

Academic freedom as both quality assurance and quality control mechanisms for universities

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- Purpose of the paper:*** *To explore and explain how academic freedom, using Hohfeld's eight jural correlates and opposites, creates useful quality indicators for universities by examining how processes are bounded by the capability of management, staff, students and stakeholders to function and do to meet expectations for quality learning and teaching (L&T), research and public service.*
- Methodology:*** *Hohfeld's (1913, 1917) legal relations analysis model was used to identify indicators reflecting quality based on claims, privilege, power, and immunity.*
- Main Findings:*** *Hohfeldian analysis of academic freedom identifies a basis for reviewing policies and procedures and aspects of the enterprise agreement between university and staff pertaining to performance impacting outcome outputs.*
- Practical implications:*** *Organisational culture is an integral component of organizational success and performance quality. Looking at how academic freedom is working within universities generates evidence regarding potential challenges/risks along with qualitative explanations for strengths and weaknesses of processes related to L&T, research and service.*
- Originality/value:*** *This is the first study linking Hohfeldian analysis with university performance quality analysis and review.*
- Type of paper:*** *Conceptual, based on aligning legal constructs immanent within academic freedom with quality assurance and control mechanisms.*
- Keywords:*** *Academic freedom, Hohfeldian analysis, organizational culture, quality assurance, quality control, systems thinking*

Introduction

Linking academic freedom to university quality systems involves an expansion of the systems perspective of universities. Bertalanffy (1969) noted that “[a] system as a set of elements standing in interrelationships” (p. 55). Luhmann (1995), expanding on Bertalanffy, put forward that to understand systems, there is a need to understand and control its

epistemology due to the self-referential nature of systems. The reason for this is because systems:

are connected to the difference between system and environment, [meaning] that neither an exclusively self-referentially created system nor a system with an arbitrary environment can exist... [T]here are systems that have the ability to establish relations with themselves and to differentiate these relations from relations with their environment” (p. 13).

Orthodox forms and uses of quality management systems do not necessarily work well when used within the higher education sector because of context and mission. Swiss (1992) made this point regarding the use of TQM in government. For example, he argued that the most important principle of TQM is to ‘delight the customer.’ Universities, like government agencies, have the challenge of identifying who the ‘customer’ is. Both:

must serve a wide variety of customers who have widely divergent and even contradictory demands and because the general public remains a "hidden customer" with yet additional, often incompatible demands, government agencies often have to deliver a service or product that reflects an uneasy compromise (p. 359).

Swiss (1992), however, also highlighted how TQM can be particularly useful for government agencies in tracking institutional performance when emphasis is on the ‘intangibles’ that help define quality and participation and not merely on performance metrics. His conclusion was that TQM would be appropriate if the monitoring processes are modified to account for the unique features, outcomes and circumstances of governments seems to apply to universities as well.

Universities, like governments, have to deal with the fine line distinguishing stakeholders from those accessing and utilising their learning and/or knowledge creation activities (applied, basic, commercialised research outputs). The problem here, as Sharrock (2000) stated, is that “[t]he language of the marketplace doesn’t translate well to the work of universities...” (p. 149). This problem is compounded by Simon’s (2014) argument that the elasticity in the use of the term ‘customer’ makes it difficult to understand what an organisation’s focus is (or is not). Stakeholders, as Benneworth and Jongbloed (2010) stated, are “are actors—organizations, agencies, clubs, groups or individuals—who may gain or lose from an organization’s activities” (p. 569) and therefore have a ‘stake’ in what an organisation does. Universities are expected to reconsider their relationships with their stakeholders to maintain their legitimacy in the modern knowledge-based economy to ensure their ability to meet stakeholder needs (Joengbloed et al. 2007; Mainardes et al., 2010). The status of students as either stakeholder, consumers, clients or something else complicates matters when assigning priorities and roles to the different constituencies with which higher education institutions (HEIs) have to engage. Tight’s (2013) article illustrates the challenges the classification (metaphor) of what the student represents *vis à vis* higher education brings to university relationships with its external environment due to making each student responsible for bearing more of the cost of their higher education experience. These challenges represent what the author (Padró, 2022b) has seen as an asymmetrical paradox between the values university education had by the different stakeholders based on expectations and valuation of what and how of preparation and quality of graduates and/or research. The asymmetry is a result of how stakeholders are prioritised within the socio-

political context shaping the triple-helix compact between government, universities and industry, i.e., with the student treated and valued more like a commodity rather than as a learner (Bunce, 2022; Padró, 2022a). This, in turn, also diminishes the elements of what make universities unique and effective in terms of performance in throughput and output, meaning that some key processes within universities are either minimised or ignored in favour of more traditional organisational (non-university) metrics. This paper proceeds to discuss what quality indicators are, provide a general background of academic freedom, presents Hohfeld's (1913, 1917, 1923) legal relations framework and then performs a general Hohfeldian analysis of academic freedom, places the analysis in a quality context based on the Baldrige Education Criteria, and provides initial examples of quality indicators based on academic freedom.

Quality indicators

Quality indicators are “explicitly defined and measurable items which act as building blocks” about institutional performance (Campbell et al., 2002, p. 358). They provide evidence of practice performance through which improvements to a part of an organisation can be identified, acted upon and evaluated (Becker et al., 2018; Vuk, 2012). More to the point, quality indicators provide a means through which performance effectiveness can be evaluated in terms of process, program or service (Baldrige Performance Excellence Program, 2019). Specifically, indicators are used “(1) when the measurement relates to performance but does not measure it directly... and (2) when the measurement is a predictor (“leading indicator”) of some more significant performance” (p. 50).

Measuring abstractions like academic freedom can be a challenge, but it can be done by identifying the components that make up the abstraction (Early & Coletti, 1999). Using frameworks like European Foundation for Quality Management (EFQM) or the Malcolm Baldrige National Quality Award (MBNQA) assist in this component identification process (cf. Chen et al., 2017). This paper uses the MBNQA because of author familiarity and established criteria specific to the education sector. However, before identifying in which educational criteria items academic freedom can fit, a discussion of what academic freedom is and is not has to come first.

Academic freedom

Academic freedom is a principle rooted in the traditions established as part of the Humboldtian reforms in 19th century universities. However, its actuality in application has been an issue in evaluating its effects on university performance from early on, if Max Weber's comments at the Second Conference at Jenna in 1908 is an indication (Dreijmanis, 2008). Nonetheless, for many academics, in particular, it is what legitimises what universities do (Menard, 1996).

Explaining academic freedom to stakeholders outside (and some within) academia has been ineffective and unconvincing to non-scholars (Post, 2013), even in the western world where the concept is best accepted. Barnett's (1990) reasons for the lack of understanding are apt: a defensive approach toward its description, the lack of specificity regarding its definition, emphasis on academic rights over those of students, and a greater focus on the freedom rather than the obligation aspects on academics. Other complicating factors are:

- the ‘soft law’ nature of academic freedom statements¹ as inferred by van Alstyne (1987);
- what some see as the derivative aspects of academic freedom,² at least when it comes to student academic freedom (Kaplin et al., 2020; Padró, 2022b);
- the distinction and subsequent dependency and obligation overlap with other laws and rules like freedom of speech³ (cf. Lobel, 2009) as exemplified in the language used by French in his *Model Code for the Protection of Freedom of Speech and Academic Freedom in Australian Higher Education Providers* (French, 2019);
- differing claims of academic freedom being a human right⁴ (Padró, 2022b; Taylor, 2020);
- conservative political groups’ discomfort with/distrust of perceived left-wing, progressive preferences of academics⁵ and leftist academic unease with universities (e.g., Gross & Fosse, 2012; van de Werfhorst, 2020); and
- nationalist type governments considering academic freedom as “a source of disorder and tension... an obstacle to their political authority and cultural identity, to the role of the nation-state” (Rieu, 2021, p. 8/14).

¹ Soft law refers to when a declaration, policy, procedure, resolution, or equivalent written by institutions, international bodies, professional associations, and regulatory agencies have more of a political rather than legal substance. The result is that in contrast to ‘hard law’ (legislation and certain aspects of rulemaking), in soft law the legal aspects/arrangements of these written instruments “are weakened along one or more of the dimensions of obligation, precision, and delegation” (Abbott & Snidal, 2000, p. 422). In other words, these instruments can be deemed to be less or formally non-binding (Schaffer & Pollack, 2010) and one reason for academic freedom to end up in the courts for determination and resolution. To resolve this, former Chief Justice of the Australian High Court, Robert French (2019) proposed the need to formulate a legally workable definition of what constitutes academic freedom within institutional governance instruments.

² The notion of derivativeness pertaining to academic freedom found in the academic freedom literature is based on the prior existence of duties of academics to students relating to teaching (cf. Becker, 1980).

³ Post (2017), among others notes the legal distinction between academic freedom and freedom of speech. The former serves the “purpose of education” while the latter can be seen as a form of protecting the “process of self-government” (p. 12/30). However, in relation to footnote 5 below, the parameters of freedom of speech, especially when linked with HEIs, become politicised. As Stanley Fish (1994), a critic of academic freedom wrote, “[f]ree speech ... is not an independent value but a political prize, and if that prize has been captured by a politics opposed to yours, it can no longer be invoked in ways that further your purposes, for it is now an obstacle to those purposes” (p. 102).

⁴ For example, the *Magna Charta Universitatum* 2020, primarily representing European universities, recognises that “education is a human right, a public good, and should be available to all” (p.2 –

<https://www.wusgermany.de/sites/wusgermany.de/files/userfiles/WUS-Internationales/wus-lima-englisch.pdf>).

The earlier the *Lima Declaration* provides a more direct link between academic freedoms within universities being a right. In its preface it clearly states that “[a]cademic freedom is a human right of special importance to the higher education sector.” The following 1997 *UNESCO Recommendation Concerning the Status of Higher-Education Teaching Personnel*, is not as direct as the *Lima Declaration*, but it follows a similar vein:

“Considering that the right to education, teaching and research can only be fully enjoyed in an atmosphere of academic freedom and autonomy for institutions of higher education and that the open communication of findings, hypotheses and opinions lies at the very heart of higher education and provides the strongest guarantee of the accuracy and objectivity of scholarship and research” (p. 3 – <https://unesdoc.unesco.org/ark:/48223/pf0000113234.page=2>).

⁵ Although focused on the USA university environment, Smith, Mayer and Fritschler (2008) capture the argument the author has seen also at play in other parts of the world: “... [the] university has been dominated by ideologues outside the mainstream or at any rate hostile to traditional values, with the corollary that faculty members and administrators tend to foster a “politically correct” campus environment... [U]niversities were said to be a last bastion of leftist thinking or sometimes were merely depicted as being absorbed in a narrow, self-obsessed internal debate that was largely divorced from real-world politics” (p. 8).

All of these complications have a background part to play in the role academic freedom has within the functioning of HEIs.

According to the *Lima Declaration on Academic Freedom and Autonomy of Institutions* from 1988, “[a]cademic freedom is an essential precondition for those education, research, administrative and service functions with which universities and other institutions of higher education are entrusted” (<https://www.wusgermany.de/sites/wusgermany.de/files/userfiles/WUS-Internationales/wus-lima-englisch.pdf>). The UNESCO 2009 *World Conference on Higher Education Communiqué* terms academic freedom a “fundamental value” because it promotes critical thinking, [knowledge creation (discoveries)] and active citizenship that contribute to, among other goals, sustainable development (UNESCO, 2010). Academic freedom, at its core, is about members of the university community to safely exercise their ability to explore and express opinions regarding their areas of expertise and professional interests without undue fear or interference from within the HEI or from external sources.⁶ The overall rationale for academic freedom is the view is found in the *Magna Charta Universitatum 2020* (<http://www.magna-charta.org/magna-charta-universitatum/mcu-2020>): “As they create and disseminate knowledge, universities question dogmas and established doctrines and encourage critical thinking in all students and scholars” (p. 2/2).

Often confused with or seen as an extension of freedom of speech, academic freedom is a distinct yet complementary concept (Simpson, 2020). Robert French (2019), the retired Chief Justice of Australia’s High Court considered “freedom of lawful speech” to be a “paramount value” – that which is superior – whereas academic freedom “is treated as a defining value” (p. 230) – setting the interest and interpretation parameters regarding the power (enforcement) of the normative elements within the principle of academic freedom (cf. Dworkin, 1986). French’s distinction between paramount and defining value reflects Australian legal tradition as well as what Poerksen (2004) termed the plasticity of words like ‘value’ that do not have specific reference points making the significance “precise, concrete, and exact” (p. 8). This presents a paradoxical challenge because the language used in regulatory rules, policies and procedures has to be both, flexible enough to allow for application under different contexts while being specific enough to be consistent in application and enforceable, especially in courts where problematic cases tend to end up. Academic freedom, as an institutional structure, falls under what Lewellyn and Hoebel (1941) termed a “case of trouble” because the required interpretive plasticity of the term in itself has led to different claims, interpretations and politicization of what the overall parameters are, should be or should not be. The legal implications of academic freedom reflect the practical tensions of practice vis à vis societal (and governmental) norms regarding the role of higher education and its communities of scholars, students, professional staff and administrators, i.e., “the struggle between an institution as a structure and the life purpose of the institution” (p. 27).

Rostan (2010) argued that academic freedom is a quality devise, ensured by self-steering, or more precisely, by what Maturana and Varela (1980) called *autopoiesis*, self-organisation. This assurance is based on autonomy (cf. Ruiz-Mirazo & Moreno, 2004), in this

⁶ This point is an extension of Nelson’s (2010) ‘three-legged stool’ analogy where academic freedom is interdependent with shared governance and job security in that rather than only focusing on academic staffing security the broader focus should be on the security of students, professional staff and research only staff.

instance, institutional, professional and personal. Yet, from a practice perspective, as the *UK's Dearing Report* from 1997 warned, “that what would be seen as good practice in staff development, appraisal and counselling in most of industry and commerce, could be construed in an academic institution as trespassing on, or undermining academic freedom” (National Committee of Inquiry into Higher Education, 1997, ¶14.27). An example of this reverse effect – whether intentional or not – is how the reduction in institutional autonomy due to increased accountability requirements, lower government funding and increased managerialism within HEIs have been eroding academic freedom (Jonathan, 2006; Rostan, 2010).

There are different viewpoints to academic freedom based on the complexities of the relationships between the different elements making up the institution (Vrieling et al., 2011). To begin with, there are individual and institutional definitions of academic freedom that at times harmonise with each other and at other times co-exist in a state of tension (Rabban, 1993). For example, academics and students are known to sue HEIs and administrators. Councils or equivalents “have invoked institutional academic freedom... as an additional layer of protection... to [bar] judicial review of claims against universities by professors alleging institutional violations of individual academic freedom” (p. 229). Student suits are more challenging because these depend in the legal status courts confer to students and the extent to which student academic freedom is recognised by the courts, noting that student academic freedom is an underdeveloped area generally and in law (Kaplin et al., 2020; Padró, 2022b). Kaplin et al. (2020) made the point that in the USA used to be “based on generic free expression principles” (p. 376); however, more recent cases make it probable that “institutional academic freedom does not obliterate student academic freedom” (pp. 375-376).

Generally, academic freedom has four broad components, one that is institutional – autonomy – and three that are individual in scope: freedom to teach, freedom to learn and freedom to research. Originally, as conceived and practiced in Western nations, these pillars reflected the lack of administrative rules regarding learning and teaching shaping the notions of *Lehrenfreiheit* (freedom to teach), *Lernenfreiheit* (freedom to learn) and *Wissenschaft* (freedom to research) in 19th century Germany (Metzger, 1955). Each component is based on recognition that the institution itself and the members of the institutional community have a degree of independence in the pursuit of their activities; however, as Rorty (1996) observed, what is understood of this independence is the ambiguity of what this independence entails. Operationalising what academic freedom is thus paradoxical because accountability based on quality and regulatory rationale implicitly recontextualise the higher education environment to mitigate ambiguity through codification and/or adherence to standards within a regulatory framework via accreditation, voluntary or government agency oversight/recognition. This is not new as courts have been active in this area as well in many countries to determine where the parameters of academic freedom are and where limits are found.

Where academic freedom becomes complicated is that, in practicality, there is an intramural (within the HEI itself) capability where its effects are more readily recognised and an extramural (outside the HEI itself) capability⁷, which is where academic freedom becomes

⁷ The term capability in this paper is defined using Amartya Sen's (1992) definition of what a person can and does do to achieve and “lead one type of life or another” (p. 40). Sen (1999) aligned capability with individual freedom to lead a life the individual values or has reason to value. This use of capability shows the reciprocal

a contested concept, dependent on other applicable laws like freedom of expression/speech, discrimination laws, employment laws, harassment laws, etc. The distinction between intramural and extramural herein is purposeful in order to provide a simplified on-campus versus off-campus implication of the extent of academic freedom, although in reality, there what is intramural rather than extramural can be contextually dependent, as noted below. Questions regarding what the boundary of where academic freedom is begins and ends are legitimate in the sense that what type of what are considered social ‘freedoms’ or ‘rights’ can be constrained by the university. Key here is when is an individual is being oneself and when that individual is an actual or *de facto* representative of the institution, i.e., the extent to which a university or HEI is able to at least influence, if not legally restrict, what staff and students are able to say and/or do in their non-institutional *persona* in their community.

Intramurally, academic freedom for staff can take to form of routine disputes over issues such as elimination of funds, teaching loads and teaching assignments, grades, curriculum, work conditions, dismissal and promotion, academic standards, academic governance structures and participation (Rabban, 1994). Basically, academic freedom for staff is the representation of the extent to which staff are able to express their professional opinions regarding HEI matters and their ability to engage in good faith disputes (Finkin, 1988; Rabban, 1990). For students, academic freedom represents their ability to pursue academic degrees of interest to them, student conduct, the ability to express opinions within the classroom and the HEI generally (bounded by the limitation of appropriateness, reasonableness, and responsibility), capacity to engage in institutional governance, freedom of association, procedural due process protections for the different administrative functions affecting students (e.g., improper academic evaluation, protection of confidentiality, ability to appeal decisions, invitations for speakers to talk on campus), student media and/or publications, intellectual property concerns (Bowden, 2010; Macfarlane, 2012; Padró, 2022b).

Extramural expression is the most theoretically problematic aspect of academic freedom (Finkin & Post, 2011). Primarily, extramural or off-campus extension of academic freedom centres on the ability of staff, students and administrators exercise their rights of citizenship. The key term is expression, as in what can students and staff say and/or do outside the campus (online and physical) in a personal or professional capacity not directly related to their association as employee or enrollee of an HEI. Freedom of expression becomes politicised based on governmental and broader social acceptability of associations and views held. Many cases in a number of countries have been about staff members and students holding values seeming contrary to current predominant views from either side of the political spectrum. In fact, as seen in the history of higher education in Latin America, particularly in the events leading to and after the University of Córdoba reforms of 1918, the social views of students in particular and supporting sentiment of academic staff not aligned with the current governments have limited and threatened universities and their ability to

nature of a freedom like academic freedom, which is thus based as a developmental proposition (Jackson, 2020; Padró, 2022a). As Sen indicated, as a set of variables, “[t]hese capabilities can be enhanced by public policy, but also... the direction of public policy can be influenced by the effective use of participatory capabilities by the public” (p. 18). Valuing the capability to choose may be more important than the object of choice because what is appreciated is the capacity for autonomy (Sen & Williams, 1982), which can be argued to be an underlying value found within a freedom.

perform the nation-building roles envisioned for them (Albornoz, 1966; Altbach, 2001; Padró, 2022c; Walter, 1969).

Another extramural issue, somewhat related to personal views regarding disciplinary ethics and understanding, is freedom to do research (Finkin & Post, 2011). Crucial is the extent that external, third-party agreements constrain open inquiry and exchange of ideas (e.g., limitations placed by confidentiality agreements). Other considerations are reduced external funding for university-based research limiting intramural and extramural research opportunities (which is an extramural challenge to institutional autonomy) and policy-steering from triple-helix government-universities-industry preferences (e.g., focus on applied over basic research to generate innovation – Etzkowitz & Leydesdorff, 1998) linked to research funding opportunities leading to self-censorship or suppression of research (Väliveronen & Saikkonen, 2021). These have been long-standing concerns raised as far back as 1945 by Vannevar Bush, who was the Director of the Office of Scientific Research and Development for the USA during WWII, in his *Science: The Endless Frontier*.

Where the simplified on-campus versus off-campus distinction does not work well in when external politics, currently exemplified by the ‘culture wars’ enters the institutional sphere (online and/or physical) because [1] members of the community have been invited to attend an institutionally sponsored event, [2] invited to speak either in a classroom or what is essentially an institutionally sponsored event, or [3] staff or students want to participate in an institutionally sponsored event as representatives of non-institutional associations/organisations espousing a specific point-of-view that could conflict with institutional neutrality or declared perspective. Two points come to play in these instances: if staff and/or students are acting in a personal or professional capacity (which creates a blurred boundary that institutional policies and procedures need to consistently act upon) and whether the HEI is a public or non-public forum for free speech purposes. In other words, as a U.S. Court of Appeals case asked, does an HEI “possess all of the attributes of streets, parks, and other traditional public forums” (*Axson-Flynn v. Johnson* (356 F.3d 1277 (10th Cir. 2004)), p. 268)?

In Australia, academic freedom protection is based on contract law either as an express or implied term or through the collective bargaining agreement (Jackson, 2006). In Canada, academic freedom is a labour law right (Lynk, 2014). In these and other countries like the UK (Department for Education, 2021) and USA (Kaplin et al., 2020), court findings have looked at the collective bargaining agreements to determine the parameters of academic freedom and whether staff, in particular, have been afforded or denied academic freedom rights. The three Australian cases between Professor Peter Ridd and James Cook University show how courts focus on “(1) the interpretation of the Enterprise Agreement (EA) or collective bargaining agreement (CBA) between the University and its staff and (2) the drafting of the EA clauses and policies and procedures these being subordinate to the EA” (Padró, 2022b, p.433; *Ridd v James Cook University* ([2019] FCCA 997; [2020] FCAFC 123; [2021] HCA 32). This approach is consistent with Justice French’s (2019) view about how Australia’s academic freedom codes adopted by the universities should be enforced. Nonetheless, in general, what is noticeable is how courts look at academic freedom cases based on ‘hard law’ from statutes and common law precedence and ‘soft law’ based on government agency professional association stands. What is also noticeable and commented on by legal scholars and academic freedom researchers is how judges tend to avoid the

tackling of the meaning of academic freedom, preferring to rely on more technical legal precepts.

Table 1 below provides a breakdown of most of the concepts discussed above distinguished between intramural and extramural perspectives. These represent a high-level view of what tends to be permissible and implicitly non-permissible in the application of academic freedom. Not surprising, there is some repetition and cross-referencing of what *ought*⁸ to be framed in determination of applicability of academic freedom. Identified parameters reflect a combination of ‘hard’ and ‘soft’ law statements and general viewpoints found in the academic freedom literature that have themselves become ‘soft law’ points of sorts. These represent points of reference that often informs CBAs/EAs, become – in one form or another – key points within institutional policies and procedures, and are used by regulators and courts to determine findings in those ‘cases of trouble’ relating to academic freedom.

Table 1. The four pillars of academic freedom and their applicability within and outside the HEI environment

Key elements of academic freedom	Intramural	Extramural
Autonomy	<ul style="list-style-type: none"> • Manage own affairs regarding all teaching, research and enterprise functions • Participation in governance (legal authority) by staff (professional authority) and students (AAUP, 1967; Birnbaum, 2004; Klemenčič, 2011; Lizzio & Wilson, 2009) • “Any power or discretion conferred on the university by a law made by the university in the exercise of its delegated law-making powers shall be exercised, so far as that law allows, in accordance with the Principles of [Academic Freedom]” (French, 2019, p. 233) • Every member of the academic staff and every student enjoys academic freedom subject only to prohibitions, restrictions or conditions: <ul style="list-style-type: none"> ○ imposed by law; 	<ul style="list-style-type: none"> • Independence from government and other stakeholders; “Determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study” (<i>Sweezy v. New Hampshire</i>, 354 U.S. 234 (1957), Associate Justice Frankfurter concurring opinion) • Proper funding to allow HEIs to meet their mission • Establish policies and procedures pertinent to community members invited into online or physical HEI environment consistent with other applicable legal instruments

⁸ The term *ought* reflects the dualism between what should be in contrast to what is actually is (Kelsen, 1959-1960). *Ought* can cover the three functions of a norm: “command or prescription; authorization; permission” (p. 269). The point here is that something that should be the case, may not necessarily be the case without breaching any rights or obligations due to circumstantial and contextual reasons.

	<ul style="list-style-type: none"> ○ imposed by the reasonable and proportionate regulation necessary to the discharge of the university's teaching and research activities; ○ imposed by the reasonable and proportionate regulation necessary to discharge the university's duty to foster the wellbeing of students and staff; ○ imposed by the reasonable and proportionate regulation to enable the university to give effect to its legal duties; ○ imposed by the university by way of its reasonable requirements as to the courses to be delivered and the content and means of their delivery” (French, 2019, p. 234) <ul style="list-style-type: none"> ● “The right to set its own priorities, on academic grounds, for what and how it will teach and research based on its mission, its strategic development plans, and its assessment of society's current and future needs” (<i>Hefei Statement</i>, 2013, #8, p. 4/6) 	
<p>Freedom to teach</p>	<ul style="list-style-type: none"> ● “[E]ntitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter 	<ul style="list-style-type: none"> ● “[T]he freedom of academic staff, without constraint imposed by reason of their employment by the university, to make lawful public comment

	<p>which has no relation to their subject.” (AAUP, 2015, p. 14)</p> <ul style="list-style-type: none"> • “[T]he freedom of academic staff and students to express their opinions in relation to the higher education provider in which they work or are enrolled” (French, 2019, p. 231) • Specific arrangements agreed-to between staff member and HEI as enshrined in the enterprise collective bargaining agreement (Barendt, 2010; Hénard & Mitterle, 2006; Horn, 1999) 	<p>on any issue in their personal capacities” (French, 2019, p. 231)</p> <ul style="list-style-type: none"> • “[T]he freedom of academic staff to participate in professional or representative academic bodies” (French, 2019, p. 231) • Ability to speak off campus “on matters relating to their respective areas of research, teaching and courses of study [or] on matters which are not related to their respective areas of research, teaching or courses of study” (French, 2019, p. 127)
<p>Freedom to learn</p>	<ul style="list-style-type: none"> • Access to higher education • Protection of freedom of expression while responsible for learning content of courses; “Students and student organizations should be free to examine and discuss all questions of interest to them and to express opinions publicly and privately... by orderly means that do not disrupt the regular and essential operations of the institution” (AAUP, 2015, p. 383) • Protection against improper academic evaluation • Protection against improper disclosures; confidentiality of records • Freedom of association: “They should be free to organize and join associations to promote their common interests;” student organisations should be open to all students; affiliation with an extramural organisation should not disqualify the student organisation from institutional recognition” (AAUP, 2015, p. 382) 	<ul style="list-style-type: none"> • Exercise rights of citizenship regarding association and free expression of personal views • HEI intrusion limited to the extent there is a legitimate institutional concern regarding student conduct

	<ul style="list-style-type: none"> • “Students should be allowed to invite and to hear any person of their own choosing” (AAUP, 2015, p. 383) – Institutional procedures should not be a device for censorship, routine procedures only in place to allow for the orderly scheduling of facilities and event facilitation to allow event to be conducted “in a manner appropriate to an academic community” (AAUP, 2015, p. 383) • Ability to have student publications • “[T]he freedom of academic staff and students to express their opinions in relation to the higher education provider in which they work or are enrolled” (French, 2019, p. 231) 	
<p>Freedom to research</p>	<ul style="list-style-type: none"> • Staff and students able to produce knowledge “through research... without undue constraint within a research culture based on open inquiry and the continued testing of current understanding” (<i>Hefei Statement</i>, 2013, #6, p. 4/6) • “[T]he publication of the results, subject to the adequate performance of their other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution” (AAUP, 2015, p. 14) • Specific arrangements agreed-to between staff member and HEI as enshrined in the enterprise collective bargaining agreement (Barendt, 2010; Hénard & Mitterle, 2006; Horn, 1999) • “In entering into affiliation, collaborative or contractual 	<ul style="list-style-type: none"> • Ability to publish • Not to be censored based on findings of research, political bias or government interference in grant selection process(es) • Not feeling need for self-censorship • “[R]estrictions on publication of research in order to protect intellectual property rights, whether or not involving a third party” (French, 2019, p. 124)

	<p>arrangements with third parties ... the university shall take all reasonable steps to minimise the restrictions or burdens imposed by such arrangements or conditions on the freedom of speech or academic freedom of any member of the academic staff or students carrying on research..." (French, 2019, pp. 234-235)</p>	
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Hohfeldian analysis of academic freedom

Sidestepping arguments of whether academic freedom is a privilege or a right, this paper argues that it is a right and that freedom is a form of personal rights, arguably about the capacity and opportunity to act in relation to academic freedom, with choice – liberty – being the key action element (Padró, 2022b; Steiner, 1994). If choice is the principal concern, what limits choice? Another way of making the point is, what commands or permits action and what prohibits action based on claims made (Lindahl, 1977; Thompson, 2018).

Rights denote a recognised relationship between one person or entity and at least a second entity regarding a specific act (Finnis, 2011; Raz, 1980). Hohfeld's (1913, 1917) analysis of rights describes the relationship between two entities regarding what *ought* to have occurred (Thompson, 2018). In terms of academic freedom, Hohfeld's analysis helps characterise in an atomistic approach who has or if there is an exemption to obligations that make up the institutional environment (Schauer, 2000).

Hohfeld's four types of rights represent different normative positions creating a complex internal structure (Sergot, 2001; Wenar, 2021). These represent the "lowest common denominators of the law" (Hohfeld, 1913, p. 58): *rights* (claims), *privilege* (liberty), *power* and *immunity*.⁹ To begin with, Hohfeld's (1913) concept of *rights* (or Hohfeldian rights) is based on claim that is enforceable by the state whereby "others act in a certain manner in relation to the rightholder" (Singer, 1982, p. 986). A way to conceptualise the relationships is using Wenar's (2021) approach toward defining the specific legal right, in this case:

A has a claim that B do something if and only if B has a duty to A regarding that something.

Privilege or liberty "only guarantees that a person exercising the privilege will not be held liable for the exercise, and that others cannot invoke the power of the state to prevent the exercise" (p. 1122, fn. 9). In effect, privilege or liberty indicates what a person "has no duty not to do" (Wenar, 2021) or is permitted to act a certain way without worrying about incurring a liability to others without asking the state to prevent that action (Singer, 1982). Wenar (2021) pointed out that privileges and claims are the basis for what Hart (1997)

⁹ Hohfeld's fundamental conceptions, as will be seen below, can be regarded as possessing three features: comprehensiveness, sufficiency and being irreducible (Halpin, 1985).

termed ‘primary rules’ that impose duties (obligations) setting parameters on what is permissible and not. Therefore, per Wenar’s (2021) reasoning:

A has a privilege to do something if and only if A has no duty to do that something.

Power in Hohfeld’s scheme is the ability of A to change the legal relations of B. A therefore is able to alter B’s claims, duties and privileges and the state-based rules that define these entitlements (Singer, 1982). A thus has the liberty – the authority – to be in control of the relationship with B when change is possible (Schlag, 2015; Steiner, 1994; Wilson, 1980). More specifically, the power must be exercised when there is a duty to exercise it (Wilson, 1980). According to Wilson (1980),

power must always be associated with either a duty or a privilege with respect to its exercise. Equally a duty must be associated with either a liability or 'an immunity with respect to its change (p. 197).

Steiner’s (1994) commentary is also worth noting in relation to academic freedom:

Having a power to demand, proceed for or enforce compliance, with a duty entails that we may do so... If you exercise your power and liberty to waive... [a] duty, you thereby preclude your exercise of the power and liberty to demand... compliance with it. In thus extinguishing... [the] duty, you extinguish your own right which is correlative to it. Since your power to demand... compliance comes attached to that right, it is extinguished along with the right (pp. 77-78).

In other words,

A has a power if and only if A has the ability to alter [one’s] own or another’s Hohfeldian incidents (Wenar, 2021).

Hohfeld (1917) limits his definition of *immunity* to “non-liability or non-subjection to a power on the part of another person” (p. 746). Effectively, immunity is the ability of B to be protected from A’s desire to change the legal relationship, i.e., the “security from having one’s own entitlements changed by others” (Singer, 1982, p. 986). Immunity thus acts as the persistence of a duty (Kramer, 2013). Again, to quote Wenar (2021),

B has an immunity if and only if A lacks the ability to alter B’s Hohfeldian incidents.

Hohfeld (1913) saw jural relations as being composed of two groups, jural correlates and jural opposites. The meaning of the conception of rights is done through the articulation of the relationship between these denominators, be these correlatives (dependent) or opposite (Schlag, 2015). Schlag (2015) argued that each conception of right was distinct and unique in terms of how they correlate or oppose each other.

The four types of rights were broken down rights into two dyadic relationship-based groups, one based on rights and obligations (duties)¹⁰ – rights, duty, no-right, privilege – and the second group based on “a person’s ability or disability to change the legal relationship

¹⁰ Rights are based on probable legal liabilities inherent in a breach of duties imposed on a person (Cullison, 1967). “In other words, if someone has a Hohfeldian right, another person has a duty” (Nyquist, 2002, p. 240).

between [a person] and other people” (Lindahl, 1977, p. 25) – disability, immunity, liability, power.

Jural Opposites	rights no-right	privilege duty	power disability	immunity liability
Jural Correlatives	right duty	privilege no-right	power liability	immunity disability

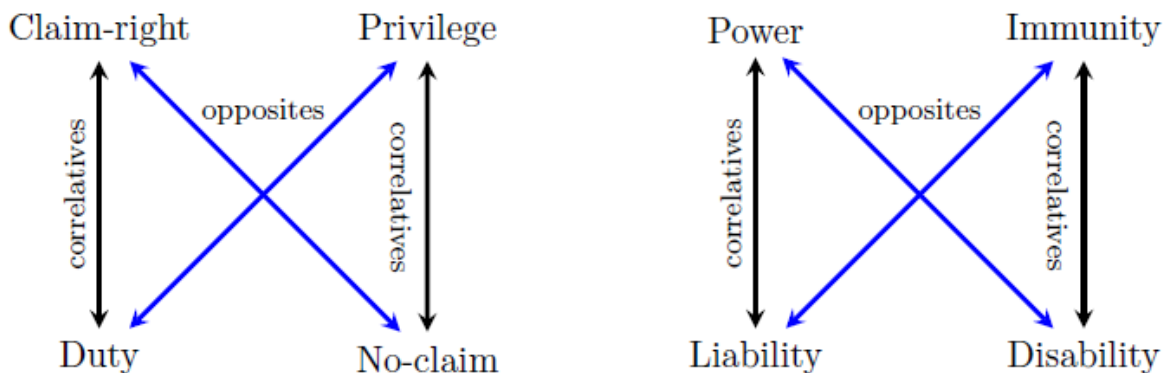
source: Hohfeld, 1913, p. 30.

Jural correlatives are legal dyadic relationships defining entitlements based on existing state of affairs (Nyquist, 2002). These represent the position of A and B regarding each other. The cardinal features of the correlatives are, per Halpin (1985, p. 439):

1. Each legal relation is concerned with one activity, or omission, of one person.
2. Each legal relation regards an activity, or omission, with respect to two, and only two, persons.
3. The analysis of a legal relation ignores the question of sanctions.
4. The analysis is concerned with the effect of all laws on a particular activity or omission. It is not concerned with presenting the material of a particular law.

Jural opposites are dyadic relationships that nullify or disable each other, thus becoming mutually exclusive. Yet, opposites refer only to one party, not both, like the jural correlatives (Schlag, 2015).

Cullison (1967) stated that “Hohfeld’s rights, duties, privileges, and no-rights are simply shorthand terms for saying what liabilities the law prescribes between two people for the doing or not doing of an act” (p. 565). Markovich (2020) illustrated the shorthand looks like:



source: Markovich, 2020, p. 130.

Thus, jural correlatives and opposite work in the following manner, according to Wenar (2021):

Correlatives

- If A has a Claim, then some person B has a Duty.

- If A has a Privilege, then some person B has a No-claim.¹¹
- If A has a Power, then some person B has a Disability.¹²
- If A has an Immunity, then some person B has a Liability.

Opposites

- If A has a Claim, then A lacks a No-claim.
- If A has a Privilege, then A lacks a Duty.
- If A has a Power, then A lacks a Disability.
- If A has an Immunity, then A lacks a Liability.

Jural correlates and opposites of academic freedom

In its broadest sense, academic freedom is a claim-right (Padró, 2022b). The duty aspect of the *Claim-right-Duty* jury correlative is to perform exercise these rights reasonably and responsibly as proposed by the *AAUP 1940 Statement*. The jural opposite at this macro-level would be that:

- Institutional autonomy from government and or principal sponsors to ensure an appropriate learning experience in disciplines taught would be curtailed or non-existent;
- Institutional revenues would be wholly determined by public and/or sponsoring entities and/or key government-identified and sanctioned stakeholders;
- Management and socio-political interests would limit what is taught, potentially how it is taught, content of what is taught, and who teaches within the HEI;
- academic staff do not have a recognised right to exercise professional judgement in the academic affairs of HEI;
- academic and/or research staff may be constrained in the pursuit of research, potentially how and what is concluded from the research (i.e., forms of censorship and self-censorship), and when, where and type of publication to publish;
- staff in general will not be restricted in what they do and/or say outside the institution due to their affiliation with the HEI that employs them;
- students would not have the capability to explore and question the information given to them by the institution (in terms of teaching and learning plus when engaging with support units and appropriate enterprise units (i.e., minimal capacity to achieve personal satisfaction from their experiences));
- students would be constrained in selecting programs of study and courses outside the defined core disciplinary courses, limited in access to HEIs, limited or no ability to transfer to other programs or HEIs;
- students would be constrained in what they could say and/or do outside the HEI due to their association with the institution.

Similarly, the jural correlate *Privilege – No-right* provides a similar result. The issue here is who lacks a claim to limit the claim-rights of academic freedom. The immediate response to the limitation of the privilege are other existing laws that either trump or by design limit the

¹¹ No-rights or No-claim, the latter being a more recent interpretation of no-rights. Either term refers to the absence of a right or claim (Hurd & Moore, 2018).

¹² Disability is having no power (Hohfeld, 1913).

scope of these rights. Regulatory compliance controls due to its linkage to legislative and administrative law or equivalent practices designed to promote legal efficiencies (Padró et al, 2020; Padró & Green, 2018). Stakeholders outside government have no claim against academic freedom as such; however, their practices and preferences may prefer to limit the privilege of academic freedom to protect their interests and practices.¹³ Commercial and research partnerships may find this to be contested grounds, especially when it comes to intellectual property and/or the practice of information sharing for the advancing or review of research methodology, analysis, findings and conclusions. Privilege-No-rights also provides a locus for determining the relationship between academic staff and students and professional staff and students (Padró, 2022b; Press & Padró, 2022). Issues regarding student ability to express opinions within the classroom and the wider HEI environment can be found here. Reasonableness, issues of freedom of expression/speech, invitation of external speakers, protests, etc. can be discussed within this jural correlative concerning limitations.

The *Privilege-Duty* jural opposite seems to provide interesting angles to some elements of academic freedom based on what duties staff are not required to perform. For example, when Australian universities were tasked with formulating an academic freedom policy based on the *French Model Code*, an issue that the author heard and read was the concern that setting out a framework for academic freedom may impose more duties on staff than already required of them. The implication was (and remains) what type of additional duties does academic freedom impose on staff. This is a legitimate concern of highly managerialised HEI sectors because a number of duties that were the traditional domain of academic staff have been taken over by the HEIs bureaucracy to meet regulatory accountability requirements vis à vis course planning, pedagogical practice, assessment, etc. in the name of improved practice more standardised student learning experiences.

Privilege-Duty, as a jural opposite, has more import regarding the student learning experience when it comes to classroom student experiences. Much good to best practice relies on the professional judgement of academic and some professional staff, but practice, unless it has become an established norm and standard of good practice does not necessarily translate into a duty unless stated in institutional policy and procedure. In turn policy and procedure are bound to the EA and subject to consistent application. On the other hand, the status of students within HEIs varies in accordance to institutional unit along with purpose and reason for the interaction. Where students do not have a duty is when it comes to extramural activities that do not relate to their studies, co- or extra-curricular activities (cf. Press & Padró, 2022). And in terms of mutual expectations and the impact of student consumerism on claim-rights from both sides, it is in this area where the impact of changes pertinent to the normative basis of the student-staff, student-student and student-HEI triad can be noted and used to better understand student conduct permissibility and preferences (Padró, 2022b).

The *Power-Liability* jural correlative is a space where the intricacies of institutional autonomy are definable, especially when it comes to extramural financial and regulatory compliance parameters. This is also the space that helps parse out the dynamics behind the triple-helix relationships that HEIs have with their external environments in defining their functional integrative capacity within their state (Landecker, 1952; Padró, 2022b).

¹³ Stakeholder and user perceptions of merit or worth are shaped by how well the intentions of the institution are shaped by the contextual dynamics driving and shaping internal processes. These dynamics, in turn, demonstrate the university's effectiveness and integrity of culture, processes and units (cf. Padró et al., 2019).

Intramurally, this jural correlative helps flesh out the intricacies of institutional governance, its role and participation by staff and students. Conversely, the *Power-Disability* jural opposite helps elaborate the limitations on institutional autonomy in terms of government and stakeholder relations and relationships. More importantly though is the capacity to establish the limitations imposed on governance and staff participation in governance due to managerial constraints and other preferences.

Power-Liability is a jural correlative shedding insights in to the arguments behind the thought that student academic freedom is a derivative right from academic staff (Padr6, 2022b). Basically, student affirmative control over their learning environment is a limited one based on institutional policies and procedures framing permissibility of their engagement within the institution in which they are enrolled. Students are subject to the professional judgement of academic staff, with liability coming in the form of poor performance per the norms of standard practice within the disciplinary area of study, i.e., grades. Liability exists in the form of exclusion and even expulsion for continued poor performance and then there are liabilities for not following policies and procedures that can lead to sanctions that can exclude exclusion or expulsion (e.g., Student Code of Conduct). The issue within this jural correlative regarding student academic freedom is the limitations of permissibility of engagement falling within the scope of acceptable behaviour. It is the *Power-Disability* jural opposite where the challenges to student academic freedom can be explained, explaining why student academic freedom was placed in the ‘too hard’ basket in the original *1915 AAUP Declaration of Principles* discussions (Metzger, 1955). The issue here is that outside their extramural freedom of speech/expression rights, the type of student engagement is bounded by the decisions made by institutional management and academic and professional staff through policies and procedures, admissions acceptance statements, program and individual course syllabi, accreditation requirements impacting institutional offerings and processes, and professional judgements adhering to consistent and reasonable accepted practice.

The final jural correlative *Immunity-Disability* and the final jural opposite *Immunity-Liability* help detail the scope of actions performed under the claims of academic freedom intramurally and extramurally. Immunity provides protection due to a lack of standing to change the legal relationship (Hohfeld, 1913), i.e., based on what a staff or student does. Disability is not having the power to effect changes. The jural correlative therefore provides an indication of what the scope of academic freedom is in terms of what staff and students are allowed because other agents like management or stakeholders are not recognised to place restrictions outside those imposed by law (French, 2019). As already noted, courts tend to not look at considerations that can be found in this legal correlative in terms of broader meaning, basing findings on the instrumentality of documents like EAs, policy and procedures, admission agreements, etc. The jural opposite strengthens the notions that compliance of actions based on the immunity acknowledged to be present in academic freedom does not confer a liability to those exercising academic freedom. Consequently, these two dyads represent a normative representation of what is at least recognised to be the exercise of academic freedom, not in terms of limitations but on permissibility.

Applicable MBNQA criteria

MBQNA has been around since 1987 and the Education Criteria adopted in 1998. Its approach is experiential rather than conceptual due to its systemwide perspective,

application- and results-based approach embedded in the MBQNA framework and the items themselves. The framework imposes business-oriented language into the operational, relational and strategic aspects of HEIs and primary and secondary school sectors to explain and explore the performance of institutions within these sectors. It can be argued, however, that certain normative aspects unique to these sectors are lost or at least not recognised that are a part of both quality assurance and quality control mechanisms within the sectors. Furthermore, focus on some of the business-oriented language and concepts may be having unintended effects on performance by shifting expectations that undermine the traditional performance processes within institutions. The best example of this is the conflation and intermixing of the terms student and consumer, with results well identified by publications such as those by Bunce, Baird and Jones (2017) and more recently by Bunce (2022). This is not to say that the MBQNA is not fit-for-purpose in the educational arena, quite the contrary because there are many aspects of the framework that are very instrumental in understanding what occurs within HEIs from an enterprise perspective. Instead, it is a return to Swiss' (1992) view that the ideas embedded in the MBQNA have to account for the unique features within HEIs to make such a framework more useful in identifying performance parameters that lead to excellence and success. Table 2 shows how academic freedom fits within the MBQNA Education Criteria core concepts.

Figure 2. Rationale for how academic freedom fits within the MBQNA Education Criteria core concepts.

MBQNA Education (https://www.nist.gov/baldrige/about-baldrige-excellence-framework-education)	How academic freedom fits within the MBQNA core concepts
Utilising a systems perspective	Academic freedom is an underpinning of intramural governance and management and generates claims for autonomous practice in the provision of post-secondary and higher education.
Demonstrating visionary leadership	Allows for the capacity for representative engagement through governance oversight of managerial decisions.
Focusing on student-centred excellence	Academic freedom provides the environmental norms and practices that directly lead to student engagement and learning.
Valuing people	Recognition of individual autonomy to pursue goals and interests relating to intellectual and practical concerns based on learning engagement and the pursuit of research and other forms of scholarship.
Having agility and resilience	Recognition of individual autonomy to pursue goals and interests.
Establishing and maintaining organisational learning	Reliant on expertise and personal experiences and interests that are aligned to institutional pursuits.
Focusing on success and innovation	Provides the basis of independent pursuit of interests.
Based on management by fact	Governance capacity for staff and students to review institutional performance and provide input to the data.
Generating societal contributions	Ability to pursue interests in research and scholarship and to be able to present these to the public without risk of adverse consequences (within legal permissibility).
Based on ethical practice and transparency	Protection of ability to pursue personal interests by EA and institutional policies and procedures applied on a consistent basis.

Delivering value and results	Individual pursuit of interests leading to recognised outputs enhancing personal and institutional reputation (staff through research and/or teaching practice, students through employment and professional practice).
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The MBQNA Education Criteria (like the criteria within the MBQNA) consists of seven categories and 17 items, not counting the organisational profile and its two items. The obvious question is: in which items could academic freedom be included given the claims in Table 2 about its comprehensive application to the MBQNA values? Table 3 below shows where academic freedom can fit within the 2019-2020 Education Criteria items based on the comments provided previously in this paper.

Table 3. MBQNA items in which academic freedom can fit as part of or as a separate indicator.

MBQNA Category	MBQNA item	Item in which an academic freedom indicator could be included
Category 1: Leadership	1.1 Senior Leadership	1.1(c)(1) Creating an environment for success
	1.2. Governance and societal contributions	1.2(a)(1) Organisational governance 1.2(b)(1) Legal, regulatory, and accreditation compliance 1.2(b)(2) Ethical behaviour 1.2(c)(1) Societal well-being
Category 2: Strategy	2.1 Strategy development	2.1(a)(1) Strategic planning process 2.1(a)(2) Innovation 2.1(a)(4) Work systems and core competencies 2.1(b)(2) Strategic objective considerations
	2.2 Strategy implementation	None
Category 3: Customer	3.1 Customer expectations	3.1(a)(1) Listening to students and other customers 3.1(b)(2) Program and service offerings
	3.2 Customer engagement	3.2(b)(1) Satisfaction, dissatisfaction, and engagement
Category 4: Measurement, Analysis, and Knowledge Management	4.1 Measurement, analysis, and improvement of organizational performance	4.1(b) Performance analysis and review
	4.2 Information and knowledge management	4.2(b)(3) Organisational learning
Category 5: Workforce	5.1 Workforce environment	5.1(a)(1) Capability and capacity needs 5.1(b)(1) Workplace environment

		5.1(b)(2) Workforce benefits and policies
	5.2 Workforce engagement	5.2(a)(1) Drivers of engagement 5.2(a)(2) Assessment of engagement 5.2(b) Organisational culture 5.2(c)(1) Performance management
Category 6: Operations	6.1 Work processes	6.1(a)(1) Determination of program, service, and process requirements 6.1(a)(4) Innovation management
	6.2 Operational effectiveness	6.2(a) process efficiency and effectiveness
Category 7: Results	7.1 Student learning and process results	7.1(a) Student learning and customer-focused service results
	7.2 Customer results	7.2(a)(1) Student and other customer satisfaction 7.2(a)(2) Student and other customer engagement
	7.3 Workforce results	7.3(a)(2) Workforce climate 7.3(a)(3) Workforce engagement
	7.4 Leadership and governance results	7.4(a)(1) Leadership 7.4(a)(2) Governance 7.4(a)(3) Law, regulation, and accreditation 7.4(a)(4) Ethics 7.4(a)(5) Society
	7.5 Budgetary, financial, market, and strategy results	7.5(b) Strategy implementation results

Potential quality indicators for academic freedom in a quality framework

It has been noted that there is a link between the construction of policies and procedures and legal application of legal problems relating to academic freedom by the courts. The formation of quality indicators would benefit from a similar approach. As already noted in this paper, a number of key definitional aspects regarding academic freedom come more from ‘soft law’ rather than ‘hard law.’ A review of the statements by the AAUP in Table 1 seem to provide broader parameters that lend themselves to a Hohfeldian construction of academic freedom indicators whereas the Australian French Model Code uses sparser language and does not provide the capacity for elaboration within the Hohfeldian scheme, at least at the prima facie review level. International declarations provide evidence that academic freedom is a right. From the perspective of academic freedom as a human right, a quality indicator can be created in terms of ethical practice, but difficult to provide

additional statements that can serve as bases for quality indicators. Nonetheless, these do act as a basis for what is possible.

The following are instances of possible quality indicators based on the MBQNA items identified in Table 3 above. This list is not exhaustive, merely suggestive to demonstrate their construction and appropriateness. For example, Baldrige items 1.2(a)(1), 1.2(b)(1), 1.2(b)(2) and 1.2(b)(3) offer a means of establishing a quality indicator. Item 1.2(a)(1) is in regard to the governance system, 1.2(b)(1) focuses on legal and regulatory compliance issues, 1.2(b)(2) looks at ethical practice, and 1.2(b)(3) considers the social benefit of institutional practice. Quality indicators possible are:

- The selection of governance structures allows for oversight of staff (academic and professional) and students, who have a proper allocated time to participate in governance and have the capability to provide feedback based on good faith reasoning unencumbered by managerial concerns over difference of opinion.
 - Demonstration of staff ability to provide input regarding who may teach, what may be taught, how it shall be taught, and who may be admitted to study.
 - Students (and student organisations) are able to express their ideas, examine and discuss all questions of interest to them in class in accordance to protocols and orderly means that do not disrupt the regular and essential operations of the institution.
- Staff and students are able to exercise their extramural and intramural rights of free speech/expression as allowed by law without undue interference from the institution.
 - The institution does not limit staff and student activities outside the campus unless these represent actions and statements related to their role at their institution or otherwise limited or disallowed by law.
- Students are allowed to pursue studies of choice and are provided curricular, co- and extra-curricular opportunities, and offered appropriate support to assist in the pursuit of their studies.
- Research and scholarship by staff and students can be identified, performed and disseminated in accordance to personal preference and professional practice, whether these activities are for the general advancement of knowledge; applied to meet certain artistic, scientific or social interests.

Regarding staff, these quality indicators also can be linked to the Category 5 (Workforce), specifically 5.1(a)(1) capability and capacity needs, 5.1(b)(1) workplace environment, 5.1(b)(2) workforce benefits and policies, 5.2(a)(1) drivers of engagement, 5.2(a)(2) assessment of engagement, and 5.2(b) organisational culture. These quality indicators also apply to students, thus falling under Category 3 (Customer), in particular items 3.1(a)(1) listening to students and other customers and 3.1(b)(2) program and service offerings. As proposed, these quality indicators show the interconnected and pervasive nature of academic freedom as a background determinant and facilitator of performance excellence.

Conclusion

Hohfeld (1913) created his legal relations framework to help clarify what is meant by the various terms found in legal problems. His approach was atomistic in the sense that he was looking for the specific breakdown of what these legal relations meant and their application. As he said:

Putting the matter in another way, the tendency – and the fallacy – has been the specific problem as if it were far less complex than it really is; and this commendable effort to treat as simple that which is really complex has, it is believed, furnished a serious obstacle to the clear understanding, the orderly statement, and the correct solution of legal problems (p. 19).

Academic freedom is a very complex problem; yet, only looked at and considered from limited perspectives based on personal interests or application by HEI management, regulatory agencies and the courts. What this paper has attempted to do is to provide a basis of looking at academic freedom using the wider lens of systems thinking. The narrative has attempted to make a case that academic freedom can and should be used as a quality indicator within quality assurance frameworks. While risk has not been a major emphasis of this discussion, the implication of legal risk is clearly palpable. The issue, again, is that the most challenging problems regarding the claim for academic freedom and its abrogation often ends up in the courts to determine the legitimacy of the claim. It is the risks from not understanding the dynamics of academic freedom in a quality context is what should encourage their use as quality indicators even though conceptually they are not often as clear as preference would have it. Using a Hohfeldian analysis provides the means through which a detailed analysis (or at least parsing) of the different facets of academic freedom can occur in order to translate the conceptual nature of academic freedom into delineated and manageable indicators of experience within HEIs.

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