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ACADEMIC FREEDOM AS A PUBLIC GOOD: A CDBU POSITION STATEMENT

This short paper articulates the nature and importance of academic freedom as a public good and highlights the contemporary challenges it faces. In the light of recent national discussions, it also sets out suggestions for protecting academic freedom, including a model ordinance that individual institutions might adopt to assert institutional autonomy in upholding this essential principle.

The Nature and Importance of Academic Freedom

Academic freedom is not partisan. It is fundamental to the effective functioning of universities as centres of discovery and innovation, to the development of intellectual skills and technical expertise of various kinds, to cultural, political, and scientific debate. In serving these purposes, Universities are essential in the creation of a critical and intelligent body of citizens, and to the building of a vigorous, plural, and democratic society. In this respect, universities are crucial in sustaining the kind of social awareness that will resist authoritarianism.

As a public good, academic freedom:

- **Is the commitment to free and open inquiry in research, teaching, and learning.** Academic freedom is the principle through which academics and students have the right to follow the argument wherever it might lead. Because it does not endorse particular viewpoints, or police the content of speech, academic freedom allows all ideas to flourish.
- **Ensures diverse views are articulated on the most important questions that we face.** People who express minority views or speak from positions of marginality are often met with hostility from those associated with dominant views. Academic freedom creates space for these voices to be heard. This helps to counter hidden biases in research, in teaching, in institutional and administrative cultures, and in public discourse.
- **Fosters citizens' independent, informed, and creative contributions to society and the world.** Open dialogue, robust argument, and constructive disagreement underpin the civic mission of a university to bring together people from different walks of life to understand and address pressing social, civic, and ethical concerns in creative ways. Academic freedom advances these aims through a variety of activities such as (i) placing research in the public realm to inform policy debates, (ii) expanding access to higher education for underprivileged communities, and (iii) hosting public fora for debates, discussions, and exhibitions.
- **Enables students and staff to ask difficult and sometimes unwelcome[d] questions about complex problems and thus to find solutions for them.** When the state and the public respect academic freedom, wider society benefits from the ideas, discoveries, and creations of academic research and the public discussion that arises from them. When academic freedom is eroded, the quality of research, education, and informed discourse declines, to the detriment of wider society.
- **Underpins a functioning democracy by training students to understand the importance of critical thinking and of rational disagreement.** When academics are free to consider matters in the classroom in a manner consistent with the standards and norms of the scholarly enterprise, students develop the knowledge

and skills necessary for democratic life and better understand why pluralism is at the heart of healthy modern democracies.

- **Secures the range and quality of higher education for the public.** Academic freedom is the condition both of a robust higher education sector and of public confidence in it. Academic freedom ensures the proper functioning of a University both in terms of the quality and diversity of its research and teaching, but also in the way these activities are conducted. This sometimes means that academics express opinions that are critical of the governance of universities and their policies, or that are unpopular because they are perceived as potentially affecting the university 'brand'. Indeed, academic freedom specifically establishes the right *and the responsibility* of academics to speak about institutional policies.

Contemporary Challenges for Academic Freedom

Academic freedom operates in a sphere separate from that of politics and government; universities serve the public, not the state. For this reason, the authority for determining what academic freedom is, and what regulations should rightly protect it, cannot sit with the Government or any other non-academic body. Some recent government interventions have not been helpful to the cause of academic freedom. For example, some politicians have attacked or stigmatized responsible attempts to redress historical exclusions of marginalised perspectives in teaching and research, perhaps because they fail to understand the issues such attempts seek to resolve.

In a plural society, diverse opinions will always be contested, but academic freedom itself is not a fundamentally disputed concept. Although we may debate how academic freedom applies in particular contexts, or how it creates the conditions for civil and fair treatment of differing opinions, such arguments arise precisely because academic freedom has intrinsic value as a public good. Norms and standards of scholarly discourse require civility and mutual toleration, but they do not justify the closing down discussion of ideas, however distasteful or offensive members of the public or members of the academic community itself may find them. Some may be offended by the substance of an expressed opinion, but that is necessarily what happens when cherished or strongly held beliefs are questioned. Open dialogue and robust argument about the merits of contested ideas do not, however, allow individuals to say whatever they wish, wherever they wish. Speech that seeks to promote hate or elicit harm to others is subject to criminal law, which is binding on all, including academics and students. Hence, it is not subject to protection under academic freedom. Crucially, creating an atmosphere where every participant in a discussion feels able to express their ideas and experience without fear is a necessary condition of proper academic liberty. While it is not always easy to keep the balance between ensuring this kind of safety and overcompensating to avoid offence, academic institutions are building up experience in dealing with these questions in a way that serves the interests of all their members.

Academic freedom and shared governance are the twin pillars upon which the autonomy of universities rests. This differs markedly from the autonomy that any CEO of a large organisation might expect. Unlike a business, a university's structures, processes, and policies are determined by a diverse group of academic and professional staff, students, administrators, and governing boards working together to uphold the values and standards of higher education. While successive reforms to higher education have introduced managerial practices into universities, they remain, at heart, collegial institutions. While institutions may compete for students and research funds, the pursuit of knowledge afforded by academic freedom serves to maintain collegial bonds across institutions nationally and internationally.

The Protection of Academic Freedom

It is not unreasonable for governments to require universities to have ordinances and statutes endorsing academic freedom, but their form should be determined in line with the autonomy and culture of universities as professional institutions of critical learning. This is itself a guarantor of academic freedom. In this way, academic freedom is self-monitoring and regulated according to the very debate that academic freedom itself requires.

Below, we provide a 'model' ordinance that individual institutions might modify and adopt as well as an appendix of guidance and policy statements related to academic freedom.

We call upon

- University Vice Chancellors, Provosts and Principals, as well as the body representing universities, Universities UK, to adopt these proposals for the protection and governance of academic freedom and to acknowledge the rights and responsibilities of higher education institutions to regulate themselves with respect to academic freedoms rather than being policed by the state.
- Councils, Senates, and Academic Boards to secure academic freedom for staff and students collegially, through university statutes and ordinances that are written in accordance with international standards and best practice. Monitoring procedures should be determined at the institutional level.
- Our fellow academics to promote academic freedom as a public good in their classrooms, research centres, and engagement with the functioning of universities.
- Members of the public to engage with the public discussions and opportunities for research that Universities provide, and to use their diverse voices to express support for democracy-sustaining academic freedom to their elected members of parliament.

Model Ordinance: Statement of Academic Freedoms

1. Academic freedom is the commitment to free and open inquiry for academics and students. As such, it is a foundational right of higher education.
2. In accordance with international standards and best practice, all members of staff and research students who engage in academic teaching or research either by their written contracts, conditions of their programme of study, or by established and agreed practice, shall have the rights listed below, which comprise “academic freedom” for the purposes of this ordinance.
 - 2.1. All such members of the University, without fear of censorship or any professional or personal reprisal or disadvantage, have the right, within the law, to:
 - 2.1.1. determine and pursue the subjects, methods, purposes, and partners of their research, scholarship, and creative expression, and publish and disseminate the results of that research as they wish and in the form they deem appropriate;
 - 2.1.2. conduct teaching and consider matters in the classroom in a manner that they consider appropriate to the standards and norms of the scholarly enterprise. This includes but is not limited to determining programme and module content, teaching methods, assessment and marking, or to facilitate class discussion in accordance with good scholarly practice;
 - 2.1.3. speak or write internally or externally on matters of public concern and academic interest, as well as on matters related to professional duties and the functioning of the University, and of higher education in general, whether in the UK or abroad.
 - 2.2. All such members of the University will have the responsibility to
 - 2.2.1. recognise the demands of the scholarly enterprise;
 - 2.2.2. perform professional duties and responsibilities, observe policies concerning behaviour at work and the conduct of their duties, including expectations of civility and tolerance of differing opinions;
 - 2.2.3. honour any applicable agreements with research funding bodies;
 - 2.2.4. when speaking on matters of public interest, academics speak in their professional individual capacity unless they specify otherwise, and understand that the public may judge their profession and institution by their utterances.
 - 2.3. No academic member of staff shall be subject to disciplinary proceedings, any other internal proceedings leading to dismissal, or any form of direct, indirect, or soft retaliation on account of having exercised academic freedom in accordance with the law and with this policy.
 - 2.4. Breach of University policies relating to 2.2.2 above may lead to disciplinary proceedings, but in all such cases, the University guarantees to have due regard for academic freedom.
3. Additional rights for all university staff members should also be protected, including but not limited to the
 - 3.1. right to free expression within or outside the context of university employment;
 - 3.2. right to participate in professional or representative bodies of their choosing, including trade unions.
 - 3.3. right to take part in the governing bodies, and to criticise the functioning of higher education institutions, including their own, while respecting the right of other sections of the academic community to participate.
4. In accordance with international standards and best practice, all registered students, in the context of their University education shall have the rights listed below, which

comprise “academic freedom” for the purposes of this ordinance. All students shall have the:

- 4.1. right, within the law, to examine and discuss all questions of interest to them as they relate to their course of study, and take reasoned exception to or reserve judgement about data or matters of opinion, without fear of unfair evaluation unrelated to their academic performance;
 - 4.2. responsibility to learn the content of any course of study for which they are enrolled, and observe policies concerning student conduct, including expectations of tolerance of opinions that differ from their own.
5. Additional rights for all registered students of the University should also be protected, including the:
- 5.1. right of expression, whether exercised within or outside the context of University study;
 - 5.2. right to participate in student organisations, unions, societies, and representative bodies of their choice in accordance with the law.
 - 5.3. right to question any practices or expressions which they may construe as threatening to their safety or freedom of expression.
6. The University commits to
- 6.1. stand behind academic staff in their pursuit of research, teaching, and defence of their principles within the law, regardless of their focus. Such support should be free of any political agenda, institutional priority, or pressures exerted implicitly or explicitly, which may come internally from managers or colleagues or from external bodies or organisations;
 - 6.2. safeguard its academic staff and researchers from all forms of abuse, wheresoever such abuse may take place, and support them if they are affected by such attention. This support may include, but not be limited to: human resources and legal advice, public relations support, counselling services, Campus Security protection, and robust advocacy and defence of academic staff in the wider public sphere;
 - 6.3. respect research grant and/or innovation agreements, undertaking no change or amendment to such agreements without the consent of the researchers, in order to protect academic freedom;
 - 6.4. protect academic freedom at all stages of national and transnational collaborations, (for example, within activities that involve students, academics, institutions, campuses, branches, joint accreditation or dual recognition of awards, donors, fieldwork, research, student exchanges, teaching activities and/or employment, commercial activities, on- or off-campus activities, or access to the universities communities, facilities or resources) by
 - 6.4.1. evaluating the *de jure* constitutional and legal protection for freedom of expression and academic freedom and the operation of *de facto* academic freedom, in those nations within which the University wishes to operate or with whom they wish to collaborate,
 - 6.4.2. undertaking meaningful risk assessment and due diligence when such collaborations and/or operations are being considered, and
 - 6.4.3. putting into place *from the outset* measures to protect academic freedom commensurate with any identified risks and adapting such measures as necessary; and
 - 6.5. establish a standing academic committee on academic freedom and freedom of speech.
 - 6.5.1. Membership of the committee will include a diverse group of academic experts in relevant subjects, including law. Members of the University Senate, or its

chosen representatives, should be directly involved both in the resolution of specific cases and in the determination of any policy related to academic freedom.

6.5.2. The committee will monitor concerns raised by staff and students about academic freedom and free speech and report annually to the University Senate.

6.5.3. Responding promptly to events as they occur, this committee will also assist the Vice Chancellor and her/his designees with particularly sensitive questions that might encroach on statutory principles of academic freedom and free speech when applying the Codes of Practice.

7. It is not the proper role of the University to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable, or even offensive. The University greatly values civility, and all members of the University community share in the responsibility for maintaining a climate of mutual respect. Nevertheless, concerns about civility and mutual respect can never be used to justify closing off discussion of ideas, however offensive or distasteful those ideas may be to some members of our community.
8. In narrow and exceptional cases where the criminal law requires it to do so, the University may reasonably restrict expression.

Appendix: Academic Freedom Guidance and Policy Documents

This appendix summarises national and international guidance and policy documents relevant to discussions of academic freedom in England.

1. International HE policy environments and some domestic ones are moving towards greater protection for academic freedom.
2. The legal protection for academic freedom in England is unusual and weak. Unlike the US and some of our EU neighbours, it is not articulated in a written constitution or in a bespoke law designed to address the higher education sector, universities, or the role of academics. The UK has no tenure system, which in other national contexts systematically specifies and strengthens the formal and normative protections afforded by academic freedom. Instead, academic freedom appears as a principle of conduct for the Education Commissioners and the Office for Students in England. The relevant pieces of legislation are the 1988 Education Reform Act (ERA) and the Higher Education and Research Act (HERA) 2017 respectively.

- 2.1. The 1988 ERA establishes University Commissioners, whose functions and responsibilities are outlined by the Act. One of those responsibilities is to exercise its functions with due regard to the need to:

ensure that academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at their institutions....

- 2.2. The 2017 HERA establishes the Office for Students, one of whose functions is to protect the institutional autonomy of HE providers. In so doing, it must be guided by the Secretary of State's Guidance who in turn must also seek to protect the institutional autonomy of providers. Institutional autonomy is articulated as including:

the freedom within the law of academic staff at English higher education providers—(i) to question and test received wisdom, and (ii) to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at the providers.

The focus on institutional autonomy in the 2017 HERA, detracts significantly from the vital importance of the protection of academic freedom of individual and groups of academics themselves.

3. As a result of the paucity of the law in this area, it is incumbent upon universities themselves to articulate robust protections for academic freedom, based on best international practice.
4. The **1950 UNESCO International Conference** in Nice, at which the International Association of Universities (IAU) was founded, stipulated three indissociable principles for which every university should stand, namely:
 - 4.1. The right to pursue knowledge for its own sake and to follow wherever the search for truth may lead;
 - 4.2. The tolerance of divergent opinion and freedom from political interference;
 - 4.3. The obligation as social institutions to promote, through teaching and research, the principles of freedom and justice, of human dignity and solidarity, and to develop mutually material and moral aid on an international level.

5. The 1967 Joint Statement on the Rights and Freedoms of Students, set out the essential provisions for student freedom to learn, including freedom of inquiry, expression and association, and the right to proper academic evaluation, disclosure, and representation in University governance.
6. Academic freedom is one of the fundamental principles of the 1988 Bologna Magna Charta Universitatum, of which most UK institutions are signatories. It states that:
 - 6.1. 'Freedom in research and training is the fundamental principle of university life, and governments and universities, each as far as in them lies, must ensure respect for this fundamental requirement;
 - 6.2. 'To preserve freedom in research and teaching, the instruments appropriate to realize that freedom must be made available to all members of the university community'.
7. The UK is also a signatory of UNESCO's 1997 Recommendation concerning the Status of Higher Education Teaching Personnel, which includes the following:
 - 7.1. 'The principle of academic freedom should be scrupulously observed. Higher-education teaching personnel are entitled to the maintaining of academic freedom, that is to say, the right, without constriction by prescribed doctrine, to freedom of teaching and discussion, freedom in carrying out research and disseminating and publishing the results thereof, freedom to express freely their opinion about the institution or system in which they work, freedom from institutional censorship and freedom to participate in professional or representative academic bodies';
 - 7.2. 'Higher-education teaching personnel have a right to carry out research work without any interference, or any suppression, in accordance with their professional responsibility and subject to nationally and internationally recognized professional principles of intellectual rigour, scientific inquiry and research ethics. They should also have the right to publish and communicate the conclusions of the research of which they are authors or co-authors';
 - 7.3. 'Higher-education teaching personnel should have the right and opportunity, without discrimination of any kind, according to their abilities, to take part in the governing bodies and to criticize the functioning of higher education institutions, including their own, while respecting the right of other sections of the academic community to participate, and they should also have the right to elect a majority of representatives to academic bodies within the higher education institution'; and
 - 7.4. 'The principles of collegiality include academic freedom, shared responsibility, the policy of participation of all concerned in internal decision-making structures and practices, and the development of consultative mechanisms. Collegial decision-making should encompass decisions regarding the administration and determination of policies of higher education, curricula, research, extension work, the allocation of resources and other related activities, in order to improve academic excellence and quality for the benefit of society at large'.
 - 7.5. UNESCO set up an appeals procedure, under which universities' staff organisations and trade unions can appeal if they feel that their governments have abrogated their responsibilities to protect academic freedom.
8. The 1997 UNESCO recommendations formed the basis for in the IAU's 1998 Policy Statement on Academic Freedom, University Autonomy and Social Responsibility which:
 - 8.1. Emphasised that academic freedom and university autonomy are basic and inalienable conditions, not privileges, which enable Universities and individual members 'to meet, fully to assume and optimally to fulfil the responsibilities Society confides to both';
 - 8.2. Defined academic freedom as 'the freedom for members of the academic community - that is scholars, teachers and students - to follow their scholarly activities within a framework determined by that community in respect of ethical rules and international standards, and without outside pressure';

- 8.3. Recognised that ‘the expression of views which follow from scientific insight or scholarly investigation may often be contrary to popular conviction or judged as unacceptable and intolerable’; and
 - 8.4. Asserted that ‘such expressions of scholarly judgement and scientific inquiry shall not place in jeopardy the career or the existence of the individual expressing them nor leave that individual open to pursuit for *délit d’opinion* on account of such views being expressed’.
9. The inaugural Global Colloquium of University Presidents (2005), presided over by the Secretary General of the United Nations, reinforced the importance of academic freedom and the responsibility of universities. Including, in Section III:
 - 9.1. The right of scholars and students ‘to study, learn, speak, teach, research, and publish, without fear of intimidation or reprisal, free from political interference, in an environment of tolerance for and engagement with divergent opinions’;
 - 9.2. The right of universities to autonomy, ‘to preserve the human record of knowledge and ideas, to advance the discovery and interpretation of new knowledge, to educate students, and to serve the larger society’; and
 - 9.3. The responsibility of universities ‘to protect the scholars and students who work within them from improper pressures, whether political, cultural, economic, or ideological. Universities must maintain and encourage freedom of inquiry, discourse, teaching, research, and publication, and they must protect all members of the academic staff and student body against external and internal influences that might restrict the exercise of these freedoms’.
 10. In 2006 the American Association of University Professors (AAUP) produced a document containing Recommended Institutional Regulations on Academic Freedom and Tenure. This reiterates the principles of academic freedom set forth in the 1940 Statement of the Principles on Academic Freedom and Tenure by the Association of American Colleges and Universities (AACU) and the AAUP which states, in the section on Academic Freedom, that ‘College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence, they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution’.
 11. The University and College Union (UCU) 2009 Statement on Academic Freedom upholds the principles set out by UNESCO and the IAU.
 12. The Explanatory Notes of the 2010 Equality Act states, ‘Courts and tribunals will continue to be required to balance competing rights on the facts of a particular case; this would include consideration of the value of freedom of expression (as set out in Article 10 of the European Convention on Human Rights) and of academic freedom.’
 13. In 2015 the University of Chicago’s Committee on Freedom of Expression published their report, known as the ‘Chicago Principles’. This document has set the international standard for a University’s commitment to free, robust and uninhibited debate and deliberation in an academic community.
 14. The Counter Terrorism and Security Act 2015 stipulates that higher education institutions must have ‘particular regard to the importance of academic freedom’ when carrying out the Prevent Duty.
 15. In 2019 the Council of Europe commissioned a report entitled Threats to academic freedom and autonomy of universities in Europe. It sets out the freedom to teach and the freedom to research as the two substantive elements of academic freedom, which are

upheld by the three supportive elements of tenure, shared governance and autonomy. It emphasises the mutual importance of these elements as necessities to establish academic freedom.

16. Similarly, the Concordat to Support Research Integrity, whose signatories include UKRI and Universities UK, makes clear that academic freedom is both the condition of a robust higher education sector and of public confidence in it.
17. The European Higher Education Area Committee approved a Statement on Academic Freedom on 19 November 2020, which sets out the complex factors at play in protecting the rights of academics and students 'to learn, to teach, and to research', including institutional autonomy and public and social responsibility.
18. In 2020, the Global Public Policy Institute launched an Academic Freedom index (AFi), policy report and working paper, calling on decision-makers in higher education and foreign policy, university administrations, research funding organisations, advocacy groups and parliaments to use AFi data to better protect and promote academic freedom.
19. Despite such clear national and international commitments, the most up-to-date study of academic freedom in the UK, conducted by the University and College Union, reveals that:
 - 19.1. Only 20% of academic staff respondents knew about the protection for academic freedom under ERA and less than 10% had heard of UNESCO's *Recommendation*.
 - 19.2. Abuses of academic freedom are widespread in UK universities.
20. The recent 2020 reports by the conservative think tanks Policy Exchange and Civitas have also been reviewed. We have serious concerns about the methodology they employ, although they too suggest that academic freedom is in need of more robust protection in the UK. This research is explicitly cited as underpinning the UK government's February 2021 Higher Education: free speech and academic freedom policy paper, and so has been examined.
21. In 2019, the UCU submitted an allegation to CEART regarding (see 7.5 above) the UK government's inadequate protection of academic freedom. The initial government response argued that *institutional* autonomy was defined as including *individual* academic freedom, and being underpinned by it. This reasoning is at variance with nearly everything published about academic freedom and institutional autonomy. A response from the UK government has not yet been published.
22. There are also growing concerns about the protection of academic freedom when UK universities collaborate with national and transnational partnerships. These have been clearly outlined in the Academic Freedom and Internationalisation Working Group's Model Code of Conduct for the Protection of Academic Freedom and the Academic Community in the Context of the Internationalisation of the UK Higher Education Sector released in October 2020. We have incorporated key principles of this document in the proposed ordinance.
23. In February 2021, the UK government released a paper entitled Higher Education: Free Speech and Academic Freedom, in which it set out proposals related to freedom of speech and academic freedom in higher education in England. The proposed 'free speech and academic freedom champion' raises serious concerns for academic freedom and institutional autonomy, since the government proposes that this individual has the power to fine universities or students' unions judged wrongly to have restricted free speech.

