

Championing academic freedom: a call to unite for the sake of higher education

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Academic freedom and freedom of expression are fellow travellers whose paths sometimes cross, sometimes proceed in parallel, and yet crucially also pull in different directions. While each has its place on university campuses, the two are distinct in definition, scope, purpose, and justification.

The UK HE sector should develop a deeper shared understanding and appreciation of academic freedom so as to defend it at a time when disagreeing well, expanding horizons of knowledge, and empowering democratic debate are central to the value of higher education. Championing a robust notion of academic freedom will significantly impact on public perceptions of higher education and also enable the sector demonstrably to make good on its [responsibilities to society](#).

The value of academic freedom

The liberty of free speech is limited only by the other limb of democracy. When tempered by an egalitarian principle, it ensures participation equally yet differently for each individual. It limits interference in individual rights only to the extent necessary to protect the rights of others. Academic freedom, by contrast, is rigorously discerning as to the quality of thought, though neither to the subject matter nor to the speaker. This follows from academic freedom's distinct purpose and justification. The university, unlike Speakers' Corner, is charged with directing its freedoms towards the pursuit of truth, knowledge, or critical understanding. This is not to say that free speech does not have its place on university campuses. It certainly does insofar as universities, like the press, serve an [important public watchdog function](#) in democratic societies, as is recognized by [the European Court of Human Rights \(ECtHR\)](#) and other international bodies.

Academics, though, enjoy a relationship to knowledge and its scrutiny that may be distinguished from that of journalists. The function of the academy goes beyond investigating and checking knowledge to producing and even interrogating the very conditions for the production of knowledge. Like the press, the academy should cultivate a certain critical circumspection while remaining open-minded, but since academics have a particular responsibility in society for how knowledge is produced, they must be held to a different standard of open-minded circumspection. Even if both academics and journalists may write polemically to intervene in a debate, the nature of those debates is qualitatively different. This is in part because academic freedom is a set of freedoms and responsibilities belonging to a particular community and in part because the academic contribution to advancing knowledge and understanding necessarily includes putting in question not just what we know but, furthermore, the ways by which we think and develop understanding.

The history of the modern university owes much to the foundation of Humboldt University in 1809, which was informed by philosophical thinking of the day, including Immanuel Kant's *Conflict of the Faculties*, which extols the autonomous exercise of critical reason. This origin suggests that academic freedom is defined less by the simple pursuit of the truth than by its critical function. The definition in English law—the freedom within the law to question and test received wisdom, and put forward new ideas and controversial or unpopular opinions—captures something of this spirit, but it does not quite specify what distinguishes academic freedom from vigorous public debate. The definition is permissive (one may question or test) rather than restrictive (questioning or testing as a precondition). In the sphere of free speech, it is perfectly acceptable that your only possible response to what I say is “I disagree.” That means something in that discursive space. But academic freedom—properly understood as being in the service of unfettered inquiry and deepening of understanding—requires something more than “take it or leave it.” It requires that my expression be amenable to question, critique, refinement, rebuttal, and correction—that it leave space for another member of the academic community to challenge, test, and improve my ideas with a view to advancing knowledge and understanding.

This requires openness not merely to other views but to other theories, strategies, methodologies, and framings for making sense of the world. Viewpoint diversity is often championed because it is said that the best ideas will win out. In his canonical *On Liberty* John Stuart Mill thought it impractical to exclude sophistry from free speech because he considered it possible for speakers to withhold facts, misstate parts of their case, or mischaracterize their opponents' arguments largely in good faith and without in general being ignorant or incompetent. If good faith is too low a bar to reflect academic responsibility, imposing quality controls that demand “accuracy” or conformity to narrow disciplinary standards might deter risk-taking or interdisciplinarity and exclude creative or experimental forms of thought, putting a brake on innovation and diversity of knowledge production. Susceptibility to critique, however, offers an appropriately robust litmus test of credibility, more so than rhetorical persuasiveness or capacity to generate consensus. It tests the quality of *how* we pursue the truth, probing arguments for their internal coherence, logical robustness, and evidentiary basis, without allowing disciplinarity to dictate *what* that truth is. Propaganda, trickery, dogmatism, and mis- or dis-information, which present as impervious to that kind of scrutiny, might reasonably be allowed to circulate freely in the public sphere. But they need not be protected within the university where they jeopardize its intellectual and broader social purposes. A more subtle case for viewpoint diversity is that I must hear the best (and most sincerely made) version of an argument if I am to develop effective counterarguments. Again, though, the requirement that the expression be open to such a critical response is key to its intellectual value. “I disagree” is not much of a counterargument in academic discussion.

A counterargument to this line of thinking might warn against deterring academics from taking risks lest they make a mistake. This, though, confuses the critical function of the university for censorship. The university exists not simply for discerning truth from error but, more importantly, for posing the problems and questions that then determine how knowledge is pursued. It is a common misconception that critique means criticism when it is more accurately the capacity to challenge the foundations and assumptions on which a knowledge claim is based. What matters is diversity less of *what* people think than *how* they think. It is this capacity that makes critique an engine for more radical innovation beyond incremental advances in knowledge because it enables the academic community to revise the horizons and methodologies of inquiry under the test of scholarly deliberation. Protecting academic freedom as openness to critical challenge goes hand in hand with incentivizing the risks of shaking up a field and going against the grain not merely to provoke, outrage, or close down but to refine and expand the horizons of thought and knowledge.

This criticality, at once judicious and bold, has benefits for society. Academics do not only impart knowledge to students and citizens more widely. Academic freedom moreover cultivates critical ways of thinking that can be brought to bear on any kind of knowledge and information. This happens both among direct beneficiaries of higher education and also among the public at large whose capacities for open-minded circumspection and out-of-the-box thinking are honed through the contribution of scholarly findings and argument to public debate. In short, academic freedom is a public good because it increases both the quality of information available for public debate and also the deliberative capabilities of citizens. Especially given that there is evidence to suggest positive effects of education on trust in (non-corrupt) political systems, it is hardly an exaggeration to say that academic freedom—and not only free speech—is the lifeblood of democracy. This is one reason why protecting the extramural expression of academics beyond typical scholarly venues is vital (for example, see [Erdoğan v Turkey](#), §§40–41 and [Kula v Turkey](#), §38). In promoting and explaining the value of academic freedom, the sector can articulate how, in a climate of political disaffection and widening cleavages, higher education contributes meaningfully to producing an informed and reflective citizenry that has confidence in democratic participation and representation, and that is able to listen and respond constructively to opposing viewpoints.

The exercise of academic freedom teaches how to disagree well. At its best, it provides a model for broaching controversial topics productively by challenging the idea or argument rather than the identity or dignity of the person. It opens up spaces for discussing complex and contested issues that invite people to come together around a problem to be grappled with; the focus on critique over criticism advises against more superficial forms of point-scoring. Because it takes a critical stance on the credibility of arguments, it can also help to foster awareness of how certain kinds of claims or people occupying certain positions in

social space tend to be taken less seriously. In this way, it can help combat those ways, aside from straightforward censorship, by which certain voices and views are silenced, marginalized, or their ability to cut through undermined. The discerning disposition points up where the free marketplace of ideas is not in fact content-neutral but discriminates according to prevailing social hierarchies. In this way academic freedom can help to make free speech more egalitarian and genuinely free for all.

Definition and scope

From a legal standpoint, free speech and academic freedom are overlapping categories since one of the elements of academic freedom is a subset of freedom of expression protected by Article 10 of the European Convention on Human Rights (ECHR), which is incorporated into English law via the Human Rights Act 1998. Such freedom is suitably qualified to ensure its protection is balanced with the protection of other rights, including freedom from discrimination: academic freedom of expression may be exercised exclusively by academics, both within and outside the walls of the academy but within the sphere of their professional expertise and competence (construed broadly) and conditional upon their exercising a similar degree of professional responsibility to other actors involved in public scrutiny, such as journalists.

The [Higher Education \(Freedom of Speech\) Act 2023](#), long in gestation, could have been an opportunity to align English law more closely with international human rights law and other instruments that speak to academic freedom. Two points in particular merit highlighting. First, the new domestic legislation provides only an enhanced process duty: to take reasonably practicable steps to secure freedom of speech within the law, having particular regard to its importance. Like the Public Sector Equality Duty, this requires universities to give conscientious consideration in its decision-making but not to arrive at any particular outcome. It is to the Convention and the Article 10 jurisprudence that one must turn for substantive protection, which may then be realised through the new enforcement mechanisms of the statutory tort and the Office for Students (OfS) complaints scheme. The definition in the new statute, which the OfS adopted from the Education Reform Act 1988 and which is repeated in many institutions' charters, is also comparatively thin when viewed alongside the richer understanding of academic freedom of expression in the ECtHR jurisprudence. Second, there is risk of confusion in that when ministers removed the overly narrow qualifier "within their field of expertise," the clause pertaining to academic freedom was on the face of it left wide open without the broader ECtHR restriction to "the areas of their research, professional expertise and competence." My view, however, is that the addition of a clause in the statute defining freedom of speech with reference to the Convention in response to pressure from lawyers in the Lords goes some way to resolving both these issues from a strictly legal perspective. It means that the scope of academic freedom as understood by Strasbourg ought to be read directly into the enhanced process

duty given that the Act in subsection A1(5) positions the duty to secure academic freedom as a subset of the duty to secure freedom of speech.

Any withdrawal from the Convention or repeal of the Human Rights Act would [imperil academic freedom](#) in this country (along with other rights). While the thin English-law definition captures broadly the critical thrust of academic freedom and explicitly protects unpopular or controversial opinions, it is silent on a number of the features in international articulations of the concept that have been recognized to greater or lesser degrees by the ECtHR. Strasbourg, for example, explicitly recognizes the right to criticize the institution or system in which one works (see [Sorguç v Turkey](#), §35), and has prioritized this over institutional reputational rights (see [Kharlamov v Russia](#), §29). The judges furthermore show a sensitivity to other aspects of academic freedom that go beyond expression rights and that are recognized by international instruments such as the [UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel 1997](#), the [Committee on Economic, Social and Cultural Rights' General Comment on Article 13 of the International Covenant on Economic, Social and Cultural Rights 1999](#), the [Bonn Declaration on Freedom of Scientific Research 2020](#), and the [Annex to the Rome Ministerial Communiqué 2020](#) that came out of the Bologna Process. These international instruments define academic freedom as a composite set of individual and collective freedoms that include freedoms of research, teaching, professional association, and collegial self-governance in addition to expression. Some even mention freedom of learning for students, although this idea was clearly rejected by the government in debates during the Bill's passage through Parliament. In short, the international instruments recognize the multiple conditions necessary to ensure the thriving of free, open, critical, and robust inquiry.

Underpinning these different rights is the foundational precondition of institutional autonomy. This allows the academic community—based on the experience, expertise, and competence of its members and via democratic structures and practices of self-governance—to determine the best way to fulfil its objectives in education, research, and public dissemination and exchange free from the interference of state or other external actors. In the current climate, members of the public may view academic freedom as a professional privilege that grants academics additional license. In defending the need for legislation, government ministers suggested that intervention was necessary to protect free speech on campus, and yet the Act seeks to do this without engaging in any detail with the distinctive character of academic freedom, notwithstanding attempts in the Lords to probe this difference.

Working with the OfS on the implementation of the new legislation, the sector might usefully renew a clear commitment to the principle of democratic self-governance. This would stress the collective responsibility that academics share for furthering education, research, knowledge, and innovation as public goods in our society.

University leaders might, for example, point to the importance of expert peer-review in guarding against misinformation and giving the public confidence in the quality of knowledge and research findings. The open-minded circumspection that I have suggested characterizes academic freedom will also be crucial here if it is to avoid arbitrary disciplinary gatekeeping or other disincentives to ground-breaking work. Academic judgment, informed as it is by disciplinary and wider methodological or pedagogical expertise, even if imperfect, remains best qualified to adjudicate on such matters. The quality of this judgment and its value to the public will be most effectively guaranteed by promoting the principles of academic freedom.

Academic freedom is a multifaceted and complicated sphere to protect. Few academics or senior leaders in the sector, excepting those with specialist expertise, will be familiar with the various international instruments and details of all relevant Strasbourg case law on academic freedom of expression (although there are helpful guides, including on public debate and hate speech, and links to judgments on the [ECHR knowledge sharing platform](#)). In the absence of detailed internal policies and guidance, the lack of clarity is likely to increase the number of contested cases and make institutional processes more complex, while also increasing compliance-related risks already heightened by the statutory tort. For these reasons, the sector stands to benefit from coming together to articulate a common definitional understanding of academic freedom. This should reflect both the robust and nuanced conception that the ECtHR has been developing and also the academic community's self-understanding of its rights and associated responsibilities. This might take the form of a voluntary code, similar to the [Model Code](#) drafted by former Chief Justice Hon Robert French AC and adopted by universities in Australia, or even a simple one-page statement reciting the main components of academic freedom and clarifying its relation to free speech. Such an approach would have the advantage of underscoring the international outlook of the UK HE sector by stressing common norms among the academic community worldwide that underpin potential for collaboration, as well as the leading role of UK universities in advancing knowledge and promoting standards of inquiry globally.

Academic freedom, diversity, and inclusion

There is perhaps one significant limitation to the legal approach to academic freedom, which tends to position it as a right to free expression to be balanced against other rights, including rights to private and family life and to freedom from discrimination. This is arguably a necessity given how the human rights framework and the justice system are structured where the proportionality test (whether interference in free speech is proportionate to a legitimate aim in a democratic society) shades into a balancing act when that aim is protecting the rights of others.

The public conversation, though, has become quite brittle in this area—more so than the ECtHR’s judgments—with the result that duties on universities are often framed as a competition or trade-off between freedom of expression on the one hand and equality, diversity, and inclusion on the other. It would be helpful if the sector were to reclaim the idea that freedom of expression is itself an equalities issue. Historically, the role of freedom of speech and its egregious violations in the civil rights movement in America, for instance, bear out that the two are deeply entangled; the same example was cited by the new OfS Director, Arif Ahmed, in his [first major speech](#) at King’s College London. It continues to be dissenting voices of the structurally marginalized that are at the sharp end of attacks on free speech. Making the case that freedom of expression and EDI are not only compatible but mutually reinforcing is an important task to build common understanding among university communities and to uphold the values of our higher education institutions.

Academic freedom has something specific to offer to this endeavour. Its primary objective—to advance knowledge and critical understanding, including in unconventional or hitherto unauthorized ways—is best achieved through diversity of thought (*how* one thinks) and not just of viewpoint (*what* one thinks). Marginality is an obstacle to the advancement of knowledge and to innovation because it suppresses novel or unfamiliar ways of thinking. To the extent that one’s strategies, theories, and methodologies for making sense of the world are informed by one’s lived experience, the university’s critical function is better served by actively including diverse voices that are likely to question hegemonic assumptions. Such inclusivity also makes its contributions to public debate more representative of the experiences and ways of thinking in the society for which it acts as a watchdog. Creating environments in which structurally marginalized members of society feel able and confident to contribute to debate within our universities is thus essential to their mission. This means fostering spaces in which every person enjoys sufficient dignity that they are empowered to relinquish the constraints of intellectual security, feeling safe enough to take on intellectual challenges and risk. Some no doubt seek to blur this distinction between intellectual and dignity safety to their own advantage. Academic freedom as an ideal, though, has respect for everyone but little tolerance for unfounded claims or incoherent arguments. Because it is subordinated to these intellectual and associated social goals, academic freedom’s critically discerning judgment can—rather like an audio mixer—rebalance existing distributions of voices where, for example, certain speakers or speech tend to silence, drown out, or undermine minoritarian or dissenting arguments.

The enhanced protection that academics enjoy for their expression under human rights law crucially comes with a set of responsibilities; these go beyond the requirements of harassment and discrimination provisions in the Equality Act 2010. Scholarly method affords academic expression considerable protection, but this would not, one ECtHR judgment suggests, extend to cases where the method amounts to generalized negative stereotyping of minority groups (see [Aksu v Turkey](#), §56 and §§69–75).

Academics may turn out to be wrong in the end ([Hertel v Switzerland](#), §50) or engage in a degree of hyperbole ([Kharlamov v Russia](#), §32), but the court has also been keen to uphold professional standards, as determined by the relevant community, for academics as for journalists. Aside from operating in accordance with internationally recognized research ethics and any appropriate regulations, this means upholding both scholarly rigour and integrity. The responsible exercise of academic freedom might then include, for example, recognizing the labour and intellectual property rights of others, presenting and appraising facts and the work of others scholars fairly and impartially without deliberate misstatement or distortion, engaging in scholarly debate and collegial governance in good faith, recognizing conflicts of interest and resisting external attempts to influence findings, working to maintain and develop one's knowledge and expertise, recognizing the limits of one's expertise and the authority that one's speech carries, taking care to avoid misleading that public, promoting the free and responsible exchange of ideas in the classroom, and so on.

The defence of academic freedom is perhaps at its strongest when it goes in tandem with the freedom to learn. Inclusivity of scholarly inquiry is a necessary condition for widening access and increasing participation and success so that students from disadvantaged backgrounds know that their arguments and views will receive a fair hearing. When freedom of academic inquiry is more inclusive, diverse, and equal except as to quality of thought, and when it is independent of external influence, it can provide an important boost to civic competencies and participation. It can help to make public debate and policy more robust and equitable, and to ensure that critical thinking prevails over ignorance, superstition, and irrational abuse of power. To privilege free speech at the expense of academic freedom would be to undercut the social benefits of the university's educational mission, substituting diversity of uncritical opinion for intellectual rigour and creativity.

Academic freedom's criticality underscores the value of higher education for democratizing lifelong learning, intellectual growth, and empowerment. Academics, students, higher education leaders, policymakers, and regulators—all should unite to champion it.

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