

# What Kind of Freedom is Academic Freedom? Emerging Human Rights Perspectives

Academic freedom remains ill-defined, creating confusion about its parameters, its importance, and how best to defend it.

In recent years, human rights practitioners have paid increasing attention to academic freedom, debating how the human rights tradition might help articulate and protect the roles of research, teaching, and learning.

This report captures these debates, in the hope that they will be useful as educational institutions face a new wave of threats.

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**The Pozen Family Center for Human Rights at the University of Chicago** is an interdisciplinary center for the study and advancement of human rights. The Center's undergraduate human rights major and internships, graduate fellowships, and community programming seek to bridge the worlds of theory and practice—and prepare a new generation of human rights leaders and thinkers.

**Pozen Center Reports** draw attention to cutting-edge conversations among human rights scholars and practitioners, highlighting their relevance to pressing issues of our time.

**“What Kind of Freedom is Academic Freedom: Emerging Human Rights Perspectives”** was prepared by Pozen Center Communications Specialist Peter C. Baker.

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## I. INTRODUCTION

In the spring of 2024, on university campuses across the United States, heated protests responding to the war in Gaza spurred new discourse among pundits, politicians, and university communities on the concept of academic freedom. The term, invoked more often than it was defined, was often deployed interchangeably with related concepts, most of all free speech. Academic freedom remains poorly understood by the broader public. Even within academia, many would be hard-pressed to define it, let alone explain why it might be worth defending.

The questions from last spring—about the nature and purpose of the academy, how it handles disagreement and dissent, and why—are still with us. Universities across the country and around the world face heightened threats, including funding cuts, political interference with curricula, the erosion of tenure, and the investigation, suspension, and firing of professors who engage with controversial subjects. One need not have a precise definition of academic freedom to know that academic freedom is in trouble.

Initially, the concept of academic freedom was developed to help structure the relationship between academia and the rest of society, carving out protected spaces where people can seek out and debate the truth without undue outside interference. In the face of a new wave of attacks on research and teaching, it is worth asking whether our current articulation of this relationship is up to the challenges it now faces.

Recently, multiple prominent human rights practitioners have begun to develop a new conception of academic freedom, one that goes far beyond the dominant American definition. They argue that this approach, grounded in the international human rights tradition, does a better job of locating (and, therefore, protecting) the academy's contributions to democratic progress.

The purpose of this report is to draw attention to this timely discourse among human rights specialists. It also explores the argument that human rights is the wrong lens for academic freedom, and searches for productive points of overlap between the two perspectives. It has been prepared with the hope of opening a space for reflection for the many people grappling with the serious challenges facing academia today. ●

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## II. ACADEMIC FREEDOM IN AMERICA: A BRIEF HISTORY

There is a common intuition that the term refers to the right of professors to share their views freely, both in and out of the classroom. At its core, however, it has referred to the ideal that academic pursuits should be meaningfully self-governing.



**Participants in the American Association of University Professors' 2019 Summer Institute, which trains faculty members in union organizing and other forms of advocacy.**

Image credit: Mike Ferguson/AAUP, July 26, 2019. Flickr.

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## II. ACADEMIC FREEDOM IN AMERICA: A BRIEF HISTORY

In the United States, many members of the public have no working definition of academic freedom. There is a common intuition that the term refers to the right of university professors to share their views freely, both in and out of the classroom. This is understandable: for much of the last decade, academic freedom has typically appeared in the media by way of stories about professors facing calls for punishment for opinions they have expressed.

This equation of academic freedom with free speech is not entirely off-base: almost every existing theory of academic freedom does, indeed, give substantial consideration to the speech rights of professors. But even in its specifically American formulations—in which speech concerns have historically been central—the concept has always had core meanings beyond the individual freedom of expression.

At its core, academic freedom has referred to the ideal that academic pursuits should be meaningfully self-governing: that individual professors should be free to conduct the research they want, and that professors, as a collective, should be able to reach their own consensus about what counts as quality academic work.

Historians trace this ideal's arrival in the United States to the late 1800s. This was when American professors, influenced by contact with peers from Germany, sought to redefine their profession as one oriented around not just the transmission of knowledge but also the self-guided creation of new knowledge, following specialized procedures of evidence and debate. Academic freedom, then, was the freedom of academics to follow their inquiries as they saw fit, governed by standards set by their peer communities.

From the start, this concept was proposed as having a special value to democracy. Academic spaces, the argument went, have a unique ability to produce and test arguments that are useful to the public good. But these arguments carry the potential to displease people in power, who might seek to muzzle or suppress them. Therefore, any society with a genuine investment in democratic progress—and the idea that progress relies on an informed, engaged citizenry—will take steps to protect academic spaces from the influence of outsiders with other priorities.

In the US, support for this view grew significantly in the early 1900s, helped along by high-profile incidents that exposed the fragility of academic autonomy. In 1900, Edward Ross, a professor of political economy at Stanford University, was dismissed because Jane Stanford, one of the university's co-founders, was displeased by his public comments on populist economic policies (which he supported) and immigration (which he opposed, on straightforwardly racist grounds). Outrage over Ross's firing and similar incidents spurred academics, working together through new organizations like the American Association of University Professors (AAUP), to explicitly articulate their conception of academic freedom, and to also demand more of it. It was wrong, they argued, for a non-specialist like Jane Stanford to have the power to fire Ross, given that his professional peers agreed that his scholarship and teaching were of high quality.



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in part, the protections of the bureaucratic state already enjoyed by European academics). But over time, the concept—at the level of real-world implementation, anyway—has not always kept pace with changes in academia, themselves linked to broader shifts in American political and economic life. The legal scholar Renata Uitz has characterized academic freedom as a “rebel right,” one that, like the freedoms of press, expression, and assembly, enables the arguments and contestations that constitutional democracy requires.<sup>1</sup> If this is correct, it is all the more striking that many people—beyond those with an immediate professional stake in the concept—seem unfamiliar with the concept.

It has hardly helped matters that, while US courts have at times endorsed the value of academic freedom, they have done so almost entirely by recourse to the First Amendment, contributing to the widespread confusion between academic freedom and free speech. For this reason, the difference is worth restating: The First Amendment is meant to prevent the government from limiting what *any* citizen can say. Academic freedom, by contrast, is meant to protect the government (or anyone else) from meddling with how *citizens in one specific category*—academics—about the collective enterprise of seeking the truth. In a free speech framework, all views are inherently equal. In an academic freedom framework, the academy’s purpose is precisely to identify some conclusions as more rigorous than others, following certain agreed-upon standards of evidence and argument. Professors have speech rights, but speech rights are only a part of academic freedom.

The ongoing confusion of academic freedom and free speech helps explain why discourse on the campus upheavals has often felt so muddled. Take, for example, the flashpoint of student protests. To many observers, it was obvious that the Gaza protests of 2024 posed central questions about what is permitted at universities, and why. The assumption that these were questions that a concept called “academic freedom” would help answer was not unreasonable. But the concept as it currently stands had little to offer in the way of answers. To the extent that academic freedom is an institutional right for professors, it has little to say about student conduct. To the extent it is a special application of the First Amendment, it does little better, especially when so many American universities are private institutions with no legal obligation to protect speech rights. ●

While this incident involved Ross’s speech, it fundamentally came down to the question of academic self-governance. Decisions about who got hired and promoted, were—academics now began arguing in force—best made by an academic’s peers, exclusively on the basis of their scholarly accomplishments.

This reading of academic freedom yielded significant victories. Perhaps most significantly, it led to the creation of the US system of academic tenure (which reproduced,

<sup>1</sup> Uitz, Renata. “Academic Freedom as a Human Right.” *Political Science 2* (2020). (Citations w/ full online addresses on page 25.)

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### III. THE HUMAN RIGHTS APPROACH: FIRST GLIMPSES

The possibility of an approach to academic freedom grounded in the human rights tradition has been percolating for decades, but mostly in the margins of other conversations, or in arguments that failed to make an immediate mark.



**Flags placed in front of the College of DuPage’s Homeland Education Security Center to mark the twentieth anniversary of September 11, 2001.**

Image credit: College of DuPage (COD) Newsroom, September 3, 2021.

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### III. THE HUMAN RIGHTS APPROACH: FIRST GLIMPSES

In recent decades, multiple human rights advocates—including at least three United Nations Special Rapporteurs and one UN working group—have made the case that it would be productive to approach academic freedom through the lens of international human rights law.

This approach differs from others, such as the AAUP's, in its emphasis and scope. The human rights stance on academic freedom maintains the traditional focus on scholarly and institutional autonomy. But it goes further, most notably taking a broader vision of exactly who academic freedom applies to.

This development has been percolating for decades. As early as 1997, the United Nations Educational, Scientific, and Cultural Organization (UNESCO) proposed a human rights grounding for academic freedom, suggesting that the autonomy of educational institutions was a necessary ingredient for the full realization of the universal right to education.<sup>2</sup> A similar point was advanced in 1999 by the UN Committee on Economic, Social, and Cultural Rights (CESCR), which argued that the right to education was meaningless if not “accompanied by the academic freedom of staff and students.”<sup>3</sup> But the Committee passed over this suggestion quickly and without much elaboration on its implications.

In 2003, the legal scholar Balakrishnan Rajagopal—currently the UN Special Rapporteur for the Right to Adequate Housing—took to the pages of *Academe*, a magazine published by the AAUP, to make one of the first explicit arguments about how human rights law could augment the existing US approach to academic freedom.<sup>4</sup> Rajagopal's immediate concern was the status at US universities of scholars from abroad who were not US citizens, especially those who were Muslim. With post-9/11 paranoia raging, these scholars—including any who questioned (or appeared to question) the invasion of Iraq, the resurrection of torture as an instrument of state policy, or the curtailment of civil rights in the name of security—were coming under suspicion from the media and government agencies as potential conspirators against the national interest.

It felt to Rajagopal like a resurrection of the McCarthy era, with its paranoid focus on rooting out and expelling Communist threats. He argued that existing mechanisms of academic freedom were inadequate to protect *all* scholars in the US from the new era's ideological pressures. At the time, he noted, at least 5 percent of professors at US universities were non-citizens. These individuals were not automatically extended the full protection of the Constitution. Therefore, they had little if any legal recourse against the threat of surveillance or even

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<sup>2</sup> United Nations Educational, Scientific, and Cultural Organization. “[Recommendations Concerning the Status of Higher-Education Teaching Personnel.](#)” (1997)

<sup>3</sup> United Nations Economic and Social Council. “[CESCR General Comment No. 13: The Right to Education \(Art. 13\).](#)” (1999)

<sup>4</sup> Rajagopal, Balakrishnan. “[Academic Freedom as a Human Right: An Internationalist Perspective.](#)” *Academe* (May-June 2003)



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### III. THE HUMAN RIGHTS APPROACH: FIRST GLIMPSES

deportation as retaliation for expressing “incorrect” opinions. If, however, academic freedom was recognized as a human right—as something that applied to all academics, everywhere and of all nationalities—then these scholars could, at least in principle, pursue the possibility of recourse within the international human rights regime.

This possibility was inarguably a faint one, given America’s traditional disregard—or, at minimum, selective regard—for international human rights law. But Rajagopal was also interested in other possible implications of his proposed reframing. He was especially intrigued by the possibility, as suggested by UNESCO and the CESCR, that academic freedom was something derived from or implied by the universal right to education. This was appealing to him both on conceptual grounds and as an attractive way of disconnecting academic freedom’s long association, in America especially, with individual rights like free speech. Far better, he wrote, to think about academic freedom in more collective terms:

... as a right to education that has individual and collective dimensions that can only be discharged between students, faculty, institutions, the government, and society. In this sense, academic freedom is not only an end, as it is under an individualistic conception. It is also the means for realizing other ends, including individual freedoms that go beyond expressive freedoms to encompass all freedoms ... In other words, academic freedom is not simply an individual right to something, but it is also a collective right for the realization of important societal goals.

This definition, with its focus on academic freedom as something realized in a sticky web of interactions involving both rights and obligations among far more people than just professors, was less analytically clear-cut than, say, the AAUP’s. But Rajagopal saw it as a more accurately reflecting what actually happens at universities, where student and faculty activities become complexly intertwined, where what happens in the classroom is not easily delineated from what happens on the rest of campus, and where what happens on campus is not easily delineated from what happens in the broader world.

“You simply can’t tease these things apart,” Rajagopal noted in a Pozen interview in the summer of 2024. “And when you try to, you end up with a vision of the university that bears very little resemblance to reality. These are fundamentally collective spaces. Looking at the right to education, and all the relationships that go into it, helps us remember that. It’s a way to defend academic freedom by rearticulating the academy’s relationship to the rest of the world.” ●

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## IV. A HUMAN RIGHTS APPROACH TAKES SHAPE

As assaults on academic spaces have intensified, high-level human rights practitioners have responded with new attempts at reconceptualizing academic freedom.



Tents set up in spring 2024 by protestors demanding that the University of Toronto divest from companies connected to the Israeli military and cut ties with academic institutions that operate in occupied territories.

Image credit: Pac Swire, May 10, 2024.

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## IV. A HUMAN RIGHTS APPROACH TAKES SHAPE

**A**t the time, Rajagopal's argument drew little support from his peers in academia, with few responding publicly at all. Ten years after the *Academe* piece was published, Cary Nelson, a former president of the AAUP, published an article arguing bluntly that “academic freedom is a specialized right that is not legally implicated in the full spectrum of human rights that nation should honor.”<sup>5</sup> Stanley Fish quoted this line approvingly (“That’s perfect”) in a *New York Times* column that summarized Rajagopal's argument and promptly dismissed it, suggesting that academics attaching their context-specific professional standards to human rights discourse were trying to shake off ivory tower guilt.<sup>6</sup>

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Wherever academic freedom was being eroded, it was a good bet that basic human rights were being undermined, too.

In recent years, however, the idea of a human rights approach to academic freedom has resurfaced. This has been the result of a rising recognition among academics worldwide that their institutions are under attack, and a growing awareness in civil society that assaults on democracy are often facilitated by assaults on independent sites of knowledge production and teaching.

Even in Europe—where, compared to the United States, academic freedom has long had a stronger grounding in law and a higher overlap with the human rights tradition—there is now a sense, expressed in print by academics themselves, that for academic freedom to be defended, it would be good to have more clarity about its exact definition. Interpretations still vary from jurisdiction to jurisdiction (country to country, university to university), with a great deal of confusion on the ground about precisely what academic freedom protects and with what rationale.

In 2020, David Kaye, at the time the UN Special Rapporteur on the Freedom of Expression and Opinion, issued a report that served as a clear benchmark of this reconsideration-in-progress.<sup>7</sup> This report, in addition to surveying threats to academic freedom from around the world, made an explicit proposal—one more forceful and fleshed-out than any that had come before—that the concept be reframed in terms of its relation to human rights. Kaye's argument was that academic freedom had such an intimate relationship with widely acknowledged human rights, including free expression and the right to education, that it warranted special attention from the human rights community. Wherever academic freedom was being eroded, it was a good bet that basic human rights were being undermined, too.

<sup>5</sup> Nelson, Cary. “Academic Boycotts Reconsidered: A Response to the AAUP.” *Journal of Academic Freedom* 4, (2013)

<sup>6</sup> Fish, Stanley. “Academic Freedom Against Itself: Boycotting Israeli Universities.” *New York Times*, October 28, 2013.

<sup>7</sup> United Nations General Assembly. “Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, David Kaye.” (2020)



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This approach produced a view of academic freedom that (much like Rajagopal's) was considerably more expansive than the US status quo. As Kaye wrote:

Academic freedom should be understood to include the freedom of individuals, as members of academic communities (**e.g. faculty, students, staff, scholars, administrators, and community participants**) or in their own pursuits, to conduct activities involving the discovery and transmission of information and ideas, and to do so with the full protection of human rights law. (Emphasis added.)

In keeping with this broadened definition, Kaye's report ranged far beyond the familiar question of professional academics' autonomy as knowledge-seekers. It also examined issues as varied as student protest, funding cuts, sexual violence on campus, disparities in internet access, and university cultures of self-censorship. In this account, protecting academic freedom didn't mean just leaving formally recognized academic experts alone to produce academic knowledge; it also meant taking positive steps to make sure the rest of society—including students—had meaningful opportunities to learn what academics had to say, benefit from their expertise, and express their own responses. "Without academic freedom," he wrote, "societies lose one of the essential elements of democratic self-governance: the capacity for self-reflection, for knowledge generation, and for a constant search for improvements of people's lives and social conditions."

The implications of this approach were especially visible in Kaye's discussion of student protests (perhaps a natural focus, giving his rapporteurship's mandate). Kaye recognized the possibility, familiar to anyone who followed 2024's campus unrest, that student protests carry the potential to disrupt other students' learning experiences—by, say, monopolizing or blocking entrances to campus spaces, or making noise that disturbs classes. At many US institutions, the disruptive effect of protests and encampments, at times exaggerated by their detractors, were often cited in decisions to shut them down. While in many cases this was an entirely legal approach under US law, especially on the campuses of private universities, it was, from a human rights perspective, unacceptable.

Human rights law recognizes that there can be legitimate reasons for restricting rights, but it requires all such restrictions to meet a high three-pronged standard of necessity, proportionality, and legitimacy. In a summer 2024 interview with the Pozen Center, Kaye explained that, under this standard, it isn't enough to point out that a protest is disruptive and then shut it down. (This is true wherever a protest takes place, but especially in communities meant to be dedicated to discourse and debate.) Instead, campus administrators and local governments are obligated to articulate the necessity of any restriction as clearly as possible and, just as importantly, work with protestors toward solutions that preserve their expressive goals to the highest extent possible. From a human rights perspective—unlike a US Constitutional one—it makes no difference whether the protest in question is happening on a publicly or privately held campus.



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“Maybe an encampment has to meet a certain noise standard during certain hours. Maybe it needs to be moved to a slightly different location that’s still a meaningful one in the life of the campus,” Kaye said. “Situating student protests in a human rights context creates a positive obligation for people in charge to really explore all the options. Which is certainly not what we saw at every university last year.”

Gina Romero, the current UN Special Rapporteur on Freedom of Assembly and Association, spent the summer of 2024 conducting research on how universities and governments worldwide responded to the Gaza protests. Her finding, summarized in a statement released in October 2024, was that authorities displayed a general trend of treating pro-Palestinian groups differently from other student associations that engaged in protest, subjecting them to more restrictions and harsher crackdowns.<sup>8</sup> If true, this would be a blatant violation of the legitimacy requirement of the three-pronged standard.

Though Romero’s statement did not centrally engage with the emerging human rights discourse on academic freedom, she agreed that the question of how schools responded to protests goes to the heart of universities’ core purpose. “Say you’re in medical school,” she said. “Are you there just to learn certain facts about the body and become a doctor, or are you also learning about what type of citizen you are, about what rights you have, about the direction of society? If you’re learning, and alongside your learning you decide to protest, to what extent is that an academic activity? This is a central issue for universities today.” ●

<sup>8</sup> United Nations General Assembly. [“Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Gina Romero.”](#) (2024)

## V. THE 'TENTACULAR' THREAT

In recent years, more participants in human rights discourse have engaged with academic freedom, proposing significant expansions of the concept. Some have gone so far as to define academic freedom.



Seattle University faculty, students, and staff on National Adjunct Walkout Day 2015.

Image credit: SEIU Local 925, February 25, 2015.

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## V. THE ‘TENTACULAR’ THREAT

In 2024, two major UN publications developed the human rights approach to academic freedom even further. First, a UN Working Group on Academic Freedom, assembled in response to Kaye’s 2020 report, issued a concise set of nine principles for the implementation of academic freedom.<sup>9</sup> (Kaye was also a member of the working group.) Shortly thereafter, Farida Shaheed, the current UN Special Rapporteur on the Right to Education, posted a major thematic report on academic freedom.<sup>10</sup>

Both reports went significantly further than Kaye’s 2020 report, arguing not just that academic freedom is worthy of special human rights concern, but also that academic freedom *is itself a human right*, one owed—albeit in different forms—to all participants in the pursuit of knowledge, including university professors, K-12 teachers, students, and people teaching and learning outside of conventional educational institutions.

In extending the right to academic freedom to students, neither of these reports argued that professors and students have (or should have) equal or identical positions within the academy. Instead, like Rajagopal over two decades earlier, they suggested that professors’ and students’ pursuits are so closely linked that it makes good sense to address them under the same conceptual umbrella.

This line of thinking was especially salient in Shaheed’s draft report. If academic research and critique is restricted by outside interference, she argued, this violates the rights of professors and students simultaneously. Professors who aren’t themselves freely debating the truth are in no position to model for students how to do the same. “Educators can only foster critical thinking and provide diverse perspectives if they, themselves, enjoy academic freedom, while upholding the principles of pluralism, respect for others, and the pursuit of knowledge,” she wrote. Without academic freedom, the report suggested, the right to education gets hollowed out from the inside and becomes impossible to realize.

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<sup>9</sup> United Nations General Assembly, Human Rights Council. “Principles for Implementing The Right to Academic Freedom — Working Group on Academic Freedom.” (2024)

<sup>10</sup> United Nations General Assembly, Human Rights Council. “The Right to Academic Freedom — Report of the Special Rapporteur on the Right to Education Farida Shaheed.” (2024)

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## V. THE ‘TENTACULAR’ THREAT

This approach (and perhaps its author’s background as a sociologist) informed Shaheed’s list of academic freedom’s contemporary threats. While she wrote at length on clear-cut violations of academic freedom—universities being shut down at gunpoint, professors being fired and even jailed by government order, legislative edicts banning the mention of certain subjects, government surveillance of academics—she spent just as much time highlighting the proliferation of comparatively more stealthy, and subtly intertwined violations. These included:

- Rising university tuition, which negatively affects the ability of less wealthy members of the public to participate in the pursuit of knowledge.
- Rising access fees from for-profit publishers.
- The influence of donors and alumni on university decisions, and the possibility of donor influence swaying academics’ pursuit in directions they wouldn’t have gone otherwise.
- The spread of a worldview “perceiving universities as corporations and their corporations as ‘stakeholders.’”
- University collaborations with private sector, for-profit enterprises, and reliance on such collaborations for funding, “redirecting research from curiosity-driven to commercially-driven.”
- The pronounced increase in part-time, fixed-term, and non-tenure-track appointments, reducing the job security that makes potentially controversial academic inquiry possible.
- Outsized fear, especially in the West, of offending students, including fee-paying from abroad on whom universities are increasingly dependent as a result of cuts in public funding.
- An increase in students and parents complaining when certain controversial subjects are broached.

Shaheed evocatively described these forces’ interaction as “tentacular.” The erosion of academic freedom, she argued, can be a gradual, unspoken, and hard-to-identify process, one in which the academy itself becomes a collaborator, with institutions and individual scholars changing their approach to research and teaching—and, by extension, the experience of their students—not always in response to direct interference, but instead out of a generalized fear stoked by job insecurity and the constant need for money.



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## V. THE ‘TENTACULAR’ THREAT

Against such a backdrop, the mere possibility of government interference can lead to schools pre-emptively limiting their *own* academic freedom, in hopes of avoiding future punishment. (Had Shaheed’s draft been released just slightly later, it could have included as a data point the spectacle of a major US political party’s vice-presidential candidate declaring that “we have to honestly and aggressively attack the universities in this country,” or a sitting president issuing an order to dismantle the federal Department of Education.) Shaheed pointed out that all this can happen in near silence. Thanks to the interplay of these tentacular forces, a school can remain open—and even, by some metrics of achievement, thrive—while still having its critical pursuit of truth seriously compromised, for faculty and students alike.

Compared to Kaye’s report, Shaheed’s had relatively little to say about the question of student protest. But after an official visit to the United States this year that coincided with the Gaza protests, she issued an official statement noting her impression, similar to Romero’s, that pro-Palestinian protestors had received disproportionately harsh and violent responses, often in ways that, from a human rights perspective, constituted an illegitimate restriction of the freedom of expression. The UN Working Group’s statement of principles touched on protest more explicitly, posing a set of questions familiar to anyone who followed the furious debates over the Gaza protests, and the new protest restrictions written into effect at many universities in their aftermath:

Are students’ rights of expression and protest respected, individually or in groups, on or off-campus? Do students experience threats, intimidation, or retaliation for exercising their right to academic freedom, expression, or protest, including suspensions or expulsions, exclusion from facilities or dormitories, or being subjected to harassment, abuse, excessive force, beatings, arrest, prosecution, and imprisonment? Have the state or institutions imposed undue restrictions on the right of assembly? Has the incidence or severity of any such threats, intimidation, or retaliation against students increased or decreased over the last year? ●

## VI) THE DISSENTING VIEW

Not everyone concerned with the state of academic freedom thinks that the human rights framework is an appropriate tool for its defense. Why not?



March 2012 “Occupy Education” teach-in at the San Francisco State Building, protesting budget cuts to schools.

Image credit: Peg Hunter, March 4, 2012.

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## VI) THE DISSENTING VIEW

**T**he idea that academic freedom might fall within the domain of human rights law (let alone that it might also apply to students) has remained marginal enough—especially in the United States—that few thinkers outside of human rights spaces have addressed it publicly. The noteworthy exception is the historian Joan Wallach Scott, who for years has been an energetic contributor to debates around academic freedom, both by way of her own scholarship and her committee service for the AAUP.

In 2020, Scott was invited to a conference on “Academic Freedom as a Human Right,” organized by the School of Human Rights in Ankara, Turkey, a European Union-funded “alternative university” founded by academics dismissed as part of a broader crackdown by Turkish President Recep Tayyip Erdoğan’s regime on public employees. Scott attended the conference in solidarity with her fellow scholars, but she disputed its premise. She agreed that academic freedom was in crisis worldwide, thanks in equal part to authoritarian repression and the intrusion of free-market logic in educational spaces. But, as she wrote in a 2022 paper adapted from the talk she delivered,<sup>11</sup> she “did not think academic freedom can be considered a human right.”

Part of her objection, she acknowledged, came from her general skepticism of *all* human rights discourse:

Its focus on violence against individuals and groups ignores or underplays the structural inequalities that enable that violence; its appeal to states to rectify “crimes against humanity” committed by other states has often led to violent interventions that are colonial in nature; its assumption that state power carries sole responsibility for human rights undercuts the importance of other kinds of collective political action to redress inequalities of power.

Scott also expressed concern that the human rights framework—by virtue of its well-known association with rights granted to all people—is the wrong tool for defending or protecting the specialized activities of groups of experts. “In some ways, I guess, the right to education (to the processes of knowledge production enshrined in the academy) could be counted as a human right,” she wrote.

But I think that is somehow to individualize and generalize the collective activity of knowledge production, to minimize its distinctiveness and its specificity—and so to deny the importance of the specific ethical and procedural responsibilities upon which it depends.

Along similar lines, she wrote that associating academic freedom with human rights would risk heightening the longstanding confusion with freedom of speech. This would be especially unwelcome, she argues, given the rising trend of people across the political spectrum pitting the ideal of free speech *against* academic authority, alleging, for example, that the application of “elitist” scholarly standards to student work constitutes a harmful infringement on those students’ right to hold and express whatever beliefs they choose, regardless of their academic rigor.

<sup>11</sup> Scott, Joan W. “What Kind of Freedom Is Academic Freedom?” *Critical Times* 5, no. 1 (2022)

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## VI) THE DISSENTING VIEW

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What excites [Scott] is the idea of academics seeking to have their enterprise validated by the broader public that they have an ethical commitment to serve.

At an even deeper level, Scott's objection was rooted in her sense that rights-based approaches to seeking change are simply incompatible with the crisis of academic freedom. Rights-based campaigns, in her characterization, rely fundamentally on petitioning governments for redress. But when the problem for academic freedom is a repressive authoritarian regime, the state is the very force attacking universities. In more democratic countries, meanwhile, the state has directly fed the crisis by abandoning the ideal of education as a public (and publicly funded) good,

letting it be replaced by the logic of the marketplace. As a result, universities have been transformed from publicly funded sanctuaries for critical thinking into businesses that sell vocational training and credentials to individual student-customers who must be satisfied rather than challenged. "In these instances," Scott wrote, "it is futile to appeal to academic freedom as a principle that the state will respect, because the state no longer fulfills its responsibility to 'society,' that is, to the public good."

Scott found hope for the future of academic freedom from a history of educational experiments in which the state was minimized, bypassed, or defied. She mentioned the "open universities" of South Africa that refused to uphold apartheid policies of racial separation; the Freedom schools of the US Civil Rights Movement; the teach-ins of the anti-Vietnam War era; the informal seminars run out of dissident professor's apartments in Bulgaria in the 1980s, in defiance of the ruling Communist regime; and Turkey's Solidarity Academics, alternate schools (like the School for Human Rights) staffed by academics purged by the Erdoğan regime.

Scott did not claim that these experiments constitute a replacement model for larger, more formal, permanent institutions. What excited her was the idea of academics seeking to have their enterprise validated not by the state or market but directly by participants from the broader public that they have an ethical commitment to serve—and to serve in the particular way that only academics can. The contemporary battle for academic freedom, she suggested, could benefit from exploring similar strategies. ●



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## VII) IN CONCLUSION

What matters just as much as the precise definition of academic freedom is the extent to which the concept can find purchase among the broader democratic public that universities are meant to serve.



Participants in the University of Chicago Forum for Free Inquiry and Expression summer 2024  
Academic Freedom Institute.

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## VII) IN CONCLUSION

**S**cott framed her view on academic freedom as diametrically opposed to, and incompatible with, the human rights approach. In many ways, it obviously is. Equally notable, though, is the extent to which Scott's concerns overlap with those at the center of Kaye's 2020 report, Shaheed's 2024 report, and the 2024 recommendations issued by the UN Academic Freedom Working Group.

The overlap is especially pronounced in the case of Shaheed's report. Both Scott and Shaheed pay a great deal of attention to cuts in public funding, the sway of donor and corporate money, and the corrosive effects of market logic on free inquiry. (This suggests that at least some contemporary human rights advocates are more attuned to contemporary capitalism's disenfranchising effects than is sometimes assumed.) For both Scott and Shaheed, the correct frame of analysis for academic freedom is the academy's contribution to the public good and to democracy, delivered not just through research but also teaching. And both are attuned to the value of research and teaching pursuits that happen outside of traditional academic structures, with Scott arguing that these pursuits have historically helped us reconnect to education's true purpose, and Shaheed insisting they deserve to be protected under the same framework as formal scholarship. Finally, both give accounts of university life in which it is clear that, when students' access to learning and free expression is under attack, professors' rights to engage in scholarship are likely on the chopping block, too.

Taken together, Kaye's report, the Academic Freedom Working Group's recommendations, and Shaheed's report all acknowledge the need for a range of actions that go well beyond the narrow theory of change Scott ascribes to human rights discourse. All three documents express hope that both states and international rights-enforcing bodies can play a role in the promotion of academic freedom. They all encourage the UN to more energetically seek out and identify violations of academic freedom. They recommend that governments set policies that define academic freedom and establish mechanisms for monitoring its health and addressing violations. But in addition, all three stress the importance of more local interventions, including schools setting and revising their own academic freedom policies through processes that involve as many community members as possible. These interventions do not require the intervention of the state or international bodies. They are tools that anyone can pick up and adapt to their local purposes.

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## VII) IN CONCLUSION

The UN Academic Freedom Working Group, whose recommendations Shaheed's report endorses, is especially direct on this point, identifying academic freedom as a "shared responsibility," one that "everyone has a right and a responsibility... to respect, promote, and strive for." Their report identifies a vast range of parties with a plausible interest in the health of academic freedom, and urges them all to mobilize on its behalf. The list includes: educational professionals, students, families of students, businesses, religious and cultural bodies, political parties, and media..

"Higher education staff and students," the working group writes, "should take special care to ensure full implementation of the right [to academic freedom] through their scholarship and teaching." It is possible to imagine this care taking the form of alerting the UN or state body to a violation of academic freedom or attempting to sway state or school policy on the subject. It is also easy to imagine it taking more local and spontaneous forms, like the various non-traditional educational experiments Scott identifies. And, finally, it is possible to imagine efforts at these multiple levels—and others, including K-12 education—informing and bolstering each other. If, per Shaheed's framing, contemporary threats to academic freedom are "tentacular," then perhaps its defense could be, too.

In an interview with the Pozen Center, Scott made clear that she agreed with all of the ways that Shaheed's report expands traditional notions of academic freedom (and, by extension, its defense). "But I still disagree that human rights is the correct way to conceptualize the concept," she said. "From my view, there's an inherent connection between human rights discourse and a focus on individual rights that gets in the way. Because what we need is to think about academic freedom as something with a distinct social good. So, for me, human rights is the wrong lens. At the same time, anyone defending academic freedom should be willing to take any allies they can get."

University of Chicago law professor Tom Ginsburg (head of the UChicago Forum for Free Inquiry and Expression and co-chair of the Pozen Center Faculty Board) struck a similar note. Ginsburg, who has written extensively on academic freedom from a constitutional law perspective, doesn't think it makes analytic sense to group students' right to learn and professors' right to conduct scholarship under the same conceptual umbrella. "They intersect," he said. "But that doesn't mean they're the same thing."

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If contemporary threats to academic freedom are "tentacular," then perhaps its defense could be, too.

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## VII) IN CONCLUSION

At the same time, he agreed that many of the interventions suggested by Kaye, Shaheed, and the UN working group were worthwhile—and that human rights law was full of useful tools for writing more coherent campus policies about protest.

But what mattered just as much as the precise definition of academic freedom, Ginsburg argued, was the extent to which the basic concept could find purchase in the public sphere. In his view, this will require a high-intensity campaign in which people within and beyond the university become familiar with the democratic case for academic freedom's importance. He held up the efforts to date of the Forum—including its Academic Freedom Institute—as a starting point, but also acknowledged the need for action in the political sphere. “The case has to be made to Congress. And the case has to be made to the public, a full-throated defense of higher education. If the human rights framework can help with that, that’s good. The important thing about rights, ultimately, is what you can do with them.” ●



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## APPENDIX

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