

## Free Speech at the University: A Way Forward

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Free speech, a staple of modern democracy, has become the focal point for political and cultural forces impacting the university. From our students calling on us to restrict speech as a way to avoid harm to marginalized members of the community, to political actors calling on us to expand protection for diverse ideological views, academic free speech is a point of contention and struggle. I present inclusive freedom as a response that is anchored in the university's core mission.

Charged with the mandate to expand the boundaries of knowledge, to disseminate knowledge through teaching and other modes, and to serve the public by training citizens and leaders, universities thrive in an environment of open inquiry. J.S. Mill clarifies the centrality of encountering opposing views to the advancement of truth and knowledge; free speech is for him not an end in itself but a tool in the progress toward truth. How does this insight translate to our age in which truth itself is politicized and sometimes maligned? My goal today is to offer in response a democratic framework for protecting free speech in higher education, a framework which I call 'inclusive freedom.' An inclusive freedom approach reflects the commitment of the university to protect free thought, inquiry and expression; and to ensure that the dignity of all students and faculty is protected by allowing them to freely and equally contribute to this shared endeavor. This framework can guide university leadership, faculty and

students through turbulent times by being responsive to contemporary circumstances while remaining committed to the university's long-standing values.

While the boundaries of academic speech have been debated and contested for decades, the focus on free speech as a wedge issue is newer. The current focus is more pressing, as evident in protests around controversial speakers as well faculty statements in class and online, and students' demands for changes in university practices that define and respond to impermissible speech. Along with these internal tensions, there are concerning efforts in many countries to curtail academic speech and freedom in ways that present new political challenges to higher education. Let me consider the internal pressures and the external demands on academic open expression in turn.

The third fundamental principle of the 1988 Magna Charta Universitatum reads in part "Freedom in research and teaching is the fundamental principle of university life [...] Rejecting intolerance and always open to dialogue, a university is an ideal meeting ground for teachers capable of imparting their knowledge... and for students... willing to enrich their minds with that knowledge."

Freedom is constructed in this principle as an ideal that can be realized through the rejection of intolerance and through openness to dialogue. Today, the freedom to express intolerant views has become a matter of struggle, challenging universities to consider their foundational values and common practices.

Internally, universities are challenged to consider the price that some of their members pay for maintaining their commitment to free expression. As places

where knowledge is developed and disseminated, universities must provide freedom to inquire, question, and probe established views and new visions without fear of retribution or silencing. This freedom is central to research, to teaching, and to learning. Speech protections are therefore necessary if researchers and their students are to make the kinds of contributions that society expects them to make, and for which they come to the university.

Within the diverse legal contexts in which higher education institutions operate, many currently encounter a common challenge in pressure from students (and faculty) to limit speech protections, and to restrict the speech of instructors, students and invited speakers. As I advise universities in their efforts to develop policies regarding speech protection, and to help them implement these policies and address tensions, I observe a pattern of concerns: students are calling for administrators to limit faculty who engage in speech that they see as offensive, for instance, anti-immigrant statements, racial bias, or religious intolerance; in some places, students raise concerns regarding the views of invited speakers, for example when those are opposed to equal gay rights and thus might hurt their fellow LGBT students, or when students worry that their views might demean members of other minority groups on campus.

My suggested response is anchored in the core mission of the university. To clarify, in the United States the law requires viewpoint neutrality and thus permits expressions of bigotry and bias, whereas in the rest of the world basic democratic norms of equal dignity are usually enforced through a variety of laws that forbid and punish hate speech. These legal frameworks provide the context in which universities operate, but they are not the only context that inform our approach

to open expression - it is not enough to simply look to the law (or the courts) to determine speech policy in higher education, rather we need to look at our values and the goals of our work and ensure that they are reflected in our practices. While in a broader democratic context freedom of expression represents the equal dignity of all citizens, in a university context speech is regulated by professional norms and is aimed at promoting the shared mission of advancing knowledge. Freedom of speech at the university is thus organized and constrained differently than it is in the broader social and political context, and should clearly relate to institutional norms, practices and goals rather than merely reflect legal or political expectations.

Our standing, historic mission, as noted, requires broad speech protections so that unpopular and unorthodox views can be voiced and considered, allowing mainstream, popular and orthodox views to be questioned and tested.

Contemporary struggles regarding the boundaries of legitimate expression at universities need to be understood and resolved in light of the expansion of this mission. The current generation lives in a polarized political sphere, and their views are shaped by this polarization as well as by the diversifying societies they inhabit.

It is not only the broader society, though - universities are increasingly diversifying as well. Long dedicated to educating elites, preparing the next generation of political, religious and economic leaders, in recent decades universities around the globe opened their gates to include members of groups that were never considered admissible. Women, and applicants who belong to racial and religious minority groups, along with those from all social classes, have changed the composition of the student and staff. These newer members bring with them new

types of knowledge, and they reasonably expect that admission affords them not only access to the institution as it is, but also the opportunity to contribute to the university's structures, practices and epistemologies. These expectations carry significant consequences to the particulars of speech protection within the university.

Why would changes in demographic makeup require that we rethink the way we delineate and protect free speech? To respond we can simply consider the question (raised in the introductory statement to this meeting), "is the academy equally free for all its members?" Decades ago, when newly admitted or promoted women in some institutions called for the expansion of the canon to include works and perspectives by women, their point was not just that excluding women authors from syllabi was harmful or offensive (though it surely reflected bias) but also that it reflected laziness of thought and resulted in poorer quality of both research and teaching. Assuming that the university could simply add women without any curricular changes ignored how the university's mission was advanced by widening perspectives. Expectations about institutional relations needed—and still need—to change accordingly.

Today's forms of diversity at the university - racial and ethnic, religious, class-based and national - similarly reflects an expansion of the university's mission. Clearly, the expanding reach of higher education, its increasing globalization, and the expectation that universities admit diverse students and prepare them for evolving market needs as well as for their democratic roles, all require rethinking of the forms of knowledge we produce, and the ways in which we disseminate it. I suggest that an inclusive freedom approach can offer an effective response to the challenge of educating more diverse students to their

roles in a changing economy and a polarized political sphere.

An inclusive freedom framework continues to take seriously the importance of a free and open exchange of ideas as a necessary condition for the pursuit of knowledge and as a contributing condition to the development of civic and democratic capacities. Expressing views, trying new ideas, freely exchanging perspectives and visions about a variety of topics, are necessary aspects of research as well as learning, and therefore open expression is at the heart of our work. Inclusive freedom lends similar weight to the related demand that *all* members of the university community be able to participate in this free and open exchange if it is to accomplish the goals of free inquiry, open-minded research, and equal access to learning and to civic development. Protecting free inquiry without taking steps to ensure that all members can in effect - not on paper, but in practice - speak up and share their views, leads to an impoverished conversation. If we cannot hear everyone, then we cannot learn from everyone, and we cannot ensure that we are teaching everyone.

The commitment to open expression and the commitment to inclusion are commonly portrayed as being in tension with one another, and indeed they sometimes collide as in the cases I mentioned, particularly around the expression of biased views that threaten to harm some members of the community. But overall this is a false dichotomy and a misrepresentation of these two values - inclusion and freedom (especially freedom of expression) - as mutually exclusive. In fact, universities address both commitments at once, by ensuring a robust and open inquiry in which all can equally participate. In the vast majority of cases, an inclusive climate is one in which more people and more views are protected. In marginal cases, speech especially bigoted, biased, and controversial speech, is

exclusionary and thus undermines the equal standing of diverse members of the community. Focusing on these marginal cases can be helpful to improve a university's practice and its climate, but it also distracts from the fact that for the most part the two values go hand in hand, especially in the higher education context.

This is the crux of the response leaders can and should offer to internal challenges they face from students (and faculty) who demand greater speech restrictions against biased and bigotted speech. When open expression is properly tied to the university's mission, it protects everyone, and supports an inclusive environment. Restriction on speech (beyond what the law requires) threaten this inclusive environment. Therefore we should not respond to concerns about harmful speech by using censorship and speech restrictions (beyond what are local laws require). There are other tools we can use, and which are readily available to universities: education, activism, support for student voices, clear expression of values, and support for inclusive freedom, both in statement and through our actions. I will note some related tools for realizing this vision in a few moments, but let me turn first to the related external pressures universities face in implementing an inclusive freedom approach.

At the same time that mission changes and cultural shifts present these internal tension around the boundaries of legitimate expression, universities experience a growing external pressure by politicians and organized groups to expand the presence of specific ideas in their classrooms and events. Just last month (September 2019), flyers were posted at York University, Ontario, calling students to support the Canadian Conservative Party, "because you can only hear

the same left-wing talking points from your professors so many times.” Driven by concern about the relative sparsity of conservative and right-leaning views in many universities, which in most countries tend to be more left-leaning than the general population, or possibly driven by an effort to undermine perceived orthodoxies of thought and authoritative knowledge about politicized topics, politicians are taking steps to expand viewpoint diversity, often at the expense of institutional autonomy and sometimes through silencing some protesting voices. The demands to expand viewpoint diversity are often presented as belonging with the effort to diversify the institution, this time along ideological and political lines; and framed as a matter of protecting conservative speech from censorship and suppression by students or administrators.

The external pressure to diversify the ideological makeup of the campus can be a helpful way to both support students and faculty who endorse less common views, and to expose all students to the diversity of perspectives and ideologies held by their peers and colleagues. However it sometimes threatens the independence of the university, rendering it more vulnerable to political intervention, and to demands for the silencing of specific views.

Moreover, these very topics, free speech and diversity, have become politicized and are being used as an ideological marker in the culture wars, and as a result intense media attention exacerbates the tensions around otherwise mundane events. Whereas in the past a possible misstep by an instructor, or a divisive speaker, would gain some attention among interested students and blow over, today they can feed days of news cycles, blogs and responses, twitter outrage that lasts for days. Often this cycle leads to additional political pressure to curb certain forms of speech and promote other views at the university. Universities



ought to learn to manage and respond to these pressures from outside entities, in ways that protects a productive environment for research and for learning.

Around the globe, in democracies and authoritarian countries, scholars are put at risk as a result of their research, and student activism is stifled and punished. In the United States as in Canada we see a movement to legislate restrictions on student protests, either broadly or in regards to specific political issues. Similar tensions around the boundaries of acceptable speech on college campuses are evident in recent years in many countries. In the UK, the “Prevent” requirements limit some forms of expression and intervene in institutional autonomy, In India, laws that protect religious sentiments, including through the banning of books and films, have been expanded; In Israel as well as the US the expression of certain political views critical of the state of Israel is now punishable, and specific legislation and enforcement are targeting protests or other political expression on college campuses. In Brazil, the new government intervenes in higher education to prioritize some domains and defund others; in Hungary, certain subjects cannot be taught anymore, and a reputable university was driven out; in Ontario CA, universities are required to affirm a statement supporting free speech at risk of losing their funding. These are all illustrations of the shared challenges this era presents. Populist movements in many democratic countries promote the view that higher learning insidiously promotes ideologically skewed education. In this unique moment, expert opinion, knowledge and truth – all values that are foundational to higher education - are seen as standing in opposition to populist political visions. This perceived alignment between the university, as an ideal and as an actual institution, and a specific political ideology, thrusts the university into the public sphere in ways that are sometimes detrimental to its functioning. As a

result, we see reduced support for higher education, cuts in public funding – and, significantly, efforts to legislate curtailing, directing and censoring faculty and student speech as a way to rebalance political ideological expression.

This phenomenon is typical of what universities face in many countries now, and seems to be a part of current struggles against elites in government, the media, and higher education, questioning their epistemic authority and social standing. It stems from the tension at the heart of democracy, between the presumed wisdom of self-governing populations and the need for expert knowledge vetted and evaluated by learned elites. Institutions of higher education, transitioning as they are from a venerated ivory tower to a gateway for many into the professional middle class, represent this challenge, but they are also in a position to contribute to its alleviation. The boundaries of acceptable speech, and the permissibility of expressing ideological views - those based in nationalist and exclusionary ideology, as well as those based in values of diversity and inclusion - are issues which we tackle daily, and thus are able to take active steps in addressing them.

As the 1988 language of the Magna Charta states, “The university is an autonomous institution at the heart of societies differently organized... it produces, examines, appraises, and hands down culture by research and teaching. To meet the needs of the world around it, its research and teaching must be morally and intellectually independent of all political authority...”

This vision, which has never been realized fully, and is under intense pressure now.

In response, universities need to affirm their commitment to protecting the broadest possible range of views, perspectives and hypotheses in their effort to push the boundaries of knowledge. At the same time, our role is not to simply present a range of views but rather to develop and utilize tools for assessing and evaluating the content of speech, considering the truth value of statements, the relevance of arguments, the evidence and precedence available. Judging the content of speech within disciplinary boundaries and professional norms is an ongoing responsibility of scholars, and along with this responsibility comes the additional consideration of the preservation of an environment conducive to learning, which is the responsibility of the university as a whole.

Allowing politicians instead of scholars to judge the quality of academic work undermines a key contribution of higher education, namely, its focus on knowledge production regardless of political expediency or ideological consideration. Our ability to respond to the internal pressures from students and faculty who call on universities to limit harm to members of our community which biased speech might cause, as well as to the external political pressure to regulate our members' speech, requires insisting on the autonomy and independence of the university, and on its protection of expressive freedom and inclusion as key values. Our internal diversity of views and experiences, and our practices and structures that support argumentation, consideration and evaluation, are viable to the stability of our institution and the ongoing contribution they can make even in the face of mounting pressures.

I thus see freedom of speech and inclusion as aligned and complementary, and the university as able to encompass both, if and where it can maintain its

independence. Freedom is a democratic value, understood negatively as lack of undue governmental restraints, or positively as ensuring the substantive opportunity to act by one's will; if freedom is respected and implemented, it ought to apply to all members of the democratic community. In protecting freedom we also recognize and implement a vision of inclusion, understood as creating access to all for participation as equal contributing members and to benefiting from all that the community has to offer.

This is certainly even more so at the university. While freedom, especially freedom of speech, is key to our mission, we cannot fulfil this mission if we fail to ensure that all of our members can openly speak and be heard – in other words, without true inclusion our mission to protect free expression as a way to maintain an atmosphere of free inquiry and learning cannot be realized. If members of racial or religious minorities are consistently devalued and questioned, if women are consistently intimidated or ridiculed when they participate, then we do not in fact uphold and maintain an atmosphere of free inquiry, because we effectively silence or fail to hear what many in our community are contributing to the discussion. If we demand adherence to a given orthodoxy of values, our views turn from belief and reasoned arguments into dogma.

The university community has many tools to address concerns about the exclusion of people or ideas. Student clubs, departments, or the administration can take steps in response to exclusionary speech, for example by elevating the voices of those who are silenced and demeaned by such speech, by emphasizing and enacting the inclusive aims of the institution, or by ensuring that there are groups, practices, and conditions that allow for all to participate and be heard. I

am often heartened to see the work that universities take on to ensure that all voices can be heard, even in the face of internal demands from students that some speech be censored, and even in the face of external demands from legislatures and other forces to limit student protest or other dissenting voices.

To provide the service that we are set to offer society, and to adhere to our core mission [again, the third principle of the MCU: “Freedom in research and teaching is the fundamental principle of university life [...] Rejecting intolerance and always open to dialogue, a university is an ideal meeting ground for teachers capable of imparting their knowledge... and for students... willing to enrich their minds with that knowledge”]- our core mission requires that our institutions remain committed to free speech and academic freedom. We must commit to protecting a broad boundary of expression, within the legal framework of each of our countries, so that we can continue the search for knowledge in the service of our countries and of humanity. We must do so without losing sight of the price paid by some of our members for some of this free expression, especially in these polarized times. We must take an active stance in support of all our members’ equal dignity, so that they are all able to contribute to our shared mission; and we must represent our institutions for what they are: among the most ardent protectors of open expression in democracies today.

THE END



? While the institution may serve as respite or “safe space” to study and socialize, part of the institution mission is still to challenge students, to make them think, to expand their intellectual horizons, and to prepare them for their civic roles. To do so, even a more homogenous institution needs to expose students to some of the tensions and disagreements that they might encounter beyond the institution’ gates. The leadership on institution, as well as some of the faculty, may recoil from this suggestion, fearing the possibility of raising tensions where none exist. Clearly there is no need to generate artificial tensions or clashes, but students deserve the opportunity to grow and expand their perspectives. Preserving a false sense of security that comes from never having one’s views challenged or encountering diverse peers (or faculty) limits the benefits that college should provide. Addressing issues of speech and expression requires a framework that is aimed at protecting free speech for all members of the institution community in ways that support the development of an inclusive environment.

**Universities, while flawed, stand out as institutions where free speech is upheld.**

That does not mean we have nothing to improve – sometimes concern about hurt feelings can become exaggerated and chill speech; in some places viewpoint diversity should be more of an active concern than it is; and in many contexts some students are effectively silenced because their identities or ideologies are not equally valued. Free speech is regularly negotiated as part of our mission to expand and disseminate knowledge, and that is a constructive aspect of our work. Still it is important to avoid confusing viewpoint diversity with speech protection,

a confusion that has become common and serves as a pretext to interventions into the autonomy of academic institutions.

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The role of universities in preserving democracy, truth, open mindedness and civic connection

How universities can protect democracy –

Representing their work to the public, to counterbalance bad faith descriptions of the work we do, exaggerations of the shortcomings present in our communities and institutions

Protecting our institutional independence especially in light of legislative efforts to curtail or prioritize certain types of speech

Protecting adjuncts and others and their rights and speech

Protecting student protests

The changing mandate of the university in the coming decades:

How to prepare people for a changing society

The university's dual mandates:

**Knowledge: Conserve and progress**

Truth, deconstruction, deceit, lies, conspiracies



Using knowledge for the public good: resurgence of diseases, climate challenges – looking critically at our current tools and knowledge, and how it can be used to address new challenges (health care; rebuilding Notre Dame)

Open and closed questions,

### **What is worth debating in the name of free inquiry?**

Everything, generally speaking, but not by everyone and not at any time or in any venue.

The challenge to institutions today is a version of the democratic dilemma: to flourish, democracies rely on the free flow of ideas and the ongoing exchange of views; but these can be weaponized to inject bad faith arguments that undermine the foundations of democracy, erode democratic trust and \*crumble the foundations of democratic equality, and especially as those include a promise of protection for minority views and identities from the majority's tyranny. In a parallel (though different) way, institutions of higher learning depend on open inquiry and the free flow of ideas – including marginal and controversial ones – to fulfil their mission. And on institution too, as we have seen in many of the countries represented here today, the open atmosphere has been used to propagate intentional falsehoods and unfounded, hateful prejudices. The role of free expression on college institutions though is different than it is in democracy: while in a democracy speech is protected as a way to allow all citizens to express their equal standing and dignity by voicing their views publicly, the boundaries of speech on institution are stricter, as speech has different goals in this context. First, it is meant to advance knowledge and truth, and therefore is less tolerant of

views that are patently false: the flat earth society is free to assemble as part of their democratic civil rights of its members, but it makes sense not to promote the exposure of geography students to its message. Second, the goal of speech on institution is advance the dissemination of knowledge through teaching and learning, an activity that depends on the possibility of dialogue, and relies on more than the formal equal standing that is sufficient for a democratic public sphere. For a dialogue and for learning to be possible it is necessary to create the conditions of equal dignity, which on a college institution means ensuring that all members of the institution are seen and treated as equals.

[Bertrand Russell](#), the essayist, logician, philosopher and social critic who was awarded the Nobel Prize for Literature in 1950 “in recognition of his varied and significant writings in which he champions humanitarian ideals and freedom of thought,” was acutely aware of the “futility of debate,” as the writer Maria Popova notes in blog [Brain Pickings](#). Russell recognized that it is senseless to debate an individual whose views are so morally misaligned with one’s own that the price of engaging in such debate is one’s own sanity. In short, we have to pick our battles.

In a telling incident, Russell received a letter in 1962 from Sir Oswald Mosley, founder of the British Union of Fascists, who yearned to debate the merits of fascism with Russell. A staunch opponent of fascism, Russell declined to engage, deftly responding:

I feel obliged to say that the emotional universes we inhabit are so distinct, and in deepest ways opposed, that nothing fruitful or sincere could ever emerge from association between us...I should like you to understand the intensity of this conviction on my part. It is not out of any attempt to be rude that I say this but because of all that I value in human experience and human achievement.

### **Students: protect and challenge**

Growing diversity along multiple lines: consider trans students; refugees and students without legal status. What speech is permissible about these newly visible forms of diversity? Should the university say something about them, have a stated position? How should it respond to diverse views about these matters?

Civic engagement and practicing social public and civic roles, in and out of the classroom

What can be said in different forums (online vs institution): what types of speech should the university elevate, vs what types of speech should it scrutinize. Should legally protected speech ever be silenced?

### **Public: serve and lead**

Responding to a changing job market, a changing political landscape

Democratic pressures

My audience:

Global audience – 90 countries: Presidents, International rep of a university, some student reps