

ACADEMIC FREEDOM AND FREEDOM OF SPEECH IN THE PUBLIC SPHERE

Ethical guidelines for Humboldt-Universität staff¹

More than ever, academia today has an impact on the public sphere. In order to meet global challenges such as climate change, the threat to democracies, advances in artificial intelligence and how we deal with pandemics, academic expertise is essential. Academics respond to social challenges, contribute to public debates with their expertise and increasingly communicate on social media platforms.

At the same time, the forms and structures of public communication are undergoing profound structural changes. New social media allow greater participation and increase the speed of communication. But the way social media works does not typically support the kind of discourse that academics prefer: evidence-based, open-ended, factual debates aimed at solving problems and finding answers to research questions.

New Challenges Posed by Structural Changes in Public Communication

These developments pose new and unfamiliar challenges to academics who are publicly confronted with biased, distorted and unobjective and uncalled-for criticism. The staging of public debates in the media follow different discursive rules compared to those which guide academics. Academics who research particularly contentious topics have to take into account that their contributions may be used for media debates and may be discussed in the media according to criteria which are alien to academic contexts.

Since academia contributes to solving non-academic issues and is therefore embedded in social debates, academics should expect to have to face these kinds of critical and, in some cases, unfair challenges in the public sphere.

Universities have a particular responsibility in this context. They are spaces of academic research and teaching, but they also function as a forum for social debates which require academic expertise and orientation. That is the reason why the university maintains a space for critical debate even for topics where there may be particularly passionate clashes between argument and counterargument.

The Role of Academic Freedom

Criticism of research results and protests against events or the invitation of particular speakers are seen increasingly as curtailments of academic freedom. There have been cases in which individuals have rejected any criticism of their positions by referring to academic freedom, or where they have deliberately evaded debate on whether their position would stand up to scrutiny. However, academic freedom is not endangered when academics meet with passionate resistance or polemical criticism of their positions in public spaces.

In constitutional terms, academic freedom is a fundamental right which preserves independent research and teaching from interference from outside of academia. Academic freedom is granted to those academics who have the right to undertake independent research and teaching according to Article 5.3.1 of the German Constitution. According to the German Constitutional Court, academic research is defined as “every activity which according to its form and content can be understood as a serious and planned attempt to find the truth” (BVerfGE 35, 113).

Academic freedom is not only intended as a protection of individual academic actors (“Akteurschutz”) but is also intended to protect the functioning (“Funktionsschutz”) of the academic system as a whole. This protection cannot be guaranteed by individuals, rather it is the state which “has to ensure functioning institutions of a free university system” and needs to ensure, “with the help of suitable organisational measures”, the free exercise of fundamental rights by all academics (BVerfGE 127, 87). Individual academic freedom has to be balanced both with the individual academic freedom of other academics and with other legitimate tasks the university has to fulfil (cf. BVerfGE 35, 79).

The task to protect both individual actors and the academic system as a whole may lead to tensions. University management does not give instructions on the content of academic events or the speakers who participate in them, apart from the requirement to adhere to the constitution (§5 3.2.GG). It is, however, their task to ensure that events can be held safely. If a conflict arises, the president and vice-presidents, deans, administrative departments and possibly specific representatives should be involved. It is possible in individual cases to move an event, change its format or cancel it, in order to prevent the infringement of other important rights. In all decisions, restrictions of individual academic freedom must be kept to a minimum. Changes regarding the content of an event can only be made in conjunction with the academics hosting the event. Academic committees such as the Academic Senate or its commissions are particularly suitable forums for debates on fundamental questions of university-wide cooperation and may help to resolve possible conflicts within the university.

Academic Freedom and Freedom of Speech

Academic freedom does not cover voicing political opinions on campus. If academics wish to contribute to public debates beyond their own academic expertise, their contributions are only protected by freedom of speech, a right also guaranteed by the constitution (“Every person shall have the right freely to express and disseminate his opinions in speech, writing and pictures” (Article 5. 1 GG)

Controversies concerning positions voiced by academics frequently arise when it is not clear whether the criticised contribution is protected by freedom of speech or by academic freedom. Academic debates within a particular discipline seem to be sufficiently clearly distinguishable and demarcated from debates about differing political opinions. However, there is some overlap between the university and the public sphere and it is challenging to distinguish between empirical data, interpretations of the data, research-based conclusions, and applying evaluation criteria which are sufficiently transparent on the one hand, and political opinions and policy recommendations on the other.

Opinions and personal judgements lie beyond the protected purpose of academic research which seeks to advance knowledge and understanding.

It is particularly problematic if academics resort to academic freedom rather than to freedom of speech, when they draw conclusions which are not covered by facts and research results, or when they utter unproven judgements, or when research results are presented in such a way as to silently presuppose political decisions. Academics should always avoid presenting something as the result of their own research – that is: as the result of a process which seeks to further knowledge and understanding – if this has not been achieved on the basis of widely-accepted and established standards of the discipline(s) in question.

Ethical Responsibility

Against the background of the frequently overlooked difference between academic freedom and freedom of speech, it needs to be stressed that academics who are present in the public sphere and participate in controversial debates have a particular responsibility. The university expects them to follow these ethical guidelines which are orientated towards the fundamental conditions and virtues of the pursuit of scientific knowledge while taking into account the predictable consequences of their own actions:

- At public events, academics should make clear from which position they are speaking: are they reporting their own academic research, speaking about the research results of others, are they reproducing text book knowledge or are they participating in the debate as citizens with no particular expertise on a given topic?
- Transparency is particularly important with regard to contentious hypotheses which are debated within a discipline. Presenting controversies as uncontroversial is a breach of academic integrity.
- Academics should be very careful when claiming that their academic freedom has been curtailed. Academic freedom naturally does not mean one may speak at public debates without being contradicted, nor does it entail being exempt from robust criticism. Nor does academic freedom entail the right to be invited to particular events.

Organisers of public events at the university also have particular responsibilities. When organising events on especially controversial topics or with speakers who represent extreme or contentious positions, organisers should take great care that they exercise their ethical responsibilities. Among these are:

- Planning the event as a team (two or more person-rule);
- Contextualising controversial contributions by including a diverse range of speakers;
- Including stakeholders in advance of the event, obtaining an overview of their interests and points of view and, if applicable, inviting representatives of the groups concerned;
- Actively engaging relevant bodies of the university which have to deal with protests, taking precautions, and in particular involving the PR department early on.

TYPICAL CASES

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In order to clearly define these fundamental principles, the following parts describe and comment on typical cases.

1. An academic speaks at a university event on a topic which does not fall within her or his research expertise and positions her- or himself vis-à-vis a contentious social topic.

- Complication: the public sphere does not distinguish levels of expertise to the same degree that academics do. Speakers may appear to the public to be experts when they would not be counted as such from an academic perspective.
- Further complication: when statements contain descriptive as well as normative passages, it is often difficult to distinguish what is protected by academic freedom and what would “merely” fall under freedom of speech.

Suggested action: the speaker’s role, which may change during an event, should be made transparent throughout. It should be made clear which statements should be considered to be understood as personal opinions.

2. Groups at the university or members of the public demand that an invitation to a speaker should be retracted or that the event is cancelled.

- Typically, the reason for such demands are that the invited speaker is accused of a form of discrimination against a particular group (e.g. racism, sexism, antisemitism, islamophobia, homophobia, transphobia etc.).
- Complication: it is often difficult to ascertain how substantiated such accusations are. What falls under the types of discrimination listed above and what does not? In order to make well-founded and research-based judgements and draw the right conclusion, one should ask experts on the particular form of discrimination for advice. As long as the demand to retract an invitation or to invite a particular person is voiced by a private person, this is not covered by academic freedom. One may interpret this kind of demand as an unwanted recommendation, which is covered by freedom of speech. The academic who invites speakers may follow this recommendation after a thorough examination of the case, or not. Academic hosts will follow the recommendation if they are convinced by the reasons voiced. Again, it is recommended that this kind of decision is not taken alone but by a team.

Suggested action: the university’s management and the relevant administrative departments are responsible for ensuring safety at public events and for making the arrangements which allow this safety to be maintained. It is only possible for the university’s management to fulfil this task if they are informed in good time about expected or possible disruption.

3. An active politician is invited to speak at a panel debate at the university.

Suggested action: Inviting active politicians should be part of an academic activity, and an element of research and teaching. In any case, such an event needs to allow for the possibilities of rejoinders and opposing opinions.

- During an election campaign (six weeks prior to an election) such invitations should be avoided.

4. An academic communicates in inappropriate ways on social media platforms

- “Inappropriate” in this context refers to statements that go beyond the bounds of respectful discourse, without necessarily being criminally relevant.
- Inappropriate utterances on social media, in particular when they mention a particular social group in a discriminatory manner and are voiced by lecturers, can be very challenging and unsettling for students. All members of the university are responsible for maintaining the standards of respectful communication as laid down in the university’s agreement on respectful communication.

Suggested action: For postings outside of one’s own professional position one should only use private accounts. However, the public may find it difficult to distinguish between public and private roles in the public statements of members of the university. It is therefore paramount to take seriously one’s obligation in any public communication to maintain an appropriate tone. Anyone who is abusive, defamatory or polemically provocative is communicating inappropriately.

5. An academic represents extreme political opinions outside of the university

- It is naïve not to expect reactions within academia if one has voiced an opinion merely “as a private person”.
- Academics who are civil servants are required to follow the requirement of moderation, this obliges civil servants by law to be “moderate and reticent” in their political activities both during and after work, “resulting from their position vis-à-vis the general public and in consideration of their duties of office” (BeamStG § 33).
- (as for case 1): if particularly extreme positions are voiced, it is important to stress the separation of roles during the event

6. An academic is massively attacked or intimidated, or personal or professional consequences are demanded for having taken up a particular academic position. A boundary is drawn here by the provisions of criminal law.

In the context of cooperating with colleagues, the following framework should be maintained:

- Inakzeptabel ist, wenn an die Stelle (auch scharfer) inhaltlicher Kritik an Positionen It is unacceptable if robust criticism of academic positions is replaced by calls for institutional sanctions against people, in particular a demand for dismissal or a prohibition on them lecturing and teaching. Employees in fixed-term positions are more vulnerable in this regard than those holding permanent contracts.
- Even a publicly and widely shared naming and shaming on social media is similar to such a sanction, which increases the social costs of maintaining certain research positions.
- Even in cases when a personal attack does not result in the limitation of personal academic freedom there is the danger of avoiding certain research topics or socially isolating people in an academic community.

- In cases of escalating public attacks, the institution (the university, the department, the faculty) is obliged to defend their members after carefully weighing up the overall circumstances. This also applies to attacks from within the university. The university's management has to respect individual academic freedom and needs to maintain neutrality. The requirement to remain neutral ends when the university's core values have not been respected.
- Members of the university who are affected by attacks from other social actors can expect solidarity and support from their peers. This may require a willingness to enter into a conflict by providing active support rather than just being a bystander.