before answering this research question, the Committee will issue an opinion on the admissibility of the Report.

In its Report, the Committee lays down its findings on these components, to which it can also attach recommendations for the FMG Board of Governors, as well as a recommendation for a course of action to remedy any abuses identified. Other parts of the UvA could also benefit from this.

### **Working method**

For the purpose of the Inquiry, the Commission - after a read-in period - will hold a ‘site visit’ of about two days (following the format of educational visits), during which it intends to conduct interviews with:

- the reporter
- the dean of the FMG
- the executives of the ‘triangle’ in the social sciences (department chair, education director, research director), the FMG head of human resources and any other executives who are or were involved in the Dossier
- staff and students of the relevant ISW programme (group-based)
- (delegations of) the faculty student and works councils.

The site visit, in late March 2023 [nb: took place 4/5 April], will not take place at the FMG itself, but rather in Amsterdam.

Prior to the site visit, the Committee sends, via the internal newsletter, an invitation to all employees of the ISW department asking them to provide written input on (institutional) abuses at the FMG (e.g. exclusion, cancelling and harassment), and an open invitation to do so to the faculty as a whole. This input can help the Committee in its discussions during the site visit. Expressions on social media are subject to investigation only insofar as they are contributed by an employee or a student.

During the site visit, there is an additional consultation available to others - staff and students from within or outside the faculty - to approach the Committee with facts or insights they consider relevant to the Inquiry.

The Commission’s working language is Dutch; if desired, people can also write to or speak to it in English.

The Committee is authorised to seek information from the Executive Board, the Faculty Board, and faculty staff it deems relevant to the Investigation; including inspection of personal correspondence and personnel files, but only if the person concerned consents.

The Commission is further authorised to consult external experts. In such cases, this shall be reported in the Report.

The Committee issues its Report to its client, the Executive Board. Shortly beforehand, the Committee offers the draft Report for inspection (without conclusions and recommendations and under embargo) to [The whistleblower], the Dean FMG, the ISW programme director and the Executive Board for a check on factual accuracy. Parts of the text may, if the Committee deems it appropriate, also be submitted to others in advance for a check on accuracy.

Employees without a relevant managerial position will not be quoted in the Report without their consent. All documents made available to the Commission are treated confidentially by it and are not added to or otherwise distributed in the Report without the consent of those concerned. Recordings or minutes of interviews conducted by the Commission and correspondence to the Commission shall not be attached to the Report, but shall be and remain the property of the Commission and shall be destroyed no later than six months after publication of the Report. Where minutes are taken of an interview, the interlocutor is given the opportunity to supplement and comment before the Commission adopts its final report.

The Commission aims to deliver the Report to the Board by the end of June 2023.

The Board will then determine its position on the Report, as required by the Whistleblower Procedure, and, subject to applicable regulations, make the Commission's Report public (with a non-binding translation into English).

#### 4. Elaboration of research question

##### Admissibility

Before answering the central research question, the Investigation Committee will advise on the admissibility of the Report under the Whistleblowing Procedure and its applicability, taking into account more recent developments at national and EU level on whistleblowing<sup>134</sup>.

##### Central research question and sub-questions

The central research question is: is there wrongdoing in the sense of the Whistleblower Regulations or, as stated in the Report, serious institutional wrongdoing at the FMG of the UvA leading to an acute and fundamental threat to academic freedom and the quality of education and research? The Committee focuses its investigation on the assertions and characterisations mentioned in the Letter and the Dossier and takes note of submitted information, with the ultimate aim of answering this research question. In doing so, the Committee will pay specific attention to the two additional themes raised by [The whistleblower] and the commissioner, namely 'academic freedom' and *wokeness*, and 'safe spaces and students' demands for education'.

The investigation will focus on the 'triangle' of Social Sciences (department, education directorates and research directorate), and on the FMG's administrative handling of the alleged abuses. If necessary for answering the question under review, the Committee may also involve other parts of the FMG and the UvA in the investigation, if required.

##### Academic freedom and wokeness

One of the institutional abuses indicated by [The whistleblower] concerns lack of 'academic freedom'. The question for the Commission is to elaborate on the meaning of the concept of academic freedom and its limits, especially with regard to its use for purposes within the FMG<sup>135</sup>, namely academic teaching and research.

<sup>134</sup> The 2016 House for Whistleblowers Act, the European Directive 2019/1937 of 23 October 2019 and the Bill on Whistleblower Protection.

<sup>135</sup> This is in contrast to, for example, the approach of the KNAW's 2021 report, which deals primarily with academic freedom in relation to society as a whole.

In doing so, in addition to the Netherlands Code of Conduct for Research Integrity (2018), the Committee takes into account the core values of the UvA mentioned in the current Strategic Plan and to which some elaboration has already been given in the UvA Code of Conduct.

In doing so, the Board suggests that the Committee, in the light of the UvA's core values and code of conduct, also formulate advice that could make a useful contribution to the broader debate on academic freedom and the supposed wokeness of universities, including possible suggestions on how to conduct the debate in a fruitful way in an academic environment.

#### **Safe spaces and student demands for education**

The Board also asks the Commission to specifically address the issue of 'safe spaces and student demands for education'. [The whistleblower] mentions in the Dossier restrictions that supposedly 'woke students' wish to impose on education, their teachers or their fellow students. The Committee is asked to investigate to what extent this is recognised by others (teachers and students) within FMG.

Minister Dijkgraaf of Education, Culture and Science said on 23 May 2022 (when answering Parliamentary questions) that such discussions should primarily be held in the universities themselves and are in the nature of academic education. Based on its findings, the commissioner asks the Commission, if possible, to draw up concrete suggestions that will help teachers and students, as well as the administration, to flesh this out.

## Appendix 2

# Whistleblower Regulations University of Amsterdam

### Preamble

Whistleblowing can be defined as the external disclosure by an employee (the whistleblower) of suspicions of illegal or immoral practices, which take place under the responsibility of the employer and where a major social or institutional interest is at stake, to persons who might take action against these practices.

It is important to ensure that integrity is an undeniable quality aspect of the organisation. The guiding principle is that employees and managers are expected to comply with internal and external laws and regulations at all times. In addition, everyone has a responsibility to safeguard the good name of the organisation. From this stems the right and responsibility to report suspected wrongdoing that could harm the organisation's good name and integrity.

Whistleblowing can have major consequences. The organisation concerned may be discredited and suffer damage. Whistleblowing can also seriously strain the employee's relationship with the organisation. Nevertheless, it is important for the management to be informed about (suspected) wrongdoing in the organisation in good time so that measures may be taken. Employees must be able to trust that reporting (suspicions of) wrongdoing, will not have any consequences for their legal status. Given this, it is important for both the organisation and the employee to lay down how (suspected) abuse in the organisation should be dealt with. For the University and Hogeschool van Amsterdam, this is laid down in these regulations.

Raising (suspected) wrongdoing within the meaning of these regulations must be proportionate. This means that not every report of (suspected) wrongdoing falls under the scope of these regulations. In principle, it concerns abuses with a major social or institutional interest. The concrete circumstances of the case may also play a role. The nature and seriousness of the abuse therefore influence the way in which it can be reported. As a rule, an employee may be expected to first raise the matter of (suspected) wrongdoing within the organisation internally, if necessary with the confidential adviser; the organisation must be given the opportunity to first assess the (suspected) wrongdoing itself and then - if necessary - put things right.

If an employee reports the wrongdoing externally, he or she may be required to approach the most eligible body. In doing so, the employee should take into account, on the one hand, the effectiveness with which the body can intervene, will be able to eliminate or help eliminate the wrongdoing. On the other hand, the employee must take into account the organisation's interest in minimising the harm resulting from that intervention. It is therefore obvious that, as a rule, an external report is first made to the competent authorities and not to the media. The more serious wrongdoing is, the greater the risks for certain population groups and/or the continuation of the wrongdoing despite repeated reports, the more informing the media is likely to be considered fair.

Employees who raise (suspected) wrongdoings as (potential) whistleblowers in compliance with these regulations enjoy protection. The (potential) whistleblower who raises (suspicions of) wrongdoing in derogation of this regulation will have to make it plausible that he or she had good grounds to deviate from the regulation.

The person who discloses (suspected) wrongdoing externally in disregard of the regulation and thereby causes damage to the organisation and persons working in it, may be held liable for it and/or may face consequences for their legal position.

### Article 1 Definitions

For the purposes of these regulations, the following definitions apply:

- a. Executive Board: The institutional board of the university and the university of applied sciences as referred to in Article 1.1(j) of the WHW.
- b. External third party: Any organisation or representative of an organisation, other than the confidential adviser referred to in Article 5, to whom an employee reports (suspected) misconduct because, in his or her opinion, this is of such great (social) importance that, in the concrete circumstances of the case, this interest must outweigh the university's and/or foundation's and/or university of applied sciences' interest in confidentiality, and who, in his or her reasonable opinion, may be considered capable of directly or indirectly eliminating or having eliminated the (suspected) misconduct.
- c. University of Applied Sciences: The Hogeschool van Amsterdam maintained by the foundation, based in Amsterdam and Almere.
- d. Manager: The head of a unit or - if the reporter is an employee of a faculty - the dean.
- e. Employee: A person who is affiliated with the organisation of the university or the foundation and/or the university colleges on the basis of a public-law appointment or on the basis of an employment, secondment, agency or traineeship contract.
- f. Notifier: The employee reporting or wishing to report wrongdoing.
- g. Wrongdoing: A situation where a public interest or an interest of the university, college or foundation is at stake, in connection with:
  - an (imminent) criminal offence;
  - an (imminent) violation of rules;
  - an (imminent) danger to public health, safety or the environment;
  - (a threat of) deliberately misinforming public bodies;
  - (an impending) waste of public money;
  - (a threat) of deliberately withholding, destroying or manipulating information about these facts.
- h. Foundation: Stichting Hogeschool van Amsterdam, based in Amsterdam.
- i. University: The incorporated University of Amsterdam, based in Amsterdam.

### Article 2 Scope of the regulations

1. These regulations apply to reports (of suspicions) of wrongdoing at the university and/or the foundation and/or the university of applied sciences and associated legal entities and/or organisations.
2. These regulations do not apply to anonymous reports of (suspected) abuse.
3. The scheme does not apply in case of:
  - a. complaints from employees about matters relating to work that concern them personally;
  - b. conscientious objections by employees in connection with the performance of normal duties;

### Article 3 Internal reporting

1. Unless there is an exceptional ground as referred to in Article 6, the employee reports (suspected) wrongdoing in writing or electronically to his or her superior, the Executive Board or - in case the matter concerns (members of) the Executive Board - the Supervisory Board. Reports to the Executive Board concerning the university must be addressed to the secretary of the university, marked "confidential and personal". Reports to the Executive Board that concern the university of applied sciences are addressed to the general director of the university of applied sciences, marked "confidential and personal". Reports to the Supervisory Board are addressed directly to the Chair of the Supervisory Board with the heading "confidential and personal". If desired, a request for acknowledgement of receipt may be attached to the report.
2. The person who has received the report as referred to in the first paragraph shall record the report and the date on which it was received. If the notifier has requested this, the receipt of the report shall be confirmed in writing.
3. If a manager receives a report as referred to in the first paragraph, he or she will immediately report this to the Executive Board or - in case the matter concerns (members of) the Executive Board - the Supervisory Board, for the attention of the official secretary of that board.
4. Upon receipt of the report as referred to in the previous paragraphs, an investigation into (the suspected) misconduct will immediately be started. This investigation will be conducted under the direct responsibility of the Executive Board or - if the matter concerns (members of) the Executive Board - the Supervisory Board.
5. The Executive Board or - if the matter concerns (members of) the Executive Board - the Supervisory Board may decide to have the investigation referred to in the fourth paragraph conducted by an external and independent investigator. This external investigator must observe confidentiality about the investigation and - unless explicitly agreed otherwise - will only report to the person who commissioned the investigation.
6. If the investigation referred to in the fourth paragraph is conducted by or on behalf of the Supervisory Board, the Executive Board is obliged to facilitate it.

### Article 4 Position on the notification

1. Within a period of eight weeks from the moment of the internal report as referred to in Article 3, the Executive Board or - in case the matter concerns (members of) the Executive Board - the Supervisory Board will give the reporter a written and substantive opinion on the reported matter. This also indicates whether, and if so what measures, the report has led to.
2. If the opinion referred to in the first paragraph is not given within the set time limit, the reporter shall be informed thereof and the time limit within which an opinion will be given shall also be indicated.
3. If the report referred to in Article 3 concerns a member of the Supervisory Board, the Supervisory Board shall decide on the report in the absence of the member concerned.

### Article 5 Confidential advisor

1. Before proceeding to report (suspected) wrongdoing, an employee may ask the confidential adviser for advice.
2. The ombudsperson referred to in the first paragraph is the ombudsperson of the university and the hogeschool appointed as such by the Executive Board.

### Article 6 Reporting to an external third party

1. The employee may report (suspected) misconduct to an external third party, subject to the provisions of Article 7, if:
  - a. he or she disagrees with the position referred to in Article 4;
  - b. he or she has not received an opinion within the time limit in Article 4(1) or has not received a notification as referred to in Article 4(2);
  - c. the period referred to in article 4 paragraph 2 is unreasonably long and the employee has objected to this in writing to the Executive Board or - in case the matter concerns (members of) the Executive Board - the Supervisory Board;
  - d. there is a ground for exemption referred to in the following paragraph.
2. An exception ground as referred to in the previous paragraph under d occurs if there is a:
  - a. acute danger, where a serious and urgent social interest requires immediate external reporting;
  - b. situation where the employee can reasonably fear countermeasures as a result of the internal report;
  - c. clear threat of misappropriation or destruction of evidence;
  - d. previous internal reporting of essentially the same wrongdoing that was not remedied within a reasonable time;
  - e. legal duty or legal authority to report directly externally.

### Article 7 Balancing of interests

1. With due observance of the provisions of the second paragraph, an employee may report (suspected) misconduct to an external third party if it concerns one of the cases mentioned in Article 6.
2. The report will be made to the external third party that, in the reasonable opinion of the employee - given the circumstances of the case - is most suitable for this purpose, whereby the employee will take into account, on the one hand, the effectiveness with which that third party can intervene and, on the other hand, the interest of the university and/or the foundation and/or the university of applied sciences in the least possible damage resulting from that intervention, insofar as that damage does not necessarily ensue from taking action against the wrongdoing.
3. As the possibility of damage to the university and/or the foundation and/or the university of applied sciences as a result of reporting to an external third party increases, the suspicion of wrongdoing in the employee reporting to an external third party must be stronger or the wrongdoing more serious.

### Article 8 Legal protection

1. The person who has reported (suspected) wrongdoing in good faith in compliance with these regulations shall not be disadvantaged in any way in his or her position or career as a result of the reporting and shall therefore enjoy legal protection.
2. A confidential adviser as referred to in Article 5 who is employed by the foundation shall not be disadvantaged in any way as a result of serving under these regulations.

### Article 9 Unforeseen circumstances

In cases not covered by these regulations, the Executive Board or - if the matter concerns (members of) the Executive Board - the Supervisory Board will decide.

**Article 10 Citation and entry into force**

These regulations may be cited as Whistleblower Regulations University and Hogeschool van Amsterdam and will take effect on 1 March 2007.

Adopted by the UvA-HvA Executive Board on 4 May 2006.

Approved by the supervisory boards on 21 February 2007.

Consent obtained from the university's central works council on 15 February 2007.

Consent obtained from the staff section of the Hogeschool's participation council on 28 November 2006.

## Appendix 3

# University of Amsterdam Code of Conduct

Approved by the Executive Board on 27 August 2020

### Introduction

The Code of Conduct is the framework outlining appropriate behaviour for all staff and students of the University of Amsterdam. This code is informed by our core values, as incorporated into our Strategic Plan. The Code of Conduct helps staff and students act in a responsible manner, in accordance with the values espoused by the University, and also allows them to hold each other accountable in the event that the code is breached. The code concerns any and all conduct a member of staff or student engages in as part of their work or studies, irrespective of whether said conduct takes place on the University's premises, in an academic setting elsewhere (e.g. at a conference) or online (e.g. an online lecture, social media).

Specific rules of conduct have been derived from this code and laid down in separate rules and regulations. Where relevant, these rules and regulations allow us to challenge unacceptable behaviour and to lodge complaints. More information on these regulations and complaints procedures can be found on: <https://www.uva.nl/en/about-the-uva/policy-and-regulations/rules-and-regulations/codes-of-conduct/codes-of-conduct.html>

### How to interact with each other

#### **UvA: a foundation of appreciation and trust**

The UvA seeks to offer a positive and safe working and studying environment, in which staff and students interact with each other in a respectful manner. We highly value mutual appreciation and trust. We expect UvA staff and students to show appreciation for each other's achievements, acknowledge each other's identities and assume that others are acting in good faith, even when the pressure is on. The UvA is committed to clear communication. Staff and students are willing to help each other, make an effort to establish a positive team spirit and take care not to abuse power imbalances. Staff and students are considerate of each other, listen to each other, seek to create an inclusive environment and respect interpersonal differences, for instance with regard to cultural and/or socioeconomic background, personal beliefs, political preferences, age, gender, sexual orientation, functional impairment or chronic disease.

#### **Unacceptable behaviour: harmful to people and to our organisation**

In order to establish a safe and proper working and studying environment, employees and students must refrain from any kind of unacceptable behaviour. Unacceptable behaviour is harmful and therefore not acceptable. Unacceptable behaviour comprises any behaviour on the part of a staff member or student that is stressful to the person on the receiving end, because it either jeopardises or injures the other person's bodily or mental integrity. This may include, but is not limited to, physical or verbal aggression, harassment or sexual harassment, discrimination and exclusionary behaviour, bullying and academic sabotage.

Unacceptable behaviour refers to any situation where at least one person involved may reasonably feel that the behaviour is unacceptable. Staff and students must challenge unacceptable behaviour, even when they are witnesses rather than persons involved (see below).

## Roles

### Staff

*Basic principle: all members of staff have a professional attitude*

A professional attitude is informed by integrity, diligence and expertise, regardless of what capacity a member of staff is acting in, both in collaborating with their colleagues and in their interactions with their students. We expect everyone who performs any activities at the UvA, regardless of whether they are employed by the UvA, to have such an attitude. Members of staff are aware of the UvA's role in society.

Members of staff take great care not to misuse the University's resources, such as equipment, the computer network, the library, lecture rooms and other shared facilities. In so doing, they comply with applicable regulations.

In certain situations, members of staff may be bystanders, i.e. people who have witnessed unacceptable behaviour. Bystanders play a crucial role in reducing unacceptable behaviour, either by talking directly to the person responsible for the unacceptable behaviour or by seeking help from a third party (click here for an overview of whom to contact if you have something you wish to report: [Staff](#), [Students](#)). The UvA encourages bystanders to report misconduct and follows up on all reports it receives, without exception.

In performing their academic duties, our staff ensure that they conduct their research in a careful manner. Academics are familiar with the Netherlands Code of Conduct for Research Integrity (2018) and act in accordance with said Code of Conduct.

*Expected behaviour of teachers, supervisors and PhD supervisors*

All members of staff who are engaged in teaching (ranging from student assistants to full professors) treat students with respect. They are aware of the dependence and the power imbalance inherent in their relationships with their students and do not use these to their own advantage; they do not violate their students' privacy. Mutual respect is paramount. Teachers ensure social safety during their lectures and seminars, both when teaching in a classroom and when teaching online. Teachers remember that they are role models and adhere to the values and manners laid down in this Code of Conduct, both in their speech and in their behaviour, which also means that they are proactive in identifying unacceptable behaviour and take action to put a stop to inappropriate or unacceptable behaviour.

The relationship between PhD candidates and their supervisors is similarly fraught with dependence and power imbalance. Supervisors are always mindful of this fact and do not use it to their own advantage. The collaboration between PhD candidates and their supervisors is characterised by mutual respect and a professional attitude in their interactions.

*Role of supervisors*

The person supervising a department, team or unit serves as a role model in terms of their conduct. Supervisors are mindful of the dependence and the power imbalance inherent in their relationships with their team members and never use these to their own advantage, particularly in situations in which their assessment is critical to an employee's next career move. Supervisors ensure that they do not mix personal and professional relationships and that there are no conflicts of interest. They play a key role in ensuring and promoting a positive working environment. They regularly enquire about the atmosphere on the work floor and call to task any members of staff who are guilty of unacceptable or inappropriate behaviour. This means that supervisors are open and approachable, request feedback, able to recognise and discuss unacceptable behaviour and able to intervene in such a way as to stop unacceptable or inappropriate behaviour and improve the working environment in the long term.

Supervisors who receive a report on unacceptable behaviour always take such reports seriously; supervisors assume responsibility, treat both the person filing the complaint and the person whom the complaint concerns respectfully and implement appropriate measures, while always giving the person who filed the complaint the appropriate level of protection.

#### *Relationships with colleagues*

Members of staff who, in addition to having a professional relationship with a colleague, are in a romantic or family relationship with them always act professionally and objectively and are aware of the risks such private relationships pose to their integrity. They must report to their supervisor any situations in which they are working in a hierarchical or other relationship with their partner or relative, as well as any other private relationships that might jeopardise their ability to act professionally and objectively. Their supervisor may then make the appropriate arrangements, in consultation with the other person's supervisor where necessary. Members of staff who are in a romantic or family relationship with a colleague are not allowed to assess or monitor each other's work, perform certification for each other or authorise each other to do anything requiring authorisation. The same applies to members of staff who are in a position where one person is financially dependent on another person. Teachers and supervisors ensure that they do not mix personal and professional relationships with their students and PhD students.

#### *Proper conduct with regard to ancillary activities*

Any member of staff who performs ancillary activities on top of their work at the University must provide transparency on these ancillary activities and must refrain from any activities that might damage the interests or reputation of the University or parts thereof. Staff must act in accordance with the Regulations Governing Ancillary Activities.

### **Students**

#### *Acting professionally with regard to others*

Students treat their fellow students, teachers and other members of staff with respect. Among other things, they are respectful in their forms of address and manner of communication, both in written communication and when meeting in person, during both classroom activities and social gatherings, both on campus and elsewhere. Students behave with integrity and refrain from any type of conduct that may negatively affect their fellow students, teachers and other members of staff or the quality of education in general. Students do not misuse the University's resources, such as equipment, the computer network, the library, lecture rooms and other shared facilities.

#### *Acting professionally with regard to one's studies*

Students who are attending the University of Amsterdam seek to make the most of their potential. They familiarise themselves with the requirements of their degree programme and commit to the learning objectives to be attained. With a view to their training as academics, they learn to work independently, communicate properly, collaborate with others effectively, take great care when collecting information, and solve problems. Students call each other out on ineffective behaviour such as breaking promises, quitting and profiting from other people's work, as well as on unacceptable behaviour (even if they are a bystander, rather than the victim of any such behaviour). Bystanders play a crucial role in reducing unacceptable behaviour, either by talking directly to the person responsible for the unacceptable behaviour or by seeking help from a third party (click [here](#) for an overview of where to report misconduct). The UvA encourages bystanders to report misconduct and follows up on all reports it receives, without exception.

### Other rules, regulations and procedures

The University of Amsterdam has laid down certain specific codes of conduct in separate rules and regulations, including several complaints regulations. For more information, see: <https://www.uva.nl/en/about-the-uva/policy-and-regulations/rules-and-regulations/codes-of-conduct/codes-of-conduct.html>

Regardless of whether you are a member of staff or a student, if you witness any behaviour that violates this code, check the Social Safety Support Guide for information on where to report this: for [Staff](#), for [Students](#).

In addition, members of staff are always free to consult their supervisor, and students can consult their teacher or programme director.

## Appendix 4

# UvA Social Media Comment Policy

The UvA is committed to providing a positive environment in which we treat each other with respect. To ensure that our social media accounts are a safe space for everyone, all conversations and posts should be constructive, respectful, and contain language that is appropriate for all groups and ages. We therefore reserve the right to remove comments that are:

### Harmful

- misleading or falsehoods/inaccurate information
- threats, bullying or personal attacks of any kind
- violence or sexually explicit material
- inappropriate language or swear words
- violating privacy or confidentiality (for example: someone's home address, telephone number, email address, etc.)
- slander and/or defamation in regard to a student, employee or other individual
- promoting or advocating illegal activity

### Spam

- advertisements, promotions, or other commercial content unrelated to the UvA
- violating copyrights or trademarks of the UvA
- excessively repetitive (more than one) or constituting SPAM
- off topic

If you have any doubts about whether your comments meet our guidelines, feel free to contact us, e.g. via personal message.

## Appendix 5

# Policy on free speech and safe space FMG

### Faculty of Social and Behavioral Sciences, University of Amsterdam, November 2019

Engaging with potentially controversial issues in diverse environments, such as we do in our university programmes, can sometimes lead to tensions, even conflict. This creates a dilemma: On the one hand, we seek to provide a study environment in which UvA students and teachers feel safe and respected; on the other hand, we subscribe to the fundamental value of academic freedom, which requires freedom of expression. In this policy document we clarify our response to this dilemma: We reject the approach of seeking to prevent or control conflict through censorship or directives. Instead, we promote the values of diversity, freedom of speech, and respect, and we foster open engagement to negotiate inevitable tensions in a process of mutual learning.

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At the University of Amsterdam, students are exposed to the highest standards of research-inspired academic teaching. Our study programmes are dynamic learning spaces relying on both physical and virtual interaction. In all our programmes we encourage active learning by establishing meaningful human contact and interaction between students, teachers, and sometimes guests in diverse, inclusive, and inspiring environments. Often, our programmes include students from different nationalities and are conducted in English. Then we speak of working within an “international classroom.” [1] We strongly welcome diversity in our programmes. We are convinced that national and other forms of diversity enhance the learning experience for everyone involved and help our students to develop useful networks and intercultural and communication skills. By creating a diverse and dynamic learning environment we want to help our students grow into well-informed and open-minded citizens capable of creating new knowledge and insight and becoming drivers of innovation in tomorrow’s world. We want to see our graduates move on to play pivotal roles in devising solutions to societal problems and in breaking down societal divides, locally and globally.

Diversity - national, gender, political, religious, sexual, racial/ethnic, ability-related and other forms - enhances learning because people with diverse backgrounds, experiences, and views bring different perspectives to a discussion and help everyone to see the issues discussed in novel ways.[2] Being confronted with other perspectives in that way can be truly eye-opening and transformative. It can also help us make the world a better place by fostering mutual understanding and laying foundations for cooperation. However, being confronted with other perspectives can sometimes also be uncomfortable and trigger negative emotions. There has in the past years been much discussion and debate within academic circles in which people try to balance the value of free speech with that of a “safe space” in which people will be protected from being upset.[3] Different academic institutions strike a different balance in this debate. This document clarifies the position we take at the University of Amsterdam’s Faculty of Social and Behavioral Sciences.

We ascribe to the value of free speech, without the fear of censorship, discrimination, or condemnation. In our programmes, all students - no matter where they come from and what their experiences have been -- are encouraged to speak up, write freely, listen critically, challenge each other, and in this way learn. This reflects Dutch educational culture which, in international comparison, tends to value inquisitiveness, assertiveness, and taking position. We expect that students and faculty will be engaged in discussion, debate, and sometimes disagreement. In the latter case, the ultimate outcome of discussion may be “agreeing to disagree” - it may not be possible to come to a shared judgment, and that is fine. Important is respect for each other’s views and the feeling that we can exchange those views openly. It also means being able to raise supposed taboo issues, defend unpopular opinions, or use scientific argument to question common sense. Students and teachers should feel safe to express themselves and be brave enough to do so - that is the meaning we at the UvA give to “safe space” in academia.”[4]

The limits to free speech are given by the principles of civility and mutual respect. Responsibility to uphold these principles lies with both staff and students. The freedom of expression does not include the freedom to insult or threaten others. However, people may perceive differently when a line has been overstepped. Important for creating our safe space is that everyone can speak up if they feel that the tone of the conversation has become too hostile, the conversation is biased, or if they are otherwise made uncomfortable. Also, if someone wants to be addressed differently, for example in a differently gendered or non-gendered way, we want them to feel safe to ask. We do not, however, place restrictions beforehand on our teachers about what they can speak about or how. They may raise topics or make statements that shock you. As a student you should understand that this is not done to offend you, but to make you think. If you want to object, you are invited to do so openly.

Our position on academic freedom entails that we do not require the use of “trigger warnings” as they are now in place in some academic institutions, i.e., alerts given to students by teachers prior to presenting or discussing any material that might be potentially controversial or upsetting. At the GSSS, each faculty member can, at their own discretion, preface the presentation of potentially upsetting material with a content warning. If such an explicit warning is given, any student has the right to excuse themselves temporarily from the class. However, this is NOT a required or routine practice. We believe that learning is inherently a process of questioning and grappling with controversial, sometimes difficult and negatively laden topics. We want to provide a supportive and open environment in which to do so. Shielding students from this process is antithetical to our pedagogical principles.

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In conclusion, we do not aim for a space that is made safe by fear of speaking one’s mind, a space where topics or opinions are pre-selected as acceptable, suspicious, or condemnable. Instead, we aim for a brave space that is made safe by mutual openness and respect, a genuine acceptance of diversity, and a shared desire to learn with and from each other, a space where all students, irrespective of their background, are made to feel welcome and engage, and where we equally respect the professionalism and humanity of our teaching staff.

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[1] This document draws on an advice prepared in June 2018 by the UvA-wide “Taskforce International Classroom” and entitled “Amsterdam’s Global University in the Classroom”.

[2] In study programmes where this is relevant, notably in the social sciences and humanities, the curriculum itself can be diversified for the same reason: to give space to different perspectives linked to, for example, different historical experiences.

[3] The notion of “safe space” is at its core aimed at protecting people against active marginalization, stereotyping, or discriminatory abuse, but often extended to promise protection against other forms of provocation or emotional disturbance (e.g. by reminders of possible personal trauma).

[4] This notion is sometimes referred to as “brave space” as opposed to “safe space”. Other definitions of safe spaces are, of course, also legitimately in use at the university. Students and staff may, for example, apply the term to events or areas on campus that provide space for a particular group (e.g. women or sexual minorities).

## Appendix 6

## Organisation chart FMG

Afdelingen	Onderwijs	Onderwijs	Onderzoek
Psychologie	College of Psychology	Graduate School of Psychology	Onderzoeksinstituut Psychologie
Pedagogiek en Onderwijskunde	College of Child Development and Education	Graduate School of Child Development and Education	Research Institute of Child Development and Education
Communicatie-wetenschap	College of Communication	Graduate School of Communication	Amsterdam School of Communication Research (ASCoR)
Geografie, planologie en internationale ontwikkelingsstudies	College Sociale Wetenschappen (CSW)	Graduate School of Social Sciences (GSSS)	Amsterdam Institute for Social Science Research (AISSR)
Sociologie			
Antropologie			
Politicologie			
Algemene Sociale Wetenschappen			

## Appendix 7

# FMG newsletter with invitation

As is probably known, the Executive Board has established a committee to investigate the report filed by [The whistleblower], a lecturer at the FMG, under the whistleblower regulation about “serious institutional wrongdoings at the FMG, leading to an acute and fundamental threat to academic freedom and the quality of education and research”. He also wrote an opinion piece about this in Folia (18 January).

The committee consists of:

- Prof C.J.J.M. (Carel) Stolker, emeritus rector magnificus and chairman of the board of Leiden University (chairman of the Commission)
- Prof J.I. (Janka) Stoker, professor of leadership and organisational change University of Groningen
- Prof M.L. (Berteke) Waaldijk, professor of language and cultural studies, Utrecht University.

Part of the committee’s investigation is a round of interviews with FMG stakeholders. The interviews will take place on 4 and 5 April next.

The committee invites a number of people by name and position to those interviews. If you do not receive such an invitation, but would like to engage with the committee, feel free to do so.

Three times have been set aside for (group) discussions with employees: 4 April 15:30-16:30, 5 April 9:15-10:15 and 5 April 15:30-16:30. Students from the ISW programme can also apply, for a group discussion on 5 April 10:30-11:30 am.

You can register for one of these meetings at [commissiestolker@gmail.com](mailto:commissiestolker@gmail.com).

If you do not wish to participate in an interview with the committee, you can share documents or experiences with the committee by sending them to [commissiestolker@gmail.com](mailto:commissiestolker@gmail.com). The committee will treat everything you send confidentially and will not use it in its final report in any form that can be traced back to you.

Sincerely,  
Arne Brentjes,  
secretary committee Stolker

## Appendix 8

# The committee

### Members

#### **Prof. C.J.J.M. (Carel) Stolker**

Carel Stolker is emeritus professor of private law at Leiden University, where he was also rector magnificus and chairman of the Executive Board from 2013 to 2021. Before that, he was dean of the Faculty of Law in Leiden. He holds and held numerous academic, social and policy positions, including supervision at museums and healthcare institutions, roles in review committees of the Dutch judiciary and a board membership at the Fonds Wetenschappelijk Onderzoek - Vlaanderen.

#### **Prof J.I. (Janka) Stoker**

Janka Stoker has worked as professor of leadership and organisational change at the University of Groningen (RUG) since 2003. There, she is director of In the LEAD, the University of Groningen's centre of expertise in leadership. She has always combined science and practice in her work. She also has extensive administrative experience, including as director of the Faculty of Economics and Business Administration at the RUG, and as a member of the Supervisory Board of the University of Twente.

#### **Prof M.L. (Berteke) Waaldijk**

Berteke Waaldijk is professor of language and culture studies at Utrecht University's Faculty of Humanities and affiliated to the Graduate Gender Programme. As former education director and programme coordinator of the Bachelor's programme in Language and Culture Studies, she has extensive experience in promoting safe learning communities. As a researcher in the UU Gender, Diversity & Global Justice Platform, she advises on, among other things, gender issues. She conducts research on the history of gender, culture and citizenship and is co-founder of ATGENDER, the European Association for Gender Research, Education and Documentation.

### Secretary

#### **Dr A.J. (Arne) Brentjes**

Arne Brentjes, trained as a mathematician, was on the administrative staff of the University of Amsterdam from 2002 until his retirement in 2021, successively as head of Concern Control, head of Finance, head of Strategy and Information and finally strategic advisor for the Institutional Plan 2021-2026. From 2017-2021, he was also secretary of the UvA Supervisory Board.

## Appendix 9

# Documents and literature consulted (a selection)

AAUP (2014). On trigger warnings, 2014: <https://www.aaup.org/report/trigger-warnings>.

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American Association of University Professors (2023). *Preliminary Report of the Special Committee on Academic Freedom in Florida*, 24 May 2023, at [aaup.org](http://aaup.org).

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