

Religious Attire, Equality, Trust, and Freedom of Expression

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Introduction

The discussions of various limitations on freedom of expression in institutions of higher education are at different stages in different (Western) countries. Thus, discussions are different in the US and the UK than they are in Norway. Some of the subjects, especially no-platforming and safe spaces, are under more intense debate outside the country. Nevertheless, it is reasonable to expect that such disputes will influence Norwegian debates as well. Therefore, this chapter draws on the debates and experiences from other countries.

My starting point is that the human right to freedom of expression should be understood in a broad sense. The way we

dress is part of our self-expression. So is hairstyle and beards, piercings, the use of accessories, perfume, bags, the use of pins, etc. We are making statements about who we are as well as our religious and/or political positions in many of these ways. We use our freedom of expression in this broad sense to present ourselves, our identity as we see it, to our surroundings. Accordingly, we can also express different identity political positions.

This broad understanding of freedom of expression is recognized in the European Convention on Human Rights (ECHR), Article 10. This right should not be limited without good cause. However, such reasons exist. They are also set out in the ECHR, Article 10, Section 2:

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are *necessary in a democratic society*, in the interests of national security, territorial integrity or public safety, for the *prevention of disorder or crime*, for the *protection of health* or morals, for the *protection of the reputation or rights* of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary (emphasis added).

The emphasized words in this section are what I consider especially relevant in the context of this chapter. For example, piercings are restricted in the medical sector. Because of the danger of infections, doctors and nurses cannot have piercings at work (at least not in the Norwegian health care system). This limitation of their rights would fall under ‘protection of health’, meaning that a person will have to choose between practising as a doctor or nurse or have piercings. Accordingly, based on the evidence-based knowledge we have of infections, it cannot be a human right to practice as a nurse or doctor with piercings.

The ‘protection of health’ implies a no-right to cause harm to others. This would also be a violation of the (human) rights of others. Thus, one individual’s (human) rights end where they conflict with those of others. The violation of someone’s human rights might cause offence but being offended, i.e. having one’s feelings hurt, is not proof of a violation of rights. Thus, a distinction between violating human rights and having one’s feelings hurt should be made. I will argue that covering one’s face in communication with others, certain forms of no-platforming, trigger warnings, and safe spaces are practices that can violate the rights of others, not only hurt their feelings.

The unacceptability of practices that represent harm to others, by limiting the freedom of others, for example, can be extended to expressions. The harm to others that expressions can do comprises verbal attacks on human dignity and the equal enjoyment of all human rights. A source of inspiration here is the work of Jeremy Waldron (see especially Waldron, 2012). More generally, my understanding of human rights is spelt out in my doctoral dissertation (Gule, 2003).

This dual perspective—freedom/right vs harm to others—can also be expressed in a different way. On the one hand, it concerns freedoms and rights, and on the other hand, the conditions for and quality of communication that is required in an academic institution. Based on centuries of experience, it is safe to say that research and teaching are best carried out in an environment where communication between scholars and between scholars and students, is based on openness and equality. This is the basis of intersubjective knowledge. Thus, open and equal communication is an epistemological condition for the creation, discovery, and/or development of scientific knowledge. This means that it is necessary to find a balance between freedom of expression and the need to ensure the required conditions of communication—openness, equality, and trust. Thus, the

conscious or willed reduction or degradation of these conditions could be called ‘harm to others’.

Religious dress and freedom of expression

In June 2018, the Norwegian Parliament (Stortinget) adopted amendments to the various Norwegian laws on education. The amendments introduced a ban on facial coverings in all teaching situations (Regjeringa, 2018). The ban was a result of worries about the use of *niqab* by some pupils and students and had been under political discussion for some time. It is not a general ban on facial coverings on campus (nor in public in general) but in situations of instruction.

The human right to freedom of expression means that there must be generous leeway for the use of religious apparel, like turbans, *hijabs*, *kippahs*, and *niqabs*. The yardstick for acceptance or rejection must be whether or not the clothing limits the rights of others, not whether it causes offence (hurt feelings). This is also pointed out by the Ministry of Education and Research in their presentation of the new law (Regjeringa, 2018, p. 36). This requires an exploration of what such limitations on the rights of others entail. It is obvious, as in the case of possible infections, that physical harm—pain, injuries, the (potential) spreading of diseases—violates the rights of others. So does psychological harm, even though it can be more difficult to document than physical harm, like a broken arm or a serious infection.

However, the violations of the rights of others must be—and is—understood in a broader sense than the infliction of physical and psychological injuries. It is also about illegitimate limitations of the freedoms of others. For example, it is an unacceptable limitation of someone’s freedom to say that he/she is not allowed to drink alcohol because someone else does not drink (being a

teetotaller or for religious reasons). In the same way, a vegan cannot impose his/her veganism on everybody else. Of course, freedom of expression gives both the vegan and the teetotaller the right to argue their case, but they have no right to impose their position on others, not even by majority decision.

This is relevant in academic institutions when it comes to what should be served in canteens and cafeterias on campus. Resources will often limit the choices on a menu. What is clear is that no one can demand that their dietary requirements should trump all other considerations. Thus, Muslims and Jews cannot demand completely *halal* and/or *kosher* kitchens. 1) This would limit the dietary choices of others, and 2) would require the use of resources beyond what is reasonable. Such use of resources would in most cases limit the freedom of both the institutions and its staff and students in their pursuits of knowledge because these resources should be (better?) used for research and teaching, i.e. in realizing the purpose of the institution.¹

These reflections are relevant for the question of religious attire: can some forms of apparel represent limitations of the rights of others? Not in a physical sense but in limiting the freedom of others in unacceptable ways. In general, clothing cannot be said to do this. Some might find some forms of clothing—or perhaps the lack of it—offensive, provocative, or indecent. Nevertheless, that does not represent harm to others or limit their freedom.

Free and equal communication

However, communication might be limited by clothing as we know that communication goes beyond speech. Modern linguistics and semiotics will also emphasize that communication between people goes beyond words, involving, for example, body language, facial expressions, and tone of voice. Moreover,

clothes, symbols, and music are also ways of communicating. Within this paradigm, a discourse must not necessarily contain verbal language, but may as well consist of action, objects, movement, music, etc. Thus, it is no longer assumed that a communication situation is monomodal, where there is only one form of expression, one so-called modality, that is effective in creating meaning. Communication is multimodal. We have seen a shift from the one-sided emphasis on verbal language towards communication in a wider sense (see Bateman, Wildfeuer, and Hiippala, 2017, and many others). This implies that our understanding of reality is not exclusively created through the words we choose to use, but also through a number of other ‘semiotic resources’. ‘Semiotic resources’ is a term from social semiotics, based on the idea that meaning is created in social interaction, and accordingly, the term semiotic resources is used as a broader expression than ‘signs’ in ‘classical’ semiotics.

Much of the body language that is relevant here, in teaching situations, is facial, i.e. related to facial expressions. We could emphasize the importance of seeing the other’s face in physiological-psychological terms by referring to the growing insights into the significance of mimicry and the relevance of mirror neurons in interpersonal relations (Gallese, 2008). Seeing the face of those we communicate with, is important for social cohesion and bonding, factors that are important in establishing the trust that is required to establish a common understanding of the meaning of words, gestures, etc. It is only because we have the broader experience of multimodal communication, that we can trust our understanding of words in monomodal settings—for example, when we talk on the phone or listen to the radio. Thus, limiting communication to a monomodal type in an academic setting would be a profound reduction of the possibility to express ourselves and convey meaning in a broader sense than through the material on the reading lists. The multimodality of

communication is part of how intersubjectivity of knowledge is established.

However, I will also argue in a more philosophical-ethical way, drawing on some elements in the philosophy of Emmanuel Levinas (1906–1995). For Levinas, seeing ‘the face’ of the other is of the highest importance as it establishes the fundamental ethical responsibility towards the other (e.g., Levinas, 2006, p. 31ff). By ‘face’ Levinas means the human face but as an abstraction (ibid, p. 39). Nevertheless, even if he saw the first unreflective encounter with the face as the ‘living presence’ of another person and, therefore, as something experienced socially and ethically, the specific face would still be important. ‘The face is a living presence; it is expression. . . . The face speaks. The manifestation of the face is always discourse.’ (Levinas, 1991, p. 66). Levinas’ position is succinctly summarized in the following:

‘Living presence,’ for Levinas, would imply that the other person (as someone genuinely other than myself) is exposed to me and expresses him or herself simply by being there as an undeniable reality that I cannot reduce to images or ideas in my head. This impossibility of capturing the other conceptually or otherwise indicates the other’s ‘infinity’ (i.e., irreducibility to a finite [bounded] entity over which I can have power). The other person is, of course, exposed and expressive in other ways than through the literal face (e.g., through speech, gesture, action, and bodily presence generally), but the face is the most exposed, most vulnerable, and most expressive aspect of the other’s presence (Braungardt, n.d.).

It is not necessary to accept all of Levinas’ (quite impenetrable) philosophy in order to agree with him on the importance of seeing the other’s face so as to recognize the other as a person with dignity and human rights. Another philosophical approach could be that of Socrates (d. 399 BCE), the dialogical method

(see paragraph on pedagogy below). It is difficult to understand how a serious and open dialogue could be carried out between persons on an equal footing if one person—teacher or student—insists on remaining hidden behind a mask.

But, how can it be a violation of someone's rights if 'the other' does not want to reveal his or her face? It is the covered person whose humanity cannot be fully recognized by others. Is this not an individual choice, an individual right to not be identified? In many circumstances, this is so. On the street, one can wear whatever one finds suitable—or deems religiously required.² The situation changes when someone wants to communicate with others and especially if they want to be part of a community. 'Community' and 'communication' both relate to something common, something shared. The word university itself is derived from the Latin *universitas magistrorum et scholarium*, roughly meaning 'community of teachers and scholars'. Being part of a community—e.g. a university or an academic community—means sharing interests, approaches, methods, space (in several ways) as well as languages (common and technical). It also entails interpersonal relations, recognition, and responsibilities. In short, one cannot be a full member of an academic community with its lectures, seminars, and conferences, as well as be part of the campus environment, if one is 'absent', i.e. facially anonymous. This present 'absence' of the person with his or her face covered limits the possibility of everybody else for full and equal communication with the person.

This limitation of the full and equal communication limits the communicative freedom of everybody else when we see communication as a reciprocal process. The quality of communication is reduced. This means that the covered person imposes his/her communicative restriction on others, much in the same way as a teetotaler would impose his/her non-drinking of alcohol on everybody else. This is a limitation of the freedom *in* communication that is unacceptable because the

non-anonymous communicants cannot withdraw from the communicative situation when they are in an academic setting.

Freedom in communication comprises the right to understand the other(s), the communication partner(s), on equal terms. Of course, anyone can retain or not divulge information, about themselves or other matters, in communicative settings, but this would reduce the possibility for others to understand. One could argue that this is something we always do as we never give out our whole life story, including medical records etc., when communicating with others. However, no one is saying that one needs to know everything about a person to understand him or her. The distinguishing criterion here is relevance. While childhood experiences can be relevant in some cases (and should be divulged when relevant), the face is almost always relevant in direct communication—for the reasons given above.

Someone who is hiding her/his face from others is not communicating in an open and equal way. That person is concealing an important part of the communicative context and thus depriving the communicating party of a significant portion of what is needed in order to understand what is communicated. This is limiting the freedom of others by placing an unequal burden of communication on the non-covered party in the communicating relationship, as well as reducing the quality of communication, thus representing harm to others.

In many contexts—on the street, for instance—there is no obligation to communicate with everyone. If someone with a facial covering—veil, crash helmet with the visor down, huge sunglasses—approaches me for directions, I can turn my back or walk away. I am not obliged to accept the inequality of the communicative situation and can remove myself. This is different for both teachers and fellow students. They cannot just leave or turn their backs. This is why facial covering is not acceptable in teaching situations.

This means that apparel that limits access to the faces of the communicating parties hinders communication. It makes it more difficult to assess meanings—especially meanings in context. Is the speaker sad, happy, joking, using irony, etc.? What is the impact of the words spoken to the covered person? Do they create strong emotions or is the recipient oblivious to the joke, the irony, the insult? None of this can be ascertained if the ‘speakers’ are hiding their faces. (It might still be difficult to ascertain the meaning, but that is not an excuse for ‘artificial’ limitations of the possibility to discover the context.)

Pedagogy

Pedagogy can be understood as the art and act of teaching. As a theoretical discipline pedagogy draws on other disciplines such as psychology and sociology. Within this framework, the above reflections are relevant to the understanding of the pedagogical situation, i.e. the act of teaching.

Accordingly, based on the pedagogical considerations related to all the reasons articulated above, it is important for teachers to see the faces of pupils and students. This is a way of ascertaining that they understand what is being taught in class—there and then. It will make the teacher or lecturer able to adjust his/her use of words, tone of voice, gestures, examples, illustrations on the blackboard etc., to suit the level of knowledge of the pupils or students.

There are many pedagogical approaches and methods, but an ideal is still the maieutic method of Socrates (or Plato; Leigh, 2007). This method is a form of a cooperative argumentative dialogue between individuals, based on asking and answering questions to stimulate critical thinking and to draw out ideas and underlying presuppositions—a method that is very suitable

in academic settings. It is a dialectical method, involving an open discussion between (nominally) equal partners in which the defence of one point of view is questioned; one participant may lead others to contradict themselves in some way, thus weakening the defender's point. Again, openness, transparency, and trust are required, but also developed in such a setting but only if the participants are on an equal footing.

It is not only this Socratic or Platonic method that requires equality and openness in the communication between the participants in the teaching situation. Many modern pedagogical methods emphasize the importance of avoiding authoritarian approaches where the teacher or lecturer only speaks to rather than with the pupils/students.

It is hard to see that classes where (some or all) students have their faces covered represent an optimal teaching environment. It is even more important that the pupils and students can see the face of the teacher. This is highly relevant in our context, where the teacher/lecturer must have the same 'right' to hide his/her face as pupils/students. Of course, there are important differences between teachers/lecturers and pupils/students, but as we are discussing a mainly religiously motivated face veil, the religious argument cannot be relevant to or valid for only one side in the communicative situation. If the argument is based on freedom of religion, it must apply equally to both teacher and student. It is hard to envision sound arguments for differing degrees of religious freedom for teachers and students. For example, if teachers can wear a turban, kippa, or hijab, pupils and students should also be able to wear such apparel, and vice versa. Accordingly, if there are sound reasons for why teachers cannot cover their faces, it follows that neither can students.

Thus, based on pedagogical knowledge it would seem clear that facial coverings prevent the parting of knowledge from teachers and lecturers if they wear it, and that it makes it difficult

to impart knowledge to pupils/students who wear it. Consequently, wearing facial coverings in teaching situations represents an infringement of the rights of others, the right of those who do not cover their faces to have the best possible teaching environment and the best possible way of learning.

Trust vs suspicion

Trust has already been mentioned (for more on the importance of trust, see Grimen, 2007). Social interaction relies on trust. Trust can be defined as a firm belief in the reliability, truth, or ability of someone or something. Your trust in someone is your belief that they are honest and sincere and will not deliberately do anything to harm you.

Trust depends on openness and transparency, i.e. knowledge of whom we are associating with. This transparency requires at least a visual access to the others' faces. Furthermore, based on the philosophical reflections above about human dignity, human rights, and mutual responsibility, trust is also based on these factors. They all imply equality. Someone who is hiding him- or herself from the others in a community, undermines trust. It is hard to trust someone who is not present, who has withdrawn from the social relations with others. If a withdrawn person appears anonymously (masked), it is hard to avoid the perception of being spied upon by that person.

Thus, a masked person—e.g. someone wearing a face veil—will be the object of suspicion. That person can also be seen as a threat. The suspicion will, of course, be stronger if you do not meet the person and learn who is behind the mask. However, the academic setting is wider than the closer interpersonal relations that can be established in a class (despite the inequality in the communicative situation). Academia consists of numerous

students, staff, auditoriums, canteens, and outdoor spaces. A campus represents the physical and intellectual setting where trust—including openness, transparency, non-suspicion, and confidence—is of utmost importance for the free pursuit of academic objectives. Accordingly, masked persons on campus undermine trust and violate the rights of others to have the best possible access to academic knowledge, as it also reduces the conditions for intersubjectivity. Wearing a face veil is not a way to practice freedom of expression on campuses. It represents an individual or group identity and, therefore, an identity political position. This contradicts the ethos of the university as a common community, a space for all teachers and students as scholars (and not as Christians, Muslims, Jews, Communists, Conservatives, Feminists, etc.; such identities should be secondary and subordinated the role and identity as scholars in the academic setting).

Merit and professional requirements

Openness, transparency, and trust in academia are fundamental to academia's meritocratic arrangement. If the meritocratic academic system is going to work, it is dependent on honesty, accountability, and confidence. Movement through the system, whether promotions for academic staff or the successive gaining of degrees, is based on merit. This also means that the 'right to education', especially on an academic level, is a limited right. One cannot demand the right to an education if one is unqualified. Thus, qualification assessments are part of the process of progress in education.

Sometimes this assessment goes beyond a valuation of the knowledge acquired. It will also imply an assessment of how the pupil or student acquires knowledge. Does it require special

conditions or measures? Can the pupil/student be taught with others, or does it require individual tuition? Does the student behave in a way that makes it impossible to impart knowledge to her/him in a class with others? Finally, it is a question of suitability. For a number of educations, e.g. teachers and nurses, suitability assessments are part of the overall education process. If personality traits or religious demands make it impossible to live up to or practice the professional standards required by higher education providers and professional unions, then that person has disqualified him-/herself from the study program as well.

Nor can the argument that a face veil is a religious requirement override the theoretical and pedagogical considerations of communication outlined above. That can open the door to other religious practices that will limit the freedom of others, perhaps in a discriminatory way, and/or impose unacceptable costs on the institutions. For instance, one cannot argue that one's religion forbids one to receive instruction from a male (or female) teacher or supervisor and have such a demand accepted.

Furthermore, in many cases, universities train people for professions. In most cases, modern professional ethics do not accept discrimination between the sexes. Thus, training someone on a gender-differentiated basis and then expecting them to behave in a non-discriminating way when they start their professional careers, as teachers, doctors, nurses, social workers, etc., makes no sense. Then the trainees—professionals in the bud—have not been adequately prepared for their 'real-life' work. In short, if they have been allowed to wear facial coverings during their education, they have been given substandard training not suited for their expected professional behaviour. This is not a way to understand freedom of expression in universities.

Freedom of expression and the need for no-platforming

No-platforming can be understood in a limited way as the policy of the British National Union of Students (NUS) that prevents the organizations it lists, which are known to hold racist or fascist views, from speaking at NUS events. This policy also says that NUS officers should not take part in public events with members of these groups (Equality and Human Rights Commission, 2019, p. 35).

With this limited understanding of no-platforming, it is an NUS policy only. Of course, no-platforming can be understood more broadly, even in a generic sense. In its broadest meaning, no-platforming would be any decision not to invite or allow someone to speak at or otherwise participate in an event because of the views of the non-invited person. However, this is a very broad understanding of no-platforming. It would also include any editorial decision not to publish someone's letter to the editor, reject a paper at a conference because of its poor content, not invite a guest lecturer because of certain absurd positions, or lack of pedagogical ability to impart information, etc. In short, one could see no-platforming as the consequence of any editorial or academic decision not to publish or invite someone if the reasons are related to content (and not practical or financial).

Thus, we see that no-platforming can be construed as a wide concept and something occurring every day and as something necessary and unavoidable. It is part of the responsibility of editors, academics, and other institutions. In this sense, everyday no-platforming decisions are part of academic freedom and not a limitation of freedom of expression. No one should be able to oblige someone responsible for an academic course to invite a certain speaker. And no one should have the power to prevent the same responsible academic from inviting a certain guest

lecturer. The non-invitation or non-publication of someone could also be important to ensure the widest possible freedom of expression for others.

In the same way, no one should be able to oblige a student group or union to invite someone for an event or debate. The student group should be solely responsible for whom they invite—and not invite or un-invite. Their reasons are their reasons. This relates to both freedoms of organization and expression.

Whether no-platform policies and practices are a threat to academic freedom or not, depends on, *inter alia*, two factors: why and how the policy is implemented. If a no-platform policy is implemented in order to prevent someone from violating the human dignity and human rights of others, this is a legitimate position, cf. the NUS policy against racists and Nazis. Even if it is not possible to predict whether someone is going to make utterances that will denigrate the human dignity and violate the rights of others, it can be acceptable not to invite or even un-invite, i.e. no-platform, someone whose position otherwise would be legitimized by the person's participation in the event, on the same platform, with serious non-violating participants.

The US group Foundation for Individual Rights in Education (FIRE) has a narrower understanding of no-platforming, calling it 'disinvitation':

The term 'disinvitation incident' is used to describe the controversies on campus that arise throughout the year whenever segments of the campus community demand that an invited speaker not be allowed to speak (as opposed to merely expressing disagreement with, or even protesting, an invited speaker's views or positions). We make a distinction between an attempt to censor a speaker and the actual end result of a

speaker not speaking. ‘Disinvitation incidents’ is the broadest category, including ‘unsuccessful disinvitation attempts’ and ‘successful disinvitations’ (Foundation for Individual Rights in Education, 2016).

FIRE claims that not only are unsuccessful disinvitation attempts increasing but so too are successful disinvitations, which fall into three categories:

1. Formal disinvitation from the speaking engagement.
2. Withdrawal by the speaker in the face of disinvitation demands.
3. ‘Heckler’s vetoes’—in which students or faculty persistently disrupt or entirely prevent the speakers’ ability to speak.

According to FIRE’s database, the number has been increasing over the last 20 years (Foundation for Individual Rights in Education, n.d.).

In a restricted sense, the non-invitation of a person who is seen as lacking academic merits or having views that dehumanize individuals or groups, would not be an example of no-platforming. However, if a person has been invited and then upon second thought is un-invited, it would be an example of no-platforming according to not only FIRE, but also the British Equality and Human Rights Commission. If the views expressed were not unlawful, then according to British law, such no-platforming would be illegal (Equality and Human Rights Commission, 2019, p. 37). As it is difficult to know in advance what a speaker will say at a future event, there are several problems here.

If the un-invitation of a speaker is the result of outside pressure (from others than the organizers of the event), the organizers could be held responsible for a violation of Section 43 of the Education (No 2) Act 1986. Section 43 places a legal duty on universities and other higher education providers to take ‘reasonably practicable’ steps to ensure freedom of speech within the law for their members, students, employees, and visiting speakers (Equality and Human Rights Commission, 2019, p. 13). This can be seen as a positive defence of the freedom of expression but represents a problem for the freedom of organizers to change their mind.

This duty to defend freedom of expression in universities means that ‘reasonable steps’ include acts to prevent protesters from disrupting the event. Thus, it is not acceptable to bow to pressure from protesters. However, protesters also have a right to express their views and should be allowed peaceful protest against an event or speaker (Equality and Human Rights Commission, 2019, p. 36).

On the other hand, the Prevent duty has made it an obligation incumbent on all academic institutions, to no-platform extremists (more on this in the section on ‘Preventing extremism’). However, if a responsible academic person or a student group is obliged by law or public regulation to receive acceptance from someone—an approving or controlling body at the university—this amounts to censorship. Censorship is the scrutiny of (assumed or expected) content of any form of public expression of ideas, meanings, opinions in books, films, newspapers, etc., including public speaking and lectures, intending to prevent or suppress undesired expressions (Anastaplo, 1997). ‘Undesired expressions’ can comprise what is seen as obscene, politically unacceptable, or a threat to security or public order.

Historically, censorship has been carried out by state organs, often regulated by law, even if often practised without legal

foundations in authoritarian regimes or dictatorships (Anastaplo, 1997). Thus, if the state makes it mandatory through laws to screen invited lecturers before they are invited, this represents direct control over academic activities. This is also the case for extracurricular activities on campus organized by student groups.

Censorship must be distinguished from the non-publication of articles, non-invitation of lecturers, etc. for various reasons by private actors, e.g. editors, voluntary organizations, student unions, etc. Such institutions often have as their *raison d'être* the propagation of certain views, opinions, and ideas, and cannot be obliged to become platforms for contrary opinions. This would also be an infringement of both freedom of expression and organization.

No-platforming in the broadest sense represents a challenge to freedom of expression in academia because this could prevent important but controversial persons from speaking. Still, there are reasonable limits to whom one should offer a platform. On the other hand, the denial of a platform to persons because they hold controversial opinions or because someone might be provoked, have his/her feelings hurt or be offended, is unacceptable. However, it might be right to deny someone a platform to avoid giving legitimacy (see below) to certain expressions. Where to draw the line is not always easy to determine—and it is probably not possible to establish definite guidelines in this area.

A general guideline is that human dignity and human rights of individuals and groups should not be violated. Then, however, the challenge is to ascertain when to prevent someone from speaking based on an assumption that something violating human dignity and human rights will be expressed. The alternative might be to let the person speak (no no-platforming!) and then react—with condemnation or prosecution—after the fact.

Safe spaces and trigger warnings

So-called safe spaces can be a place (e.g. on a university or college campus) intended to be free of bias, conflict, criticism, or potentially threatening actions, ideas, or conversations. It can be a term for an area or forum where marginalized groups can avoid mainstream stereotypes and thus the groups can avoid (confirmation of) marginalization. The aim could be to create welcoming, inclusive environments on campus.

Alternatively, it can be a 'space' in which a shared political or social viewpoint is required for participation. Then a feminist safe space, for example, would not allow free expression of anti-feminist viewpoints or perhaps not even positions critical of central feminist tenets. These types of safe spaces represent a serious challenge to freedom of expression in universities because they can be seen as a form of no-platforming of approaches critical to the ideas protected by the safe space. How this is practised becomes important.

Physical safe spaces for certain people or groups—women, minorities—are meant to protect the select group from oppression, harm, or even re-traumatization, as for example in safe spaces for battered and raped women. Women-only classes and workshops are also such safe spaces. Such physical safe spaces are often reserved for members of the oppressed group only. In this form, safe spaces are initially unproblematic—when it is understood as an area where oppressed, harmed, and traumatized people for a period of time can avoid meeting perceived threatening situations. However, when everywhere is meant to be a safe space where no conflicts or perceived threats should occur, 'censoring' bodies will have to enforce safe space standards established on the basis of what might amount to subjective perceptions or specific identity policies.

Of course, everywhere should be a safe space from violence and crime, including threats of violence and violations of human

dignity and human rights. This does not entail a right to not be offended, provoked, or having one's feelings hurt. Nor does it mean a right not to have one's opinions challenged. There cannot be a safe space from this—not in a free society and especially not in serious academic institutions. In academia, it is important to expose students and staff to new and provocative, even offensive, knowledge. To be provoked can be part of the learning process. It is essential to the development of critical thinking and research.

Thus, expanding safe spaces, beyond relevant therapeutic contexts, can be a threat to freedom of expression. Such safe spaces 'have been cited as a reason why freedom of expression may be restricted by SUs [Student Unions], although actual examples are hard to find' (Equality and Human Rights Commission, 2019, p. 39).

Trigger warnings represent a form of mental safe space. They can be defined as written warnings to alert students in advance that material assigned to a course might be upsetting or offensive (National Coalition Against Censorship, 2015, p. 3). They are meant to give students (and others) a chance to deselect or discard certain forms of knowledge. This can be provocative literature or a controversial lecturer.

In certain circumstances, one can understand that, for example, raped women do not want to read novels in an English literature class that can be retraumatizing, or that Jews do not want to read *Mein Kampf* in a political philosophy or political science class. Nevertheless, confronting such provocative literature, films, or other forms of expression are often necessary in order to gain knowledge and understanding. It would be a dangerous loss to education, research, and the accumulation of knowledge to attempt to sanitize students' reading material and curricula from what often is subjectively perceived as injurious.

Another matter is to inform students and others in advance of the content of texts, films, and lectures so they can be mentally prepared to handle what is presented. To shock students and others just for the shock effect, is hardly a pedagogical principle to be generally endorsed.

All in all, safe spaces and trigger warnings in the form of zones and information that will prevent re-traumatization and shock effects are no threat to freedom of expression in academia. However, defining what safe spaces and trigger warnings are too broadly do represent such a threat. A continuous and concrete discussion on where to draw the lines will always be necessary. The guiding principle should, again, be to avoid violating the human dignity of others, including avoiding unnecessary restrictions on the freedom of others.

The discussion about safe spaces and trigger warnings was preceded by, in the late 1980s and early 1990s, and is interrelated with the discussion of speech codes at American universities. This was controversial and has been the matter for court proceedings (Larsen, Lohman and Slavensky, 2013, p. 193ff). The United States District Court for the Eastern District of Michigan has struck down a speech code at the University of Michigan, indicating that too broad speech codes seeking to prohibit hate speech probably violate the First Amendment (*Doe vs University of Michigan*, 1989). Rather than using self-identified speech codes, such language has been more successfully challenged through harassment policies, diversity mandates.

Discriminatory harassment includes conduct (oral, written, graphic or physical) directed against any person or group of persons because of their race, color, national origin, religion, sex, sexual orientation, age, disability, or veteran's status and that has the purpose or reasonably foreseeable effect of creating an offensive,

demeaning, intimidating, or hostile environment for that person or group of persons (Uelmen, 1990).

The arguments against codes to prevent verbal harassment or hate speech are that the costs of enforcing such codes far outweigh their benefits. Threatened by ‘politically correct’ students who are backed by hate speech codes, students who have reasonable, yet nonconforming points of view, will be afraid to speak in classes, i.e. there will be a chilling effect. Hate speech codes encourage an artificial reality on campus that prevents students from learning to tolerate diversity effectively. Furthermore, hate speech codes may obstruct the kind of education that promotes tolerance of diversity in other ways. Over time, the same fervour that brought forth hate speech codes, will bring further restrictions by administrators eager to create egalitarian institutions in a nonegalitarian world (Uelmen, 1990). Some of these arguments are echoed in the views opposing trigger warnings and safe spaces.

Non-legitimizing hate speech

Universities are prestigious institutions. This prestige is established through the quality of their staff and research record. This, in turn, gives legitimacy to the knowledge disseminating from universities. It is seen as trustworthy and even as more trustworthy than other forms of information and knowledge. Thus, universities are not value neutral as they represent the value of truth to a very high degree. Their prestige, if not directly endorsing certain opinions, nevertheless institutionally legitimates the views of guest speakers, lecturers, and others given a university platform.

If the opinions are controversial or offensive, this should not be a problem. Then the ensuing academic and public debate will

balance the matter. If someone is invited to present a theory of a flat earth, it would only diminish the status of the university that allows such absurdities. This is because the position that the earth is flat is easily rejected on empirical grounds. Of course, a university or other institutions of higher learning should not invite a flat earther to speak as it would be a waste of time to listen and refute already refuted ideas. Thus, they would also avoid giving legitimacy to absurdities.

However, if a Holocaust revisionist or denier is invited—to give a lecture, participate in a conference or a panel—much more is at stake than the empirical facts. Holocaust denial carries with it a normative position as well—that of anti-Semitism. While the empirical facts can be set straight, the implied anti-Semitic sentiment represents an attack on the human dignity of Jews. This is not acceptable and should not be given legitimacy.

Legitimacy means that something is in accord with laws, rules, and regulations. However, it also means that something is in accord with values. When truth is an important value associated with universities, it gives legitimacy to the information circulated from them as something true. Furthermore, in their quest for truth, universities are also seen as moral institutions because truthfulness and trustworthiness are moral norms. Universities are also bound by ethical standards in their research and teaching activities. These standards should fit within the overall standards set by human dignity and human rights.

This means that the legitimacy given to a Holocaust-denying guest lecturer is the same as respecting the right to attack the human dignity of others. This is morally wrong but follows from seeing the Holocaust denier's position as a position of equal worth to positions defending human dignity. However, these positions are not 'equal but contrary'. They are of unequal worth because it is morally reprehensible to deny someone full equality in human dignity and rights. Speech advocating such positions could also

be called hate speech (Waldron, 2012; Nilsen 2014). This form of speech also undermines democracy by stating that someone does not have the same rights as others in a democratic polity. Racist, anti-Semitic, Islamophobic, homophobic, and other positions (ideas or ideologies) that attack and undermine the human dignity and human rights of persons and groups, represent a threat to freedom of expression because such positions implicitly deny the equal right of some persons or groups to express themselves—and take part in democratic processes. On the concrete level of discourse, giving legitimacy to those who attack the human dignity of others can also have a chilling effect that reduces overall freedom of expression at universities and in society.

These are strong arguments for no-platforming (and establishing a ‘safe space’ from) those who attack the human dignity of others, at universities and elsewhere.

Preventing extremism

In many countries, the authorities are developing laws and programs to prevent the growth of violent extremism, e.g. Norway, the UK, the US. This in itself laudable aim can, however, be turned into a tool for government control of academic activities. As noted above, it can become an instrument for government no-platforming—in reality, censorship.

Britain is perhaps the Western country that has gone furthest in establishing laws for this purpose. The Prevent strategy, published by the British government in 2011, is part of their overall counterterrorism strategy, *CONTEST*. The aim of the Prevent strategy is to reduce the threat to the UK from terrorism by stopping people from becoming terrorists or supporting terrorism. The Prevent duty became law through Section 26 of the Counter-Terrorism and Security Act 2015. In the Act, the duty

has simply been expressed as the need to ‘prevent people from being drawn into terrorism’.

This duty applies to all higher education providers, schools, and registered early years providers and obligates due regard to prevent people from being drawn into terrorism. In order to prevent this, all staff at universities must be alert to any reason for concern in a student’s life. This includes awareness of the expression of extremist views. In this context, extremist views are considered those that oppose—or merely critiques?—so-called British values. These are defined as a set of four values, i.e. democracy, the rule of law, individual liberty, and mutual respect and tolerance for different faiths and beliefs.

The term ‘due regard’ as used in the Act means that the authorities should place an appropriate amount of weight on the need to prevent people being drawn into terrorism when they consider all the other factors relevant to how they carry out their usual functions (HM Government, 2015, p. 2).

This leaves a wide margin of discretion to the individual institutions, even if due regard to protect freedom of expression is also expected.

In view of this, the British system, based on the Prevent duty, where both academics and student groups are required to obtain prior approval for the guest lecturers or speakers they want to invite, is very problematic. Censorship is a clear threat to freedom of expression and academic freedom.

Norway might be moving in the same direction. In February 2019, the government published the following recommendation in a press release:

Samtidig er det viktig å klargjøre hvilke arrangementer og aktiviteter som ikke bør tillates på campus, og hvem som har ansvar

for å gi råd om dette. Både institusjonsledelse, samskipnader og studentforeninger må være bevisst på hvilke organisasjoner som bruker campus. Her er det viktig å kombinere stor takhøyde for organisasjonsfrihet og debatt med et bevisst blikk på hva de ulike organisasjonene og foredragsholderne står for og hvordan de jobber, samt hva som er lovlig. Det anbefales å ha egne retningslinjer samt egenerklæring for arrangementer i institusjonens lokaler eller på campus generelt (Regjeringen, 2019).

While this press release is not available in English, it was based on the original recommendation (in point 8.I.f) from the Council on Civil Protection and Preparedness in the Knowledge Sector (Beredskapsrådet), available in English translation:

It is important to be clear and specific about which events and activities that *should not be permitted on campus and the person responsible for providing advice on this*. Both institutional management, student unions and student associations must be aware of the organizations that actively use the campus. Here it is important to combine generous freedom of organization and debate with a scrutiny of what the various organizations and lecturers stand for and how they work, as well as of what is legal. *It is advisable to stipulate specific guidelines along with self-declarations for events arranged on the institution's premises or on campus in general* (Beredskapsrådet, 2019; emphasis added).

If this recommendation is implemented, it means that someone will be responsible for clarifying which events and activities should not be allowed on campus. Someone will be made responsible for giving advice on this. It is difficult to see who this person should be. Furthermore, guidelines will have to be made, and forms for self-declaration of events on the institution's premises or on campus, in general, must also be made available.

However, for this to make any sense, someone will have to review these self-declarations before the events take place. Thus, we are not talking about self-declaration in the form of registering (as in a logbook) the event but getting the event, the speaker or lecturer, approved in advance.

In effect, this recommendation amounts to approval of censorship. It does not help that the intention is good, that high regard for organizational freedom and free debate is also recommended. In principle, this represents a problematic limitation of freedom of expression and academic freedom.

These recommendations are made with the intention of preventing so-called radicalization and violent extremism, but this approach to extremism also represents an official and very problematic version of no-platforming.

Nevertheless, there is a challenge here between the legitimate no-platforming of extremism that attacks human dignity and human rights—hate speech (see previous section)—and the danger of too broad censorship. Defending freedom of expression while preventing the spread of hate speech is a difficult but necessary task, especially in academia. Not undertaking the task will undermine the general trust we—the public—should have in academic institutions.

Trust and academic freedom

Trust is essential in all communities, including in academia. All social interaction relies on trust (Grimen, 2017). To meet someone with trust also implies self-disclosure and -exposure (Nyeng, 1999, p. 113; see also Løgstrup, 1991). It is the opposite of hiding one's positions and opinions—and one's face.

A vital academic community rests on the trust engendered through openness and equality. One could also say that 'academic

trust' is synonymous with—or a variety of—confidence. Confidence is trust or belief in the competence of the other, especially in the relationship between students and lecturers, where the students need to trust his/her qualifications. However, this trust or confidence in the teachers must be earned, and this requires openness and transparency, and moral standing.

How can the issues discussed in this chapter affect trust and confidence in academia? All factors that create suspicion can undermine both trust and confidence. And all the issues discussed here have such potential.

Wearing a face veil—or other forms of masks—represents the opposite of openness and equality. Free inquiry requires an open society, a society of equal participants. This is what the academic community is all about. This is why a ban on facial coverings in teaching situations is not a violation of the right to education. That right entails an obligation to respect the best practices of teaching. Such best practices are decided by evidence-based knowledge in disciplines like psychology and pedagogy. In addition, learning with others requires the necessary respect for the others and their rights and equal status.

No-platforming, trigger warnings, and safe spaces are based, in varying degrees, on mistrust—sometimes legitimately because of experienced attacks on human dignity and abuse of trust or even betrayal. Some of it is based on perceptions of untrustworthiness or generalized lack of belief in the honesty, fairness, and benevolence of another party. Therefore, it is important in universities to explain and state positions that clarify—make transparent—the reasons why certain policies are implemented.

This is why the anti-extremism programs and guidelines are problematic in their present forms. They are seen to be directed mainly against Muslims (see Anderson 2016 for an example of this assessment). This can undermine the trust Muslims students have in the academic institutions they have joined, but it can also

cause other students to be suspicious of them. Such suspicions are detrimental to the academic community—and can spread into the rest of society. This is not only a threat to academic freedom but can also undermine integration and social cohesion.

The current situation

The reflections in this chapter are mainly a discussion of principles. However, the discussed limitations of freedom of expression also have very practical aspects. So, what is the actual effect on freedom of expression in universities?

In the Western world—so far—the impact has been limited. The challenges from students wearing face veils have always been slight as the number of students wearing the *niqab* has been small, especially in Norway (Regjeringa, 2018, p. 20). In Norway, students wearing face veils were not able to undermine trust or create an insecure atmosphere. In that sense, the law banning face coverings in teaching situations might have been an exaggerated measure. One could also argue that the ban has stigmatized (some) Muslim students, but there is no real evidence for that—so far.

The no-platforming discussion has had a certain impact in several countries, but mainly in the US. While some cases of no-platforming in academia have received media attention, the overall phenomenon seems limited, but there is fear that it is growing. In Norway, the discussion has primarily taken place outside the universities and been related to the media and civil society (NGOs). For example, there was a heated debate about the invitation of Steve Bannon to the Nordic Media Festival in May 2019, where a number of people demanded no-platforming of Bannon.³

Safe spaces and trigger warnings would seem to be primarily a US phenomenon, perhaps with a certain impact in the UK.

However, even in the US, trigger warnings can be seen as a marginal phenomenon (National Coalition Against Censorship, 2015), although there are fears that the phenomenon is growing. Till now, safe spaces and trigger warnings do not seem to have had much influence on Norwegian academic organizations. However, we lack systematic investigations into the actual extent and impact of no-platforming, safe spaces, and trigger warnings in Norwegian universities.

Preventing extremism and so-called radicalization (better: extremization, see Gule, 2018) has been of great concern in many countries for several years. The UK has gone the furthest with its Prevent duty. Even if this represents a serious challenge to freedom of expression in academia, the overall negative impact seems to be limited.⁴ Nevertheless, through the focus on Islamist extremism, many young Muslims feel stigmatized—and not only in academic institutions. This is most unfortunate.

Norway needs to learn from these experiences before the government recommendations worked out by the Council on Civil Protection and Preparedness in the Knowledge Sector—the Emergency Preparedness Council—especially recommendation 8.I.f. are implemented. In view of the limited threat from violent extremists to the physical, academic community in Norway, it is important to show restraint in implementing ‘countermeasures’. They could backfire and create the problem they are meant to prevent through marginalization, stigmatization, and polarization.

Academic freedom

Academic freedom, the liberty of thought and expression that has been claimed by teachers and others in higher education, has been growing for many decades but not unhindered (Fellman,

2003). Academic freedom is the freedom of teachers and students to teach, study, and pursue knowledge and research without unreasonable interference or restriction from the law, institutional regulations, or public pressure. Its basic elements include the freedom of teachers to inquire into any subject that evokes their intellectual interest; to present their findings to their students, colleagues, and others; to publish their data and conclusions without control or censorship; and to teach in the manner they consider professionally appropriate. For students, the basic elements include the freedom to study subjects that concern them and to form conclusions for themselves and express their opinions (Encyclopædia Britannica, 1997).

The struggle for academic freedom is not over and cannot be won once and for all. It is a daily struggle where freedom of expression is a very important tool. However, freedom of expression is more than a tool. It is a value, an autotelic value, and an intrinsic part of human freedom. As a human freedom, it is also part of what constitutes human dignity. Nevertheless, the use of freedom of expression has its limitations as it should not be used to undermine or attack the human dignity of others.

With this paradoxical structure of freedom of expression in mind—as an intrinsic value and a tool that can be abused to negate the freedoms of others—, it is necessary to work out how to use and not use our freedom of expression. It is, therefore, necessary to pay close attention to the conditions of academic freedom. These are not only related to the non-interference in the acts of expressing oneself. These conditions include trust, transparency, openness, intersubjectivity, all of which needs to be informed by our best, often evidence-based, knowledge in various fields, like epistemology, pedagogy, and communication theory. Thus, there are limits on certain freedoms (of expression) in order to create the optimal conditions for academic freedom.⁵

Universities and other institutions of research and higher education need to rise to this challenge of balancing the requirements of academic freedom and the defence of human dignity and human rights with the optimal freedom of expression within the institutions. Seeking and discussing this balance will be a contribution to both freedoms of expression and academic freedom.

Notes

1. The obvious solution, which cannot be considered unreasonable discrimination, is that orthodox-fundamentalist Jews and Muslims bring their own food (lunch boxes) to campus. The relevant human right in this case is the right not to be unreasonably discriminated against as there is no human right to a menu of one's choice. And there is a difference between having completely halal and kosher kitchens and providing what most Muslims accept as halal food. Many, if not most, canteens at Norwegian universities serve halal food in this sense.
2. There could be other concerns justifying a general ban, for example security reasons. This has been used as reasons in both France and Belgium. The reasons have been rejected by the UN Human Rights Committee (Barns, 2018) but accepted by the European Court of Human Rights (Regjeringa, 2018, p. 19; see also the discussion of human rights in the same document, p. 16–17).
3. See the festival program at <https://www.nordiskemediedager.no/en/program-2019/steve-bannon-what-is-his-goal/session/> and <https://www.nordiskemediedager.no/program/aarebrotsamtalen-ytringsfrihet-under-press/session/>.
4. This conclusion is based on my visit to England and Scotland in February 2018 where I had talks with both researchers and Prevent practitioners. The overall impression is that the Prevent duty in principle represents a serious challenge to freedom of expression in institutions of higher learning, but in practice the effects are not as negative as could be feared. This fact illustrates the above-mentioned margins of appreciation the various institutions have and also that the British tradition of free speech remains strong. For just two examples of evaluations of the Prevent Duty, see Busher et al., 2017 and Heath-Kelly and Strausz, 2018.
5. A parallel would be the ban on piercings within the health sector and the ban on alcohol when driving—in order to avoid harm to others.

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