



2. On How to Distinguish Critique from an Infringement of Academic Freedom

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Abstract: To have a well-functioning principle of academic freedom, we need to distinguish critique from an infringement of academic freedom. To achieve this goal, this paper presents three necessary conditions for something to be an infringement of academic freedom. These conditions allow to delineate cases in which at least one of the three conditions is not fulfilled. These are contrast cases that might – at first glance – look like infringements of academic freedom but are, in fact, not so. I will refer to five such kinds of contrast cases: (1) discrimination and thus a more general kind of unjust treatment of a person engaged in academic affairs, (2) infringement of freedom of speech or other non-academic intellectual freedoms, (3) mere critique, (4) justified critique that leads to justified limitations of someone’s academic freedom and (5) cases of deep disagreement. Special attention will be given to vulnerabilities concerning unjustified silencing of critique, which haunt fields that lack clear and agreed-on ethical or academic standards.

Keywords: critique, infringement of academic freedom, academic standards, ethical standards, abuse of power, abuse of academic freedom

The Challenge

Infringements of academic freedom are traditionally characterized as infringements from outside of the academic space. They happen if non-academic forces intervene in scientific or scholarly judgements. Usually, the relevant

non-academic forces are political, economic or religious.¹ Yet, members of an academic community can also infringe each other's freedom. If so, how can one distinguish such infringements from critique?

The question is important since one of the reasons why members of academic communities cherish the principle of academic freedom is that it protects critique from being silenced. In the following, I will assume that critique consists in reasoned objections to knowledge claims, that critique is justified if the reasons offered for the critique are, and that the back-and-forth of academic reason-giving critique is constitutive of academic knowledge production, differentiating it from non-academic ways of producing knowledge and from non-academic kinds of critique.²

Critique – as also observed with worry in a recent statement of the American Association of University Professors – can be and currently often is “attacked as mere intimidation and unjustifiable censorship.”³ The challenge that this contribution addresses is this:

(The challenge at issue) If any form of critique can be taken as censorship, i.e., an infringement of academic freedom, and be sidestepped because of that, then critique becomes ineffective if not impossible. Critique can then, paradoxically, be silenced with reference to the principle of academic freedom, rather than being protected by it.

That is the opposite of what should result from having a principle of academic freedom in operation. Thus, to have a well-functioning principle of academic freedom, we need an account of academic freedom that allows us to distinguish critique from an infringement of academic freedom. At issue in this paper is thus not that sometimes *not enough* of the relevant freedom is protected – this is a rather old challenge. Rather, my focus here is that *too much* might wrongly be taken as an infringement of academic freedom while,

¹ For the history of debates on academic freedom from the Middle Ages to the age of the College in the United States, see Richard Hofstadter, *Academic Freedom in the Age of the College* (New York: Columbia University Press, 1955); for a comparative study of the philosophical foundations of some contemporary jurisdictions (United States, Britain and Germany), see Eric M. Barendt, *Academic Freedom and the Law: A Comparative Study* (Oxford–Portland, OR: Hart Publishing, 2010).

² See Douglas, H. (2023). Differentiating Scientific Inquiry and Politics. *Philosophy*, 98(2), 123–146. for a review of how reference to critique as constitutive for academic reasoning, the “norm of criticism and response” as Douglas calls it, developed in 20th-century sociology and philosophy of science. Douglas reviews Robert Merton's and Helen Longino's work and comments on some contemporary positions.

³ American Association of University Professors, “In Defense of Knowledge and Higher Education,” 2020, <https://www.aaup.org/report/defense-knowledge-and-higher-education>.

in fact, it is critique. In other words, there is a danger that the principle of academic freedom is overused and abused – to silence critique. Attention will be given not only to the overuse and abuse of the principle of academic freedom but also to the abuse of academic power since both can be used to silence critique.

The aim of this contribution is thus one of determining the *scope* of academic freedom – showing where the concept does *not* apply in order to secure its force and meaning in the area where it does apply. Metaphorically speaking, the *image* of academic freedom that we have inherited from the past might have lost its *contrast* (with respect to keeping it distinct from critique), from whence the need to *reimagine* academic freedom in face of the above-mentioned challenge arises.

The structure of the paper is as follows: the first section on The Concept of Academic Freedom will prepare the ground, putting forth a few assumptions that help to keep this contribution focused on its specific aims. The second section will then present Three Necessary Conditions for Academic Freedom Being Infringed. Doing so allows us to delineate cases in which at least one of the three conditions is *not* fulfilled. These are contrast cases that might – at first glance – look like infringements of academic freedom but are, in fact, not so. I will refer to five kinds of such contrast cases: (1) discrimination and thus a more general kind of unjust treatment of a person engaged in academic affairs, (2) infringements of freedom of speech or other non-academic intellectual freedoms, (3) mere critique, (4) justified critique that leads to justified limitations of somebody's academic freedom and, finally, (5) cases of deep disagreement.

This contribution uses hypothetical examples and proceeds in a systematic rather than exegetical manner. Since it cannot solve all involved issues, in particular with respect to when exactly a critique is justified critique, it should be treated as a frame for further analysis, establishing desiderata for accounts of academic freedom, which are summarized in the Concluding Section.

The Concept of Academic Freedom

In practice, the challenge at issue in this contribution is that what the one side in an inner-academic controversy labels as infringement of academic freedom (“censorship”, “silencing” or “cancel culture”), the other side of the controversy calls critique. How can it be decided whether a specific case is one or the other? To get closer to an in-depth answer to this question, we need to make a few assumptions, regarding what academic freedom is and why we

should care about it and how academic knowledge production is contemporarily structured.

What Academic Freedom Is and Why We Should Care about It

I will assume that academic freedom is a specific form of scientific or scholarly freedom (if not the same) and that it thus consists in an intellectual independence related to academic affairs.⁴ In more concrete terms, it is a causal independence of one's academic knowledge production from non-academic influences. Since causal independence is a matter of degree, academic freedom comes in degrees as well.⁵ Academic freedom concerns not just inquiry but also the dissemination of its results (e.g., via teaching).⁶ The bearers of

⁴ I will ignore here the question how exactly scientific or scholarly freedom and academic freedom relate. It does not need to concern us here. If academic freedom is conceptualized narrowly, that is, as applicable to those engaged in higher education institutions only, then it is a "concretised form" of scientific and scholarly freedom, as Klaus D. Beiter claims ("Where Have All the Scientific and Academic Freedoms Gone? And What Is 'Adequate for Science'? The Right to Enjoy the Benefits of Scientific Progress and Its Applications," *Israel Law Review* 52, [2019]: 240). If so, then the arguments developed here apply to the concretized form in virtue of the same arguments with respect to the more general scientific or scholarly freedom. If academic freedom is interpreted broadly, to apply to everyone engaged in scientific or scholarly knowledge production (academic knowledge production), including those working in academies of science and similar research institutes and including self-employed scholars and scientists, then academic freedom and scientific-scholarly freedom can be equated. Nothing defended here depends on whether a narrow or broad interpretation of academic freedom is assumed.

⁵ For details and justifications for that assumption, see Maria Kronfeldner, "The Freedom We Mean: A Causal Independence Account of Creativity and Academic Freedom," *European Journal for Philosophy of Science* 11: 58 (2021). See also Ronald Dworkin, "We Need a New Interpretation of Academic Freedom," in *The Future of Academic Freedom*, ed. Louis Menand (Chicago–London: University of Chicago Press, 1998), 187–198.

⁶ See Katrin Kinzelbach, *Researching Academic Freedom: Guidelines and Sample Case Studies* (Erlangen: FAU University Press, 2020), 2, 13, for an extensive list that grasps the broad extent of academic freedom, taken from a recent comment on Art. 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) ("General Comment No. 25 [2020] on Science and Economic, Social and Cultural Rights [Article 15 (1) (b), (2), (3) and (4) of the International Covenant on Economic, Social and Cultural Rights]," April 2020, § 13, 3–4). For the complexity of how to conceptualize academic freedom as part of the U.N. human rights covenants, see Klaus D. Beiter et al., "Yearning to Belong: Finding a 'Home' for the Right to Academic Freedom in the U.N. Human Rights Covenants," *Intercultural Human Rights Law Review* 11 (September 1, 2016): 107–190.

academic freedom can be individuals, an academic community or institutions. An academic community includes researchers, teachers and students. Academic freedom can be impacted by the presence of disabling circumstances and furthered by the presence of enabling circumstances.

Justifications for why we should care about academic freedom can be classified into a tripartite grid: some justifications refer to individual autonomy, some to the function of the academic space for democracy, others to the intrinsic value of the knowledge retained and produced in the academic system, while still others present a combination of the three.⁷ I take it for granted that the account presented here is neutral with respect to the different justifications. Why exactly we should care about academic freedom does not matter for the aims of this paper, as long as we agree *that* we should care about academic freedom (that it is of fundamental value) and that *one* of the reasons why we care about it relates to the protection of critique.

Assumptions with Respect to What We Mean by ‘Academic’

It is quite standard to assume that the freedom at issue when we talk about academic freedom is distinct from the freedom of speech. The contrast to freedom of speech will be crucial below, under the discussion of Condition 2; for the purpose of delineating the aims of this paper and framing the later discussion, it suffices to establish three assumptions with respect to the term “academic.”

First, I will assume that the bearers of academic freedom (individuals, communities, institutions) are protected as custodians of the academic knowledge to be protected. They are protected in a derivative sense, that is, only insofar as they perform their designated function to retain and advance

⁷ See Dworkin, “We Need a New Interpretation of Academic Freedom,” for instance. For an in-depth analysis of justifications of academic freedom, see Matthew W. Finkin and Robert C. Post, *For the Common Good: Principles of American Academic Freedom* (New Haven–London: Yale University Press, 2009), Robert C. Post, *Democracy, Expertise, and Academic Freedom: A First Amendment Jurisprudence for the Modern State* (New Haven–London: Yale University Press, 2012), or Barendt, *Academic Freedom and the Law*. Stanley Fish (*Versions of Academic Freedom: From Professionalism to Revolution* [Chicago–London: University of Chicago Press, 2014]) has added to the standard tripartite grid the deflationist excluded alternative, namely, that academic freedom is justified as a selfish interest of those engaged in it. Defending it, according to him, is similar to guilds protecting themselves, that is, it has no justification. All it relates to are interests, markets and power. See also Kronfeldner, “The Freedom We Mean” for review of the three kinds of justifications and a take on how *not* to justify freedom of research with respect to the intrinsic value of knowledge.

academic (i.e., scientific or scholarly) knowledge, which entails strong epistemological commitments to non-dogmatic, open reasoning and to objectivity, as well as to academic and ethical standards.⁸

Second, these commitments entail, in my view, that the respective critique – as a constitutive form of intersubjective and intellectual engagement in academic knowledge production – is academic only if academic standards are appropriately used to develop it. Academic standards include general or field-specific methodological standards, criteria used to delineate good from bad argumentation and general rules of good scientific practice (to prevent scientific misconduct such as fabrication or falsification of evidence, plagiarism and the like). Critique can also relate to ethical standards of producing academic knowledge (e.g., regarding experiments with humans), without failing to be academic critique. After all, there is a well-established ethics of research.

Third, the contemporary academic world is not solely structured according to disciplines which are individuated via methods. More and more academic work is organized around specific problems rather than methods. In science studies, this has been called “Mode 2”.⁹ Once consolidated, these problem-oriented fields get their own name, such as “cognitive science” and “gender studies” (both rather recent) or “religious studies,” which originated in the 19th century. Since a specific topic and related problems (such as cognition, gender or religion) rather than methods give these fields their identity, the methods in such fields are often diverse. Religious studies students, for instance, are educated in a broad range of methods (historiographic, philosophical, geographic methods, etc.); these multiple methods still allow for

⁸ With the last point, I disagree with Douglas, “Differentiating Scientific Inquiry and Politics,” who tries to prevent involving shared standards. The below section on the *Abuse of Power and Deep Disagreement* is also a reply to Douglas’ worry that such standards are too exclusive. Robert C. Post (“The Structure of Academic Freedom,” in *Academic Freedom after September 11*, ed. Beshara Doumani [New York–Cambridge, MA: Zone Books, 2006], 61–106) makes a similar assumption by claiming that the right to academic freedom is not an individual right but instrumentally justified via the professional role constituted through a specific academic employment. I agree with Post on the right to academic freedom being dependent on a professional role (what I call “being a custodian of knowledge”), but would insist that it is an individual right independent of an employment relationship.

⁹ Michael Gibbons et al., *The New Production of Knowledge: The Dynamics of Science and Research in Contemporary Societies* (London: Sage Publications, 1994). This point is inspired by Martyn Hammersley (“Can Academic Freedom Be Justified? Reflections on the Arguments of Robert Post and Stanley Fish,” *Higher Education Quarterly* 70 [2016]: 108–26) who also spotted the focus on disciplines as a limitation in many contemporary accounts of academic freedom.

field-specific academic standards of evaluating the academic work produced. The field-specific academic standards resulting from the unique mix of methods can then also be used to criticize knowledge claims in the respective field in an academic manner.¹⁰

Three Necessary Conditions for Academic Freedom Being Infringed

This section portrays three necessary conditions for a situation involving an infringement of academic freedom.¹¹ If (at least) one of them is not fulfilled, the alleged infringement is something else. Thus, establishing these necessary conditions allows us to delineate important kinds of contrast cases, that is, affairs that involve a member of the academic community whose life is impacted by a certain intervention of another member (or members) of the academic community that should *not* be counted as an infringement of academic freedom.

Condition 1: The affair needs to be about an intellectual issue open to critical treatment.

Given that academic freedom is standardly conceptualized as a specific intellectual freedom, the situation at issue needs to be an *intellectual* affair that is *open* to critical, academic treatment. An intellectual affair has to do with doxastic mental states, that is, it concerns beliefs, opinions, judgements and the like.

The following provides cases of affairs that are either not intellectual or not open to critical academic treatment. Take the example of an expert in an academic field who is – for personal reasons – not hired. Imagine that the head of department making the decision simply did not like the person *as a person*, for example, because of the way the person dresses. The affair would

¹⁰ With this, I disagree with Louis Menand (ed. *The Future of Academic Freedom* [Chicago–London: University of Chicago Press, 1998], 17–19) who claims that there is contemporarily a “crisis” that relates to the “collapse of the disciplines,” a “meltdown of disciplinary boundaries.” I disagree with this diagnosis for at least two reasons. First, not all interdisciplinary fields come with a critique of the disciplines that they connect (which is what Menand seems to assume). Second, whether the changes are disruptive or not depends on the specificities of the field, in particular its history, and on how much disagreement about the standards of a field need to be negotiated.

¹¹ Whether the three are, taken together, sufficient is left intentionally open. It is irrelevant for the aim of delineating critique from infringements of academic freedom.

be one that clearly violates the rights of the person since how one dresses should not impact whether one gets an academic employment position. But the violation of rights does not concern that person's academic freedom since it would not be an intellectual affair: it does not concern the person's doxastic mental states. The violation concerns rights regarding *discrimination* that protect all people, not just members of an academic community. The affair would be one about discrimination rather than academic freedom since it would not be an intellectual affair. A well-functioning principle of academic freedom needs to account for the fact that a case of discrimination is not the same as a case in which a person's academic freedom is infringed, even though both should be condemned. Cases of discrimination are thus the first kind of contrast case that an account of academic freedom must keep in mind.

In addition, for there to be an infringement of academic freedom, the intellectual affair at issue needs to be one that is of academic nature, that is, it needs to be *open* to critical treatment. Academic freedom is quite restricted; it does not concern just everything that is intellectual. For instance, one's sacred religious beliefs, value judgements or political opinions are not protected by academic freedom, even if they might be protected by the principle of freedom of speech or other human rights related to doxastic states, for example, religious or political freedoms. If an academic (let's say, a chemistry professor) utters in public a religious or political belief that is not connected to their research and faces consequences because of that utterance, the situation is *neither* a matter of academic freedom being infringed, *nor* a matter of academic critique. If at all, it is a *case of the freedom of speech (or similar intellectual rights) being infringed*, our second kind of contrast case. The chemistry professor can certainly reclaim the protection of these other intellectual freedoms (prima facie at least, assuming that no other fundamental rights conflict with their intellectual freedom, etc.). Yet, since the belief at issue is not a part of the person's academic work and is, presumably, not uttered as part of their academic engagement, the critique of it is *not even a candidate* for counting as an infringement of *academic* freedom, which is but one intellectual freedom.¹²

¹² Similar claims, in particular with respect to distinguishing freedom of speech and academic freedom, have certainly been made before, for example, by William W. Van Alstyne ("The Specific Theory of Academic Freedom and the General Issue of Civil Liberty," in *The Concept of Academic Freedom*, ed. Edmund L. Pincoffs [Austin: University of Texas Press, 1975], 61) who distinguished academic freedom and "nonacademic civil liberties of professional academics". See also Robert C. Post, *Democracy, Expertise, and Academic Freedom*, for a book-length defense of keeping freedom of speech and academic freedom apart.

To add complexity to the example, suppose the respective speaker claims that their religious or political belief is *beyond criticism*. The same holds true, since if a doxastic mental state is beyond criticism, then it is not an academic knowledge claim open to critical debate, but a dogma. It falls outside the scope of the protection that academic freedom grants, a protection that is limited to academic knowledge claims, which are – by definition – open to academic debate, and that means open to the giving and taking of reasons, that is, critique. Dogmatic beliefs do not even pretend to participate in the kind of back-and-forth of the giving and taking of reasons that we call *critique* and that is, as mentioned above, constitutive of (and thus defining) academic knowledge production. Uttering dogmatic beliefs and criticizing them is thus not a matter of infringing or not infringing somebody's academic freedom since the person uttering the belief is not partaking in academic affairs, at least not at the moment of utterance or through the utterance.

Thus, the first necessary condition for an intervention being an infringement of academic freedom is

(Condition 1) **The intellectual and open affair condition:** An intervention is an infringement of academic freedom only if it relates to an intellectual affair that is open to critical debate.

This condition refers to critique as being inscribed in academic engagement in the sense that *being open* to academic treatment amounts to *being criticizable*. If critique of beliefs, claims or judgments within the academic space (concerning the research undertaken, evidence gathered, references used, etc.) is not possible, then the question of whether a critique is an infringement of academic freedom *does simply not arise*. The affair is *outside of the scope* of academic freedom. Only if a claim is in principle criticizable is it a candidate of academic freedom being infringed. This means that one cannot “have one's cake and eat it too”: one cannot claim dogmatic status for a belief and simultaneously refer to an infringement of one's academic freedom for being criticized for holding the belief. Either one is willing to “play the game” of academic reasoning (and then the doxastic state is not beyond critique), or one is not (and then it cannot be protected by academic freedom).

The above may strike some readers as trivial. Perhaps; but it is a necessary step to delineate the first necessary condition (and the two kinds of contrast cases delineated thereby) from further necessary conditions. Given the aim of this paper, the hard cases are clearly ones *from within* the business of academic knowledge production, cases where the speakers at least pretend to participate in the business of providing reasons (justifications) for the relevant doxastic states and the subsequent give-and-take of critique related to these

justifications. We will get closer to these hard cases and the respective contrast cases step by step. Two kinds of contrast cases have been established already: those of discrimination and those of non-academic intellectual freedoms being infringed (freedom of speech, religious freedom, etc.).

The first condition at issue in this section spells out what it means to have an *academic* freedom being infringed. The next two necessary conditions taken together tackle what it means to be *infringed* in one's academic freedom. An infringement will be taken to consist in a limitation in the relevant sense (to be spelled out in the section on Condition 2) that is unjustified (in a sense to be spelled out the section on Condition 3). The term "infringement" is a normative term, carrying negative connotations that relate to the normativity of in/justice and justifications, whereas the term "limitation" is descriptive, merely describing how a specific intervention narrows somebody's freedom. Taking the descriptive and the normative apart is crucial to see the full diversity of further contrast cases, in particular in order to distinguish mere critique from a limitation of somebody's academic freedom, and the latter from justified critique that indeed involves limitations of somebody's academic freedom but in justified ways.

Condition 2: The affair needs to involve a limitation in the relevant sense.

For something to be an infringement of academic freedom, the affair needs to involve a limitation of somebody's academic freedom in the relevant sense. The following spells out the respective "relevant sense."

Imagine a scientist who submits a paper to an academic journal. As part of the empirical work performed, the paper is making racist claims. The paper is published and stirs quite some controversy; it is severely criticized based on worries related to academic and ethical standards. Add whatever escalation you cherish to imagine – open letters and replies to them that pile up in the respective outlets, etc. If the interactions and interventions do not end up in violence, intimidation (via threats to personal safety) and libel, or in denying access to an academic resource, there is no limitation in the relevant sense occurring. The relevant disabling and enabling circumstances mentioned above, which need to be absent or present for the academic research or utterance being possible and free, have not changed because of the critique. There is simply no concrete limitation imposed in the relevant sense, even though there is severe critique. We have thus a *case of mere critique*, our third contrast case, and not a case of academic freedom being limited.

Certainly, the self-confidence and reputation of the severely criticized author might be damaged, the opportunities of developing and disseminating their ideas might shrink because of the critique. People might refrain from inviting or collaborating with the author. There might even be a looping effect of the critique, influencing further work of the author, in one way (becoming more careful in the research, and, in effect, less racist) or another (getting stubborn, or even becoming more racist). This might be boosted by people playing specific and powerful roles within the academic production cycles. Editors or referees, for instance, might ask the author more often than before to revise the submitted work, given that these gatekeepers are – because of the controversy – more alert about the pros and cons regarding the kind of research done. After all, controversy can bring light to reasons, raising the argumentative bar for specific claims, and rightfully so.

And with that we are at the core of the challenge that this paper addresses: one could certainly call all these *consequences of critique* – all shaping the future of an academic path – “censorship” or “silencing”. However, if every *effective* critique is taken as censorship or silencing, then it does not mean anything in particular anymore to call something censorship or silencing.¹³ Concept creep (pointing at everything) is concept dissolution (pointing at nothing): the contrast in the concept of academic freedom is lost if it gets broadened too much. Thus, being clear about what is mere critique (rather than a limitation in the relevant sense) is of utmost importance, in principle and in practice. Of course, there will be borderline cases that are hard to judge, and that is why a closer look at this second condition is necessary. As the following shows, going beyond the paradigmatic example from above to the borderline cases is indeed quite taxing.

Borderline cases stem mainly from the fact that freedom allows of degrees, as mentioned above. There can be a lowered proliferation prospect (as described in the above paradigmatic example), quite subtle interference, open pressure, de facto exclusion from a specific resource (e.g., an academic platform, a position), or even exclusion from academic affairs in general. This continuum needs to be taken seriously. While its full analysis goes beyond the space available here, a few systematic notes should suffice to clarify things for the purpose of this contribution. First, limitations that relate to the absence of enabling circumstances are less strong than limitations that relate to the presence of disabling circumstances. For instance, if an academic authority

¹³ An issue already addressed in detail in Robert C. Post, ed., *Censorship and Silencing: Practices of Cultural Regulation* (Los Angeles, CA: Getty Research Institute for the History of Art and the Humanities, 1998).

tells an early career scholar that a secure position will not be provided if a specific claim is made (pointing to the future absence of a quite fundamental enabling condition), then that is a less strong pressure compared to the situation in which the same early career scholar is told that they will end up in prison (pointing to the presence of a quite severe disabling conditions, close to total exclusion from academic affairs).¹⁴ Second, lowered proliferation prospects and pressure are not just different in degree, they are different in kind to de facto exclusions. If there are funding agencies that prioritize certain topics of research, but the system of funding does not directly impact a career negatively if these funding opportunities are ignored, then academic freedom is already *limited* a bit; after all, some have then more freedom than others with respect to enabling circumstances. Yet, academic freedom is far from absent: one is discouraged to do a specific kind of research, but one is not directed (forced) not to do it, or to do something else. In situations in which governments systematically fail to secure the institutional and legal enabling conditions for academic freedom, the limitations are already quite significant. Academic freedom is, finally, *absent* if the intellectual affairs (topic choice, research methods, duration of the research, evaluation and publication of results, cooperations targeted, etc.) are to a large extent or completely directed, that is, determined from outside, as it is, for instance, often (not always) the case in military and industry contexts.¹⁵

On that basis, I want to generalize from the above paradigmatic example of mere critique and claim that as long as an intervention of members of the academic community in reaction to what is done or planned by another member of the academic community involves no *actively imposed and concrete limitation* to participate in academic matters, we have a *case of mere critique*. The paradigmatic example from above did not involve any de facto exclusion from a resource of academic research (journals, platforms, funding, positions). The racist research paper was not retracted, no event was cancelled, no funding was withdrawn, no employment impacted. Hence, no actively imposed and concrete limitation happened, even though reputation went down since the critique was quite effective.

¹⁴ As already mentioned in Kronfeldner, “The Freedom We Mean”, 11–13.

¹⁵ For examples and for how science in the United States, Great Britain, Japan or Germany got regulated since the Second World War, with government or industry-related interests in mind, see David H. Guston, *Between Politics and Science: Assuring the Integrity and Productivity of Research* (Cambridge, UK: Cambridge University Press, 2000). Julia Schleck (*Dirty Knowledge: Academic Freedom in the Age of Neoliberalism* [Lincoln: University of Nebraska Press, 2022]) addresses how neo-liberal market power and the resulting academic capitalism impacts academic freedom.

The second necessary condition for there to be a case of infringed academic freedom is thus:

(Condition 2) **The active and concrete limitation condition:** An intervention of a member of the academic community with respect to another member is an infringement of academic freedom only if it involves an actively imposed and concrete limitation for that other member of the academic community with respect to the access to academic resources.

If the intervention is more diffuse, not involving a concrete or actively imposed limitation, then academic freedom is *not* limited in the relevant sense. In practice, we usually have no problem in discerning the difference between an actively imposed concrete limitation and mere critique. In publication matters, for instance, we do know (and cherish) the difference between being criticized and being simply rejected without justification. Being criticized by editors or referees, allows one to respond, while being rejected without justification does not.

For the assessment of whether we have a case of mere critique or a case that involves limitations of academic freedom, it does neither matter how severe the critique is, nor whether the critique is justified. Even if critique is unjustified (i.e., false or exaggerated), as long as that false or exaggerated critique does not involve any actively imposed and concrete limitation, it holds that Condition 2 is not fulfilled. Hence, even in such a case, we would not have an infringement of academic freedom happening. That also means that the appropriate academic reply to false or exaggerated critique that does not involve any actively imposed and concrete limitation is not to accuse others of an infringement of academic freedom. The appropriate academic reply is to answer the critique by showing why it is false or exaggerated.¹⁶

Since the application of terms such as “limitation”, “censorship” or “silencing” can easily be overused or fail to be even-handed, it is important to have a specific cut-off line (as in Condition 2). Take the following

¹⁶ See Brian Leiter, “Why Academic Freedom?,” in *The Value and Limits of Academic Speech: Philosophical, Political, and Legal Perspectives*, ed. Donald Alexander Downs, Chris W. Surprenant (New York: Routledge, 2018), 37, on “receptiveness to critique” as “probative” for somebody being seriously committed to academic standards. See also Douglas, “Differentiating Scientific Inquiry and Politics”. It is a delicate and complex matter when this norm of response to critique is becoming dysfunctional, that is, when a critique is so false and exaggerated or outdated etc. that a reply to the critique is making things worse (shifting attention, inefficient use of resources), so that the academic community drifts away from the truth rather than getting closer. This is one of the issues that a follow-up to this contribution will have to address.

example. In a recent publication on academic freedom, Lotter accuses the tradition that she identifies as cultural studies of moralizing the academic discourse and of silencing controversial (often conservative) speakers. In addition, she describes that tradition as not being willing to listen to “irritating” speech of these controversial speakers.¹⁷ At the same time, the controversial speakers should, according to her, be protected with reference to academic freedom from being publicly shamed or humiliated.¹⁸ Lotter’s account pretends to be politically neutral, by mentioning examples of speakers who got de-platformed or criticized and who are (presumably) both from the liberal-to-left and from the conservative-to-right political spectrum. Yet, she seems to be using a double-standard since, with respect to the relevant claims she makes, all depends on *whose voice it is*. If it is the voice of the right-wing or conservative speakers, any *critique of them* seems to her to be humiliating, epistemic violence, if not public shaming; if, however, the opinions of those opposed to the respective right-wing or conservative ideology are at issue, then the respective critique is mere “irritating” speech, never epistemic violence, or public shaming. Something is wrong if we end up with such a double standard. Lotter even correctly complains that concepts such as epistemic violence (and presumably academic freedom) should not be broadened beyond limits, as she accuses her unnamed opponents to do,¹⁹ but she does not notice that she is broadening some of the respective concepts herself, just in a double standard manner.²⁰

Furthermore, the details and complexities – with respect to which limitation is at issue in a specific case – are crucial. Lotter, for instance, presents quite a diverse set of real cases that, if looked at carefully, might well mix cases of limitations of academic freedom and cases of mere critique. Such “mixed bags” – often spiced with brief and suggestive anecdotes rather than detailed reviews or studies of the respective cases – are not helpful to grasp things clearly. Things get even worse if famous historical cases (usually Galileo Galilei) are added to the bag of mixed contemporary cases. What is needed for discussing real contemporary cases are either carefully documented details of these cases and the comparisons made between them or carefully constructed

¹⁷ Maria-Sibylla Lotter, “Wissenschaft als imaginäres Wiedergutmachungsprojekt,” in *Wissenschaftsfreiheit im Konflikt: Grundlagen, Herausforderungen, Grenzen*, ed. Elif Özmen (J.B. Metzler, 2021), 74–80.

¹⁸ Lotter, “Wissenschaft als imaginäres Wiedergutmachungsprojekt,” 71, 82.

¹⁹ Lotter, “Wissenschaft als imaginäres Wiedergutmachungsprojekt,” 80.

²⁰ Lotter, “Wissenschaft als imaginäres Wiedergutmachungsprojekt,” 71, where “public shaming” is equated with “politicization” and “moralization” of science and thus with what others might call academic critique.

hypothetical cases.²¹ In other words, for individual cases we need details that go beyond anecdotes and vague comparisons with historical cases, a keen eye on sampling biases, and distinctions and conditions that give structure to the nuances involved. Without all that, it is *not* possible to get a secure and even-handed grip on what happens, and on what is a limitation in the relevant sense, able to infringe one's academic freedom rather than being mere critique. While this paper does not suffice to discuss specific real cases, especially borderline cases, it aims to establish the respective distinctions and conditions, providing a grid that allows to fill in the details in a structured and nuanced way, once specific real cases are at issue.

Part of that grid is to keep Condition 2 separate from Condition 3. The latter will state that there can be actively imposed and concrete limitations on academic freedom that are justified and therefore also not *infringements* of academic freedom. After all, there can be cases of severe critique that lead to an active and concrete limitation (e.g., the rejection or retraction of a journal article), but where the critique and the resulting limitations are justified (e.g., because the article is not good enough for inclusion or even violates certain standards). These are cases of justified critique that connect to actively imposed concrete limitations but that are nonetheless not cases of infringements.

Condition 3: Only if the limitation is not justified, is it an infringement of academic freedom.

For an imposed limitation to be an infringement of academic freedom it needs to be the case that the limitation is *not* justified.

If a person is denied access to a specific academic resource (a journal, a conference, a grant, a position, etc.), then there is an active and concrete limitation put in place, even if it is only a specific limitation (since access to other such resources might still be available). For illustration, recall the example from above, an academic journal publication with racist claims. Add, for the sake of the argument, that the critique of the publication is this time so severe that the editors of the respective journal decide not to publish the paper. We can also imagine that the paper got initially published, but that the editors eventually decide to retract the publication because of the severe critique

²¹ Given that this contribution evidently uses only carefully constructed hypothetical cases, see Jogchum Vrielink, Paul Lemmens, Stephan Parmentier, "On Human Rights, Academic Freedom as a Fundamental Right," *League of European Research Universities (LERU)*, Advice Paper Nr. 6 (December 2010) for a helpful set of real cases.

raised after publication, a critique that entailed that the racist claims are based on questionable methods. Let us imagine that the critique is indeed justified, for example, that methodological standards have been violated. In such a case, those who got excluded from access to a specific academic resource (publishing *that* paper in *that* journal) cannot reclaim the right to academic freedom to fence off the rejection or retraction decision. A freedom has been limited, no doubt, since Condition 2 (the active and concrete limitation condition) is fulfilled, but it is nonetheless not an infringement of the respective author's academic freedom since the limitation is academically justified. A parallel case could be constructed with respect to limitations that refer to the ethics of research. Limitations of academic freedom are often imposed, and rightfully so, if ethical principles are violated by the respective research.²² Such limitations are not *infringements* of academic freedom; they are *sanctions* because of a failure to follow the standards operative in the academic space, in general or with respect to a specific field. As, for instance, Edward Shils already stressed, "academic incompetence or willful failure and even obstruction requires the imposition of sanctions but only on strictly intellectual, academic grounds."²³

Thus, only if the limitation (in the case at issue: exclusion from a specific platform) is *not* justified can infringements be claimed. For illustration, imagine that the journal rejects or retracts the paper for other reasons, for example, reasons having to do with an academic conflict of interest of the reviewers or editors, or reasons having to do with a religious or political opinion of the author. In such a case, the editors and referees abused their power, an abuse that indeed results in an infringement of the authors' academic freedom, and be it with respect to publishing *that* paper in *that* journal.

The third necessary condition for there to be a case of infringed academic freedom is thus:

(Condition 3): **The absence of justification condition.** An intervention is an infringement of academic freedom only if the resulting actively imposed and concrete limitation is not justified.

²² For a contemporary in-depth take on the ethics of research, see Adil E. Shamoo and David B. Resnik, *Responsible Conduct of Research* (3rd ed.) (Oxford–New York: Oxford University Press, 2015), Kristin Shrader-Frechette, *Ethics of Scientific Research* (Lanham, MD–London: Rowman and Littlefield, 1994), and Kristin Shrader-Frechette, *Tainted: How Philosophy of Science Can Expose Bad Science* (Oxford–New York: Oxford University Press, 2014).

²³ Edward Shils, "Academic Freedom," in *Order of Learning: Essays on the Contemporary University* (New Brunswick, NJ–London: Transaction Publishers, 1997), 242. (Originally published in *International Higher Education: An Encyclopedia*, ed. Philip G. Altbach, New York: Garland Publishing, 1991).

Not accepting this third condition as necessary would mean that *all* decisions that result in a concrete and actively imposed limitation related to academic affairs (Condition 1 and 2 fulfilled) are automatically infringements of academic freedom (Condition 3 ignored). In such a situation, the academic space would collapse, since the application of academic or ethical standards, and thus justified critique that leads to limitations of one's freedom, would be made ineffective if not impossible. It would render the principle of academic freedom dysfunctional. Hence, to have a well-functioning principle of academic freedom, one must accept this third condition as a necessary one.

Certainly, justified critique and the limitations resulting from it also have to follow the same academic or ethical standards at issue. Otherwise, collapse of the academic space happens for other reasons, namely, a conservative-exclusive atmosphere. The justified critique needs to be academic (objective, open, observing the relevant academic and ethical standards) and any limitations, even if based on justified critique, should be imposed only with the utmost care and a keen eye on whether they are proportionate.

Both of these caveats taken together mean that rules of good scientific practice need policing, but the policing needs to be appropriate and proportionate. That holds for peer-review as well as disciplinary committees that investigate cases of alleged misconduct. It is clearly not proportionate to impose any further sanctions if a paper does not merit publication in a specific journal and is thus excluded from that specific platform. Yet, a violation of rules of scientific integrity (e.g., fabrication of data) can, as a matter of fact and rightfully so, result in a few years of exclusion from the overall resources channeled through a specific publication or funding body, which uses academic standards as eligibility criteria.²⁴ Depending on case, it can even result in more severe consequences, for example, in losing one's academic position, or even in losing one's academic degree. What is proportionate, depends on the details of the case and on the self-governed and evolving norms of good scientific practice. If the limitations are not proportionate, academic freedom is infringed since the respective active and concrete limitation is then not justified. For a limitation to be based on justified critique, it needs to observe not just academic standards, ethical standards and rules of proportionality. The decisions also need to pay attention to due process, for example, it needs to give the criticized person a chance to respond. Finally, it should go without

²⁴ See, for instance, Deutsche Forschungsgesellschaft, "Rules of Procedure for Dealing with Scientific Misconduct," DFG form 80.01 – 08/19, 2019, https://www.dfg.de/formulare/80_01/v/dfg_80_01_v0819_en.pdf, which has sanctions of one to eight years, depending on severity of misconduct.

saying that a given critique can only be justified critique as long as violence, hatred and intimidation (terrorization) are not involved, which would make the opposition, intervention or resulting limitation a case of something else (e.g., hate speech, libel).²⁵

Complications certainly arise once we go beyond the paradigmatic cases mentioned above since academic quality judgements and ethical judgements relating to academic work are far from an easy matter and relate to a battery of complex issues, most importantly: empirical matters, epistemic goals, epistemic values, methodological standards, epistemic responsibilities, rules about ad hominem arguments, proper conduct and the consideration of ethical principles and foreseeable consequences in the social realm. It also involves, as mentioned, epistemological commitments, such as a commitment to objectivity. Much could be said on each of these issues, but space does not allow to do so.²⁶

²⁵ Having said this, I want to stress that I aim to stay neutral, first, with respect to what “cancel culture”, “intimidation”, “libel” or “hate speech” exactly are and, second, with respect to empirical claims about our contemporary academic culture being dominated or impacted by cancel culture, intimidation, or the like – as, for instance, assumed in Marie-Luisa Frick, “Umkämpfte Wissenschaft, komplizierte Freiheit: Ein philosophischer Beitrag zur Debatte um die Lage der Wissenschaftsfreiheit,” *Zeitschrift für Politik*, 2022, and objected to in Adrian Daub, *Cancel Culture Transfer: How a Moral Panic is Gripping the World* (Berlin: Suhrkamp, 2022). Any stance on such issues (and the objection that it is all just panic or strategy) needs to be developed with the utmost care and this paper does not allow to do this. In addition, issues of intimidation or libel are distinct from issues of academic freedom, even though they are very often related. They often co-occur in the same instance, but they can also fall apart. Two scholars can enjoy all the freedom one can imagine and intimidate each other nonetheless and this might apply to many instances of controversies in the current academic space. Conversely, an unjustified limitation of one’s freedom can be imposed with full respect. Infringements of academic freedom and intimidation are both to be condemned but can be condemned independently of each other.

²⁶ On how science and society, facts and values relate, and how undue politicization can be prevented, see instead, for a start, Robert N. Proctor, *Value Free Science? Purity and Power in Modern Knowledge* (Cambridge, MA–London: Harvard University Press, 1991); Philip Kitcher, *Science, Truth, and Democracy* (New York–Oxford: Oxford University Press, 2001), Philip Kitcher, *Science in a Democratic Society* (Amherst, NY: Prometheus Books, 2011); Heather Douglas, *Science, Policy, and the Value-free Ideal* (Pittsburgh, PA: University of Pittsburgh Press, 2009), Douglas, “Differentiating Scientific Inquiry and Politics”; or Alexander Reutlinger, “When Do Non-Epistemic Values Play an Epistemically Illegitimate Role in Science? How to Solve One Half of the New Demarcation Problem?” *Studies in History and Philosophy of Science* 92 (2022): 152–61. See Eva Feder Kittay, “The Personal Is Philosophical Is Political: A Philosopher and Mother of a Cognitively Disabled Person Sends Notes from the

Instead, I want to use the remaining space to respond to a more direct concern, namely, the question of whether the argumentation developed so far ignores the frequent abuse of power within academic fields, or (in more concrete terms) the *abuse of academic or ethical standards* in order to exclude others from academic affairs as one wishes, as raised by Butler and Scott.²⁷ This will also lead us to our fifth and last set of contrast cases, cases that are objectively hard to judge since they are cases of deep disagreement.

Abuse of Power and Deep Disagreement

I will assume in the following that a field is vulnerable for abuse of academic power in the just mentioned sense if there is *deep disagreement*, that is, if the respective grounds for justifying limitations to academic freedom are too vague or too contested. By this, I mean cases when (field-specific) academic or ethical standards are not clear or not broadly accepted. On that basis, I will show that these are situations in which the question of whether a specific limitation is an infringement of academic freedom or something else is objectively difficult if not impossible to answer. Why? Since without clear or broadly agreed-on ethical or academic standards, it is impossible to answer whether Condition 3 is fulfilled or not. If *there are no* clear and accepted standards, it cannot be answered whether *they are appropriately and proportionally used* to justify the limitation (justified critique) or not (case of infringement of academic freedom).

In a recent publication, Scott has addressed the issue to some extent. Her preferred cases have to do with a scholarly orthodoxy that unduly excludes the respective avantgarde who aims to do things differently.²⁸ Opposition is then usually (and mutually) quite tough. Such cases are similar to the cases

Battlefield,” *Metaphilosophy* 40 (2009): 606–627 with respect to a rather persistent controversy, namely philosophical statements about cognitively disabled people, and how epistemic responsibility enters the situation. As mentioned, this paper can only be a frame for further analysis of these complex issues.

²⁷ Judith Butler, “Academic Norms, Contemporary Challenges: A Reply to Robert Post on Academic Freedom,” in *Academic Freedom after September 11*, ed. Beshara Doumani (New York–Cambridge, MA: Zone Books, 2006), 107–142; Joan W. Scott, *Knowledge, Power, and Academic Freedom* (New York: Columbia University Press, 2019).

²⁸ Scott, *Knowledge, Power, and Academic Freedom*, 26–31. The “culture wars” around post-modern methodology are a focus in her work. See also the debate between Post, “The Structure of Academic Freedom” and Butler, “Academic Norms, Contemporary Challenges”, addressing similar issues.

that Kuhn famously analyzed.²⁹ History of science provides us with plenty of cases of normal (orthodox) science in which a paradigm reigns, excluding everything that does not fit its rationale – until its overcome. The epistemic strategy that the orthodoxy can use as part of its “abuse of disciplinary power,” as Scott calls it, is nicely captured by her: to exclude critics, you only need to portray “internal critics as if the critics were outsiders.”³⁰

Abuses of such power, leading to limitations of freedom, are clearly a problem. Yet, and that is where I disagree with Scott, such cases are not necessarily involving infringements of academic freedom. They can, but they do not have to; whether they do can be quite hard to find out. For instance, I doubt that historians would be willing to claim that those who defended the new oxygen theory against the old phlogiston theory in 19th-century chemistry were infringed in their academic freedom just because they were initially not taken seriously and attacked by the chemical orthodoxy. There might have been such infringements but that cannot be shown by solely pointing to the fact that the orthodoxy was successful for a while in excluding the avant-garde. This is so since specific affairs can also be instances of mutual critique, with both sides using the standards of the time. They can alternatively be instances of paradigm shifts. In case of the latter, the scientists live in a time in which there are no clear or no broadly shared standards of academic quality in the respective field. As Shils observed as well, “[t]here are times when it is not easy to distinguish a crank from a really gifted person who is striking out on an idiosyncratic but potentially very fruitful path.”³¹

In such a situation, the question of who is an insider and who is an outsider and whether academic freedom is infringed cannot really be answered. The sources of such a judgement – the ethical or academic standards – have become too unclear or contested. It is then unclear what it could mean to justify the limitation of somebody’s freedom on the basis of ethical or academic standards. In other words, it can be in fact undecidable whether Condition 3

²⁹ Thomas S. Kuhn, *The Structure of Scientific Revolutions* (Chicago: University of Chicago Press, 1962).

³⁰ Scott, *Knowledge, Power, and Academic Freedom*, 28, 33. The converse strategy is certainly to portray outsiders as if they were insiders, something that has been called by various names, for example, the existence of “pretenders” (Leiter, “Why Academic Freedom?,” 37), “scientific gerrymandering” (Milica Popovic, Liviu Matei and Daniele Joly, “Changing Understandings of Academic Freedom in the World at the Time of Pandemic,” *OSUN Global Observatory on Academic Freedom*, 2022, <https://elkana.ceu.edu/sites/elkana.ceu.edu/files/attachment/basicpage/391/finalgoafglobalreport20220712.pdf>, 56), or “inquirer facades” (Douglas, “Differentiating Scientific Inquiry and Politics”).

³¹ Shils, “Academic Freedom,” 242.

is fulfilled or not. If so, critique and infringements of academic freedom are indistinguishable in that historical context. In such a context, both abuse of (academic or ethical) standards and abuse of the principle of academic freedom can be deployed to delegitimize critique. In sum, fields become simultaneously vulnerable for *both* kinds of abuses if the respective ethical or academic standards have become unclear or too contested.

Even though Scott seems to ignore that the principle of academic freedom can be abused in the way this contribution addresses, I take her to actually agree that both strategies (abuse of standards, abuse of the principle of academic freedom) exist and need to be kept in check. What I thus take her to agree on is, first, that it depends on the details of the case whether the one or the other happens and, second, that in cases of deep disagreement (disagreement about the standards involved) the principle of academic freedom will fail to be applicable, since such situations involve a paradox. As Scott writes:

“[P]aradoxically, if academic freedom is to remain an *effective* protection for individual critical scholarly inquiry, it cannot be invoked in most of the battles about the *rules and standards* that underwrite the individual scholar’s open-ended pursuit of understanding. In the collective process that articulates disciplinary power, academic freedom is not usually the most appropriate intervention.”³²

With this, I take Scott to underwrite the claim I started with: to have a well-functioning principle of academic freedom, it needs to be limited in scope; using it whenever one faces opposition or disagreement is overusing it. We need to reimagine academic freedom with a contrast, that is, with kinds of contrast cases where the principle does not apply, so that it can be more effectively used where it does apply. The contrast cases that the discussion of abuses of power led to are cases of deep disagreement. In practice, this means that the effective way to oppose power with respect to ethical and academic standards is to continue arguing about the relevant standards, that is, to be engaged in fundamental critique. Pointing all the time at academic freedom would be futile if not self-destructive for the freedom at issue.

In sum: should clear and agreed-on ethical or academic standards be absent (at a specific point in time, for a specific field), then justified critique involving a limitation of somebody’s academic freedom can indeed not be told apart from an infringement of academic freedom. As a result of that, the question of whether academic freedom has been infringed or not simply *does not make sense* in that context since it cannot be answered. In other words, the

³² Scott, *Knowledge, Power, and Academic Freedom*, 34 (emphasis added).

question cannot be answered since it cannot be clarified whether Condition 3 is fulfilled or not.

In practice, this also means that if it is in fact unclear what the standards of a field are, then there will be many cases in which it is *impossible to decide whether the respective academic critique is justified or not*. In such a situation, the gates are open, not just for undiscernible actual infringements of academic freedom but simultaneously for wrongful accusations, as part of which somebody aims to protect bad science with reference to the principle of academic freedom. Actual infringements of academic freedom will successfully pretend to be critique, and bad science will successfully pretend to be protected by academic freedom, leading to wrongful accusations.

Finally, it is not rare that good science is attacked as well, for example, for non-academic, strategic reasons (as in cases of strategic science skepticism).³³ If the academic defense against such an attack can successfully be portrayed as an infringement of academic freedom of the attacker, then good academic research is in jeopardy, since a form of critique (critique of critique) is made ineffective if not impossible thereby. In such a situation, the authority of inner-academic justification cannot protect the academic space anymore from intrusion of non-academic authorities. Therefore, as Robert C. Post has warned already, the defense of academic freedom with respect to attacks *from outside* of the academic space “will collapse if faculty themselves lose faith in the professional norms necessary to define and generate knowledge.”³⁴ In such a situation, the respective academic field is in a crisis and no principle of academic freedom will help in re-solving it.

Concluding Section: The Resulting Five Contrast Cases in Overview

The discussed three necessary conditions allow to distinguish different kinds of contrast cases. They can thus function as desiderata for any account of academic freedom: an adequate account of academic freedom needs to involve these conditions and make sure that an infringement of academic freedom (all 3 conditions fulfilled), is kept separate from (1) general discrimination within the academic space (Condition 1 not fulfilled), (2) freedom of speech

³³ See, as entry to the growing body of literature on strategic science skepticism, Naomi Oreskes and Erik M. Conway, *Merchants of Doubt: How a Handful of Scientists Obscured the Truth on Issues from Tobacco Smoke to Global Warming* (New York–London: Bloomsbury, 2010).

³⁴ Post, “The Structure of Academic Freedom,” 79.

or other non-academic intellectual freedoms being infringed (Condition 1 not fulfilled), both of which fall outside of the scope of academic freedom. Infringements of academic freedom can also be kept separate from (3) mere critique (Condition 2 not fulfilled) and (4) justified critique that leads to proportionate limitations, that is, the application of academic standards or standards relating to the ethics of research (Condition 3 not fulfilled). Finally, there are (5) cases of deep disagreement. As are contrast cases 3 and 4, the latter cases are inside of the scope of academic freedom, but it is hard if not impossible to discern an infringement of academic freedom from justified limitations of academic freedom (whether Condition 3 is fulfilled or not cannot be decided). This is because the very standards that would allow to distinguish critique from infringements are too vague or too contested.

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