Alexandra Sinclair June 20th, 2023

It's the precarity, stupid!

0 comments

Estimated reading time: 10 minutes

The recently passed Higher Education (Freedom of Speech) Act offers limited protection of academic freedom and ignores the elephant in the room – casualisation in academia.

In recent years, the UK has become fond of importing US culture war debates into British discourse. One example of this is the controversies over free speech on university campuses. Examples have been cherry-picked by the right to indicate that free speech is in crisis, but surveys of present-day students suggest that they overwhelmingly value free speech and don't perceive it to be at particular risk.

The Government's proposed solution to this apparent crisis has been the Higher Education (Freedom of Speech) Act, which came into force last month, on 11 May 2023. Its stated aim is "strengthening existing legislation on freedom of speech and academic freedom in higher education." Instead, the act appears to confuse the issue by conflating academic freedom and freedom of speech in the act's definition and by ignoring reforms the sector says could address the biggest threats to academic freedom: primarily the number of staff on casualised contracts and insecurity of research funding.

A crucial difference

So, what is freedom of speech, what is academic freedom, and how does the bill complicate these concepts? Freedom of speech is the right to seek, receive, and impart information and ideas of all kinds by any means. It protects the expression of ideas even if they offend, shock, or disturb. Academic speech, by contrast, is subject to higher standards of rigour because "speech is subject to scrutiny and approval by other academics". Academic freedom is commonly understood as having two elements: the freedom to teach and the freedom to research. Freedom to teach includes designing the curricula and selecting pedagogy, entry standards, assessment methods, and grades. The freedom to research includes what shall be researched, the research method selected, the purpose of the research, whether it is published, and how findings are disseminated.

Tenure and job security

There are two key ways these principles are typically given effect: participation in university governance (including by having a say in the running of the university and university decision-making) and tenure of academic posts. With tenure, academics have the freedom to teach and research with the security, knowing they will only be sacked for good cause, a threshold essentially requiring gross misconduct. Following Margaret Thatcher's 1988 education reforms, academics in the UK do not have protections equivalent to tenure, they can also be made redundant by their employers (although for permanent academics there is some security as the university's governing body must decide to make redundancies).

The UK has some of the worst legislative protections for academic freedom in Europe. According to Terence Karran's reading of the Higher Education and Research Act 2017, British academics receive less legal protection than their European counterparts, which ostensibly does not cover teaching activities. Academic freedom in the UK is dependent on the relationship the higher education institution has with individual academics in its employ. Karran and his collaborators argue "given that UK academics have no job security, it is difficult to see what freedoms, if any, this deficient legal framework offers them in practice."

This comparative position has only worsened via increasing precarity in academia. According to the University and College Union (UCU), more than two-thirds of researchers and almost half of teaching-only staff in the university sector are on fixed-term contracts. Recent research compiled by the LSE branch of the UCU has illustrated that many universities have been moving further towards casualisation in recent times. For example, 66% of Oxford staff, 59% of LSE staff, 57% of KCL staff, 50% of Edinburgh staff, and 40% of Cambridge staff are on fixed-term contracts. Precarity is a great threat to academic freedom because those in fixed-term employment are vulnerable to non-renewal of their contracts if they research or teach in ways that are deemed controversial or unappealing.

Different protections

In 2014, Ana Lopes and Indra Angeli Dewan published a study of the precarity experienced by university employees. Their interviewees felt that precarity affected their quality of teaching and research. The hire-and-fire culture meant interviewees felt they could not speak up at their respective universities. They would not "put their heads up above the parapet as they knew they were replaceable." Furthermore, Lopes and Dewan point out that those on casualised contracts are disproportionately women and people of colour, meaning that those groups are particularly reticent to exercise their freedom to speak, teach, and research in the university. This has flow-on effects; for example, women and people of colour are often best placed to diversify and decolonise curricula, and yet they will feel less able to do so without repercussion if they are on insecure contracts.

Another less obvious way that precarity affects academic freedom is that much of the work done by academics to assess the rigour, falsifiability, and standards of academic speech produced by their peers and colleagues is in the form of free labour, such as peer review, discussion, and evidence-gathering. For academics to have the time and the freedom to do this work properly they also need the security of permanent positions.

The UNESCO and International Labour Organization (ILO) joint report on the state of higher education highlighted the great threat that academic casualisation poses to academic freedom. It noted the "international trend" in the increasing number of staff on fixed term and temporary contracts in academia. The report said that these contracts "undermined tenure" and "weaken, the

full exercise of academic freedom and therefore, one of the fundamental pillars of excellence in teaching and research."

An example of the different protections afforded to researchers based on their employment status is the case of Malaika Shwaikh and Rebecca Gould, two scholars at the University of Bristol. In 2016, both were accused of antisemitism: Malaika because of a tweet thread she had written, and Rebecca Gould due to an article she had published six years earlier on Palestine. Gould was employed on a permanent contract as a reader at Bristol University and, due to the protections afforded by her permanent role, her job was not at risk. By contrast, Malaika as a PhD candidate did not receive any protections for her statements from her university. As Gould puts it, "In contrast to Malaika's experience, the University of Bristol did refer rhetorically to my academic freedom in its official statements."

Dangerous rhetoric and a confected crisis

The recently passed HE (Freedom of Speech) Act does nothing to address this issue and in fact ignores fundamental aspects of academic freedom. The act defines freedom of speech as the "freedom to express ideas, beliefs and views without suffering adverse consequences." The definition of academic freedom under the act is:

"freedom within the law—(a) to question and test received wisdom, and (b) to put forward new ideas and controversial or unpopular opinions, without placing themselves at risk of being adversely affected in [by]…(a) loss of their jobs or privileges at the provider; [or] (b) the likelihood of their securing promotion or different jobs at the provider being reduced."

However, this definition adds little. It reinforces an academic's existing free expression rights but does not affirm their freedom to teach and research without interference. It is unclear how the definition of academic freedom under the act as "questioning and testing received wisdom" and "putting forward new ideas" differs from the existing right to freedom of expression under the Human Rights Act. James Murray argues that the definition of academic freedom under the act is not satisfactory as it emphasises expression instead of "*crucial elements intrinsic to the rights to teach and research, such as determining the curriculum and how it is taught or the focus, purpose or collaborations of research."* He makes the point that the right to teach and research should not have been left out of the definition of academic freedom when the bill was a "blank slate*"* in which to define these concepts.

The UK's statutory framework was already worse than comparator nations in Europe in terms of its much narrower protection of academic freedom. This act only further compounds that problem by defining academic freedom as primarily about speech rights and ignoring the other important elements of teaching and research. It also does nothing to address the crisis of precarity in academia, which UNESCO and ILO say is one of the greatest threats to academic freedom. The act appears to be a solution in search of a problem in terms of a crisis of speech on academic campuses. If the government was truly concerned about academic freedom, it might put some effort into solving the problem of precarity in academia. Instead, this act takes the easier path of doubling down on the culture war rhetoric.

Note: A version of this post first appeared on 8 May, 2023 on the Contemporary Issues in Teaching and Learning Blog, part of the PGCertHE programme at the LSE.

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