

The Simultaneous, Crucial Pursuit of Academic Freedom and Equity, Diversity, and Inclusion through a Relational Approach

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Academic freedom is anchored in origin and purpose to the protection of unorthodox ideas and minority perspectives—and, by extension, to the holders of those perspectives—within institutions of higher learning. This protection is understood as essential to the pursuit of knowledge and inquiry, the goal that lies at the heart of knowledge discovery, production, and dissemination. Contemporary conversations about academic freedom have, however, pitched it as competing with institutional obligations to uphold and promote the rights of underrepresented groups on university campuses, notably via equity, diversity, and inclusion (EDI) initiatives. Hence, a core question that challenges contemporary universities is whether, and under what circumstances, academic freedom might be bridled to prevent or halt harm. This question can be further finessed by exploring who bears vulnerability in campus contexts and interrogating whether universi-

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ties ought to intervene in curbing the exercise of academic freedom when the harm in question affects socially oppressed groups and whether such harm should be interpreted with enough breadth to tolerate instances of injury to feelings or the compromise of emotional and psychological safety.

Faced with such a question, typically arising in the context of fraught campus controversies, universities face a seemingly intractable debate between two opposing camps. A first posits that ideas and their expression can inflict real harm and violence, which in turn warrants institutional intervention, especially but not exclusively when members of socially oppressed groups experience harm.² EDI, centered on the goal of promoting access to and belonging within institutions of higher education for members of these groups,³ can thus be invoked as a shield against expression understood to be harmful. An opposing view holds that a university must reflect openness to and curiosity about all concepts and arguments, even those that

2 See, e.g., Jennifer Saul, "Beyond Just Silencing: A Call for Complexity in Discussions of Academic Free Speech," in *Academic Freedom*, ed. Jennifer Lackey (Oxford: Oxford University Press, 2018), 119; Mary Kate McGowan, "On Political Correctness, Microaggressions, and Silencing in the Academy," in *Academic Freedom*, ed. Jennifer Lackey (Oxford: Oxford University Press, 2018), 136; Bernard Shapiro, "The Role of Universities in a Changing Culture," in *Academic Freedom and the Inclusive University*, ed. Sharon E. Kahn and Dennis Pavlich (Vancouver: University of British Columbia, 2001), 30; Saba Fatima, "I Know What Happened to Me: The Epistemic Harms of Microaggressions," in *Microaggressions and Philosophy*, ed. Lauren Freeman and Jeanine Weekes Schroer (London: Routledge, 2020), 163; Azeezat Johnson and Remi Joseph-Salisbury, "'Are You Supposed to Be in Here?' Racial Microaggressions and Knowledge Production in Higher Education," in *Dismantling Race in Higher Education: Racism, Whiteness and Decolonising the Academy*, ed. Jason Arday and Heidi Safia Mirza (Cham: Springer, 2018), 143. It is worthwhile noting that calls to limit academic freedom do not only stem from those who support the rights of minorities and excluded communities. See, e.g., "Map: Where Critical Race Theory Is under Attack," *Education Week*, September 2, 2021, www.edweek.org/policy-politics/map-where-critical-race-theory-is-under-attack/2021/06.

3 This objective is questioned not only by scholars concerned with EDI as contributing to mission drift within universities but also by critical scholars who speak to the challenges of implementing meaningful EDI programs, some of whom suggest that a university's EDI efforts seek to mask or dilute the discriminations faced by members of disadvantaged communities while failing to take the transformative actions needed to root out structural biases. See Sara Ahmed, *On Being Included: Racism and Diversity in Institutional Life* (Durham: Duke University Press, 2012); Richard Hall et al., "Struggling for the Anti-racist University: Learning from an Institution-wide Response to Curriculum Decolonisation," *Teaching in Higher Education* 26 (2021): 902; Ebony Omotola McGee, "Interrogating Structural Racism in STEM Higher Education," *Educational Researcher* 49 (2020): 633; M. Neelika Jayawardane and Rinaldo Walcott, "Diversity Efforts in Universities Are Nothing but Façade Painting," *Al Jazeera*, May 7, 2021, www.aljazeera.com/opinions/2021/5/7/diversity-efforts-in-universities-are-nothing-but-facade-painting; Paul Gorski, "Avoiding Racial Equity Detours," *Educational Leadership* 76 (2019): 56.

might be subjectively or objectively offensive.⁴ For this group, academic life must accept the free exchange of ideas that encourages or at least permits these ideas to be argued, tested, and debated, regardless of their propensity to engender controversy.

Advocates on each side of this debate commonly present their positions with an absolutism and conviction that can be jarring. Particularly striking is the sense one gets, listening to or reading these advocates, that theirs is the position marked by moral superiority and absolute truth. Proponents do not seem shy to show disdain for those with more nuanced or contesting positions. In consequence, the debate is oversimplified, with each side risking self-caricature, compromising the important arguments they each make.

Often university constituents turn to those at their helm, seeking decisive intervention. Yet while university leaders—presidents and principals, provosts, and deans—are charged with listening to and carefully considering varying sides of a debate, in all but the simplest of cases they cannot altogether set aside one line of argument in preference to another. That is, they do not have the prerogative of dismissing arguments promulgated about academic freedom, the latter being a core value animating the mission of higher education. Neither can universities ignore or refrain from acting to address historic institutional practices that have perpetuated structural inequities by limiting opportunities for higher education and social advancement for historically dominated groups. Both of these realities—the need to preserve academic freedom and the imperative to embed equity—matter to universities, even when they seem to be at odds. How, then, can academic institutions pay attention and give credence to divergent positions on this issue while avoiding the trap of prioritizing one over the other?⁵

4 See, e.g., Joanna Williams, *Academic Freedom in an Age of Conformity: Confronting the Fear of Knowledge* (London: Palgrave Macmillan, 2016), 4. The author argues that speech codes, antiharassment policies, and equality and diversity initiatives, while well intentioned, have the effect of privileging intellectual safety and comfort over academic freedom. See also William M. Bowen, Michael Schwartz, and Lisa Camp, *End of Academic Freedom: The Coming Obliteration of the Core Purpose of the University* (Charlotte: Information Age, 2014), 146: “Political correctness can give rise to scholarship that does not seek the truth (however conceived or defined) or even argues the issues, but rather increases the power and influence of particular moral, political, or individual positions or groups.” John Fekete, “Academic Freedom versus the Intrusive University,” in *Academic Freedom and the Inclusive University*, ed. Sharon E. Kahn and Dennis Pavlich (Vancouver: University of British Columbia, 2001), 78.

5 In Canada, academic freedom and EDI are issues recently positioned as competing with one another. See, e.g., Jessica Murphy, “Toronto Professor Jordan Peterson Takes on Gender-Neutral Pronouns,” *BBC News*, November 4, 2016, www.bbc.com/news/world-us-canada-37875695; Konrad Yakabushii, “The

In this chapter, I argue for an approach that moves away from rights-based arguments, which have been centered in recent campus debates about academic freedom and EDI in North America. Within these debates, academic freedom and EDI have each been positioned as individual liberty and free speech rights tied to the autonomy and self-fulfillment of their respective holders set against the collective rights of a certain group or community and identity politics.⁶ This framing of the debate as a competition of rights incites institutions to wade into the conflict by determining which of these prevails or trumps the other. The invariable result is an identification of winners and losers, which ultimately proves unhelpful to developing more nuanced, less polarized engagement on one of the toughest contemporary social challenges for today's Western universities.

What if, instead, our discussions about academic freedom and EDI distanced themselves from rights and instead zeroed in on *relationships*? Such an approach, which draws on feminist relational theory, would seek to identify connections deserving of protection and preservation in university settings.⁷ It would at the same time foreground the obligations of different actors, accounting for the formal and informal power that they hold about each other. A relational understanding of rights and autonomy might thus permit greater nuance in situations where academic freedom and EDI appear to be in tension.

University of Ottawa Throws Academic Freedom under the Bus," *Globe and Mail*, October 21, 2020, www.theglobeandmail.com/opinion/article-the-university-of-ottawa-throws-academic-freedom-under-the-bus/; "Concordia Students Launch Petition Condemning Film Professor's Use of N-Word in Class", *CBC News*, August 6, 2020, www.cbc.ca/news/canada/montreal/concordia-film-professor-use-of-n-word-in-class-1.5676992. Of course, academic freedom also protects the development and expression of critical social perspectives that center antioppression theory and praxis. The point has emerged in American contexts where private or public interests are alleged to interfere with so-called social justice or "activist" scholarship. See, e.g., Margaret Sullivan, "Why It's So Important That UNC Trustees Give Nikole Hannah-Jones the Tenure She Deserves," *Washington Post*, June 29, 2021, www.washingtonpost.com/lifestyle/media/unc-nikole-hannah-jones-tenure/2021/06/28/cb51a03e-d82a-11eb-bb9e-70fda8c37057_story.html. Thus, while this chapter focuses on situations in which arguments arise over whether academic freedom and EDI appear unaligned, it acknowledges the reality that, in some circumstances, these values will be mutually nourishing.

- 6 Nadine Strossen, *Resisting Cancel Culture: Promoting Dialogue, Debate and Free Speech in the College Classroom* (Washington, DC: American Council of Trustees and Alumni, 2020); Fekete, "Academic Freedom versus the Intrusive University." For a nuanced reading of this rights-based analysis, see Judith Butler, "Exercising Rights: Academic Freedom and Boycott Politics," in *Who's Afraid of Academic Freedom?* ed. Akeel Bilgrami and Jonathan R. Cole (New York: Columbia University Press, 2019), 293.
- 7 See, e.g., Jennifer Nedelsky, *Law's Relations: A Relational Theory of Self, Autonomy, and Law* (Oxford: Oxford University Press, 2012).

Critical feminist scholars over several decades have developed theories of rights in relationships, which interrogate traditional liberal approaches to rights as tethered to individualism. Orthodox liberalism casts rights as invocable as political “trumps” that protect each of us from state or private encroachment, or as requiring a “balancing” when they compete with one another. By contrast, a relational interpretation of rights moves away from this atomistic understanding and sees the human capacity for autonomy and agency as necessarily dependent on, and existing within, social contexts and relationships. Developed from work that first emerged more than three decades ago, relational theory was originally understood as tied to feminist and care-based ethics.⁸ Over time, concerns about essentializing experiences and identities along gender lines prompted a more refined discourse based on relationships and relationality.⁹

Understanding rights as existing within human relationships generates four principles that help examine the issues considered in this chapter. *First*, human agency can only be actualized in the context of healthy interpersonal relationships. As such, caring for those relationships so they are marked by trust, generosity, and empathy is essential to a fulsome expression and exercise of rights. In this way, relationships—rather than the individuals who are parties to them—are “at least the primary, if not the most fundamental, units of moral concern.”¹⁰ A *second* principle is related to the first. It posits that social relations will exert an impact on a person’s ability to exercise agency.¹¹ Accordingly, while liberal theories position individuals as consistently already ready and able to exercise rights, relational perspectives cast each of us as dependent, vulnerable, and reliant vis-à-vis one another, such that our capacity for autonomy is tied to the broader notion of social inter-

8 Carol Gilligan, *In a Different Voice: Psychological Theory and Women’s Development* (Cambridge, MA: Harvard University Press, 1982).

9 Nel Noddings, *Caring: A Relational Approach to Moral Education* (Berkeley: University of California Press, 2013), cited in Thaddeus Metz and Sarah Clark Miller, “Relational Ethics,” in *The International Encyclopedia of Ethics*, ed. Hugh LaFollette (Hoboken: Wiley-Blackwell, 2016), 6.

10 Metz and Miller, “Relational Ethics,” 7.

11 There is some debate here within the discipline about the extent to which social connections affect individual agency, with some philosophers taking the view that the former influences the latter and others arguing that the former is constituted of the other. See Marina Oshana, “Is Social-Relational Autonomy a Plausible Ideal?” in *Personal Autonomy and Social Oppression*, ed. Marina Oshana (London: Routledge, 2014), 3; John Christman, “Relational Autonomy, Liberal Individualism, and the Social Constitution of Selves,” *Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition* 117 (2004): 143.

dependence. *Third*, understanding rights as “socially embedded” or as existing “within relationship” calls for the explicit recognition of obligations as the necessary corollary of rights. As one author has stated, rights call for “answerability.” In other words, one who holds rights also holds responsibilities.¹² Thus, both rights and responsibilities ought to be shaped with reference to the relationships in which they exist. *Fourth*, relational autonomy resists the precept that the sage exercise of judgment calls for logical and impartial moral reasoning, to the exclusion of emotion. Instead, proponents of relational theory intentionally make room for personal and emotional elements within analyses and decisions. As such, within a relational framework, the subjective (emotions, identities, experiences) will matter, especially as it shapes interpersonal connections.¹³

This chapter does not undertake to contest or further refine relational theories of rights. Instead, it draws on this conceptualization to propose an approach to contemporary academic freedom and EDI debates, which concerns itself first and foremost with the relationships that lie at the heart of the academic missions of Western universities: that is, producing, advancing, and disseminating knowledge through teaching and research.

Because I believe it is both more interesting and instructive to ground discussions about concepts and theoretical frameworks with reference to examples, I begin the essay (first section) with a case study. I use this case study throughout the text as a reference point to examine how a relational framework can guide—from both analytic and governance perspectives—approaches to academic freedom in higher education institutional settings. Thus, following the presentation of the case study, I discuss a principal relationship at the heart of many situations where academic freedom ostensibly clashes with EDI in a university setting: that between professor and students (second section). Here, I consider how an approach that aims to cultivate that relationship could inform our approach to academic freedom. Finally, I explore (third section) the feminist argument that rights are not only relational but also nestled within larger social frameworks. In higher education,

12 Andrea C. Westlund, “Rethinking Relational Autonomy,” *Hypatia* 24 (2009): 28. According to the author, a key component of autonomy is the “the disposition to hold oneself answerable to external critical perspectives on one’s action-guiding commitments.”

13 Lucy-Ann Buckley, “Relational Theory and Choice Rhetoric in the Supreme Court of Canada,” *Canadian Journal of Family Law* 29 (2015): 265.

the university provides that framework. I thus consider how universities might work to nourish positive professor–student relationships that foster learning and discovery even in circumstances of tension and controversy.

While I focus here on the professor–student relationship, I do not intend to suggest that this is the only or even the most important connection that deserves attention in debates emerging within and about higher education. Besides students and professors, myriad other groups—such as labor and student associations, alumni, parents, and external communities—have varied and intersecting connections with one another. These are connections that university leaders must appreciate and account for in developing and implementing university policies. For the purposes of this essay, however, I consider the parties that will have the most direct and immediate interest in questions arising from the case study presented on academic freedom and EDI. Moreover, as I have suggested earlier, the health of this relationship both depends on and stands to be affected by the university context in which it is situated.

Having set out this background, I turn to a discussion of the case study that will ground the analysis developed throughout the balance of this chapter.

CASE STUDY

This case study is fictional. It draws on themes arising in several different incidents emergent in universities across North America, especially over the last decade or so. I have decided to build this case study on the issue of sexual violence as this topic relates to my disciplinary expertise and is one that can generate intense reactions and perspectives in higher learning settings. Having worked on sexual violence policies and their application in my home institution, I am aware of how challenging the issue can be in university settings. Moreover, while commonly framed as a gendered issue, sexual violence has transversal and intersectional implications; it is a topic that affects everyone, albeit in different ways.

With this rationale in mind, I invite the reader to consider the following scenario.

Professor X is a criminal law scholar and tenured professor. Part of her research focuses on so-called rape-shield laws, which exist in many Western juris-

dictions.¹⁴ These laws generally prohibit, in the context of criminal sexual assault trials, defense counsel from questioning a complainant about their sexual history. The laws seek to protect complainants who testify from being discredited through the introduction of evidence about their sexual past, which contemporary law deems irrelevant to determining the guilt or innocence of the accused.

Professor X's view on rape-shield laws goes against the grain. In her writing and teaching, she has expressed the view that these laws have the effect of denying procedural fairness to the accused. For Professor X, the defense's ability to adduce any evidence to show that the accused reasonably believed that the complainant consented to sexual activity should be admissible. This is true even if that evidence relates to the complainant's sexual history. Excluding that evidence, according to Professor X, is a denial of an accused's constitutional right to a fair trial.

Professor X's views have sometimes prompted lively debate in her class, "Criminal Justice 135." This year, things became intense. Initially, three of her students met with Professor X to present "a demand from students." They indicated that, because the professor's views on rape-shield laws are "triggering" to survivors of sexual assault, Professor X ought to skip this topic when it came time to teach it. The students presented an alternate "demand" should Professor X refuse the first. The alternate demand was framed as follows: teach the material factually and without reference to her own views on the matter.

Professor X thanked the students for raising their views, which she stated reflected those of some students she had taught years prior. She went on to state, "I will not be deviating from the manner in which I have taught this material in the past." The conversation ended there.

Shortly thereafter, the students wrote to Professor X's chair to request that a guest lecturer be brought in as a substitute for Professor X on the module in "Criminal Justice 135" related to sexual assault. The reply from the chair was cursory and indicated there would be no substitution of the instructor.

Students subsequently wrote an "Open Letter to the Students of Criminal Justice 135," which they circulated on social media. It read:

Students of Criminal Justice 135: You are called to stand in solidarity with millions of sexual violence survivors worldwide, including those on

14 Criminal Code, RSC 1985, c C-46, s 276.

our campus, whose sense of self-worth, safety, and truth is compromised by the likes of our instructor, Professor X. If Professor X had her way, the shreds of protection survivors have in the criminal justice system would be eviscerated. Professor X lacks empathy for those of us who are survivors. She invalidates us. She must not be allowed to teach us Criminal Justice 135, a mandatory course. By allowing Professor X to retain this teaching privilege, the university negates our basic right to safe and dignified learning spaces. We call on you to write the Chair to demand that Professor X be removed from teaching mandatory courses and that she be required to follow sensitivity training related to sexual violence and consent. Until that happens, we will wear black to Professor X's classes as a symbol of our grief. We call on you to join us.

Professor X learns of this social media campaign, which has received many "likes" and expressions of support. She connects with her department chair demanding that the university intervene to protect her reputation and support her mental health. She reveals that she herself is a survivor of a violent sexual assault during her undergraduate years. She claims to be unable to return to the classroom without demonstrated support from her university. She asks that the institution reprimand the students and require them to withdraw their open letter.

THE PROFESSOR-STUDENT RELATIONSHIP

The most obvious relationship at stake in this case study is that between Professor X and her students. Here, a singular focus on rights—whether of the professor or her aggrieved learners—neglects the ramifications of the exercise of these rights. Notably, rights-based claims open minimal, if any, space for thinking concomitantly about the parties' duties vis-à-vis one another. Likewise, zeroing in on rights fails to consider the adverse ramifications of such claims, notably the potential instability that conflicting claims will invariably inject into the learning environment. A shift to a focus on the relationships among the protagonists is not only worthwhile but necessary for the learning environment in question to function as a site where healthy exchange and learning—even if marked by disagreement or discord—can occur.

What, then, would a shift away from concentrating on rights to a focus on relationships look like in this scenario? A relational approach to rights helps us identify two key elements that would support a way forward. A first calls for acknowledging and validating the experiences and emotions—in addition to the intellectual concepts—at play, through an approach and actions rooted in *empathy*. Second, relational perspectives require an analysis of rights through a lens that concomitantly examines the *responsibilities* of the parties to the relationship concerned. This two-pronged approach can be made more concrete by examining it with reference to the different players in the relationship at issue here.

PROFESSOR X

Professor X's manner of engagement with her students, as outlined in the case study, privileges her freedom to share, through her teaching, a controversial position that she formed through her research. Her right to take and communicate this position seems clearly within the remit of free expression and academic freedom. At the same time, her approach stands to undermine objectives core to the mission of higher education, namely, learning, discovery, testing new ideas, and advancing student knowledge and capacity. Arguably, by insisting on her right to impart her controversial views, especially if she is not at the same time acknowledging the impact of doing so on at least some of her students, she risks alienating those students and thus curtailing their learning.

By contrast, a relational approach would invite Professor X to consider her responsibilities in addition to her rights. Once aware that some of her students are not at ease with her argument on rape-shield legislation, a more promising approach would acknowledge students' differing views, emotions, experiences, and perspectives while providing a rationale for the professor's position on the subject matter.¹⁵ This approach does not call for Professor X to abandon the topic or be silent about her views in its regard. But it does prompt a discussion with students about why the material is important. It should also nudge Professor X to think critically about pedagogy. That is,

15 For similar approaches, see Terri E. Givens, *Radical Empathy: Finding a Path to Bridging the Racial Divides* (London: Policy Press, 2021); Sigal Ben-Porath, "Campus Free Speech in Polarised Times," *Law, Culture and the Humanities* 19 (2020): 1.

knowing that at least some of her students are adversely affected by her take on the topic of rape-shield laws, a thoughtful approach would call for classroom techniques that encourage all students' fulsome engagement. Those techniques would proactively welcome students and facilitate their engagement within the learning space regardless of their views on the matter concern or whether these accord with their instructor's.

Further, a relational approach, which centers both rights and responsibilities, calls for reflection on how the exercise of one's rights will impact others.¹⁶ For Professor X, this would mean considering how at least some survivors might interpret and be affected by her critique of rape-shield laws. Looking even further ahead, Professor X would be wise to consider her own resilience, given the predictable objections to her work. That is, while Professor X has the freedom to advance arguments some will find controversial or even distasteful, that freedom is not accompanied by a right to be shielded from pointed criticism. Of course, when such criticism moves into the terrain of bullying or harassment, protection may be in order. But leaning on academic freedom to justify the advancement of unorthodox arguments requires one also to be ready and willing to face foreseeable resistance and objection, even when the latter becomes loud, sharp, and public. And of course, it remains critical for those who bear the privilege and responsibility of university teaching to be aware of and sensitive to the evolving nature of the student body. Time and place will play a significant role in the scope of deference students will bring to their relationships with their courses and the people who deliver them. This means that instructors ought to be prepared for varying degrees of opening, questioning, and critique by students, which ought to be welcomed while also ensuring that students understand the importance of and deploy evidence-based argument and respectful engagement.

A focus on responsibilities also would facilitate recognition that an instructor who perseveres with an absolute focus on rights and freedoms might fall short of her own duties to her learners, the duty of faculty to

¹⁶ Although not from a relational approach, the following articles emphasize the importance of responsibility and duties of academics in the exercise of academic freedom: Heather Douglas, "Scientific Freedom and Social Responsibility," in *Science, Freedom and Democracy*, ed. Péter Hartl and Adam Tamas Tuboly (London: Routledge, 2021), 68; Stuart Chambers, "Academic Freedom Entails Both Individual and Social Responsibility," *Academic Matters*, January 14, 2021, <https://academicmatters.ca/academic-freedom-entails-both-individual-and-social-responsibility/>.

respect students' right to dignity and freedom of expression.¹⁷ In our case study, Professor X's terse response to her students, and insistence on teaching her material in the manner to which she was accustomed, contributed to circumstances that stood to detract from the learning environment. The cascade of events that ensued from Professor X's initial encounter with her students would have the result of enmeshing all learners in the course in a potentially hostile classroom context, regardless of their individual views on rape-shield laws. It also risked creating a major distraction from a core principle of criminal justice, namely, the right of an accused person to robust protection from the state's bluntest instrument (penal law), which in most Western legal traditions is constitutionally enshrined. This is an irony given that Professor X's position was entirely rooted in concern for that principal.

A relational approach also might probe Professor X to consider her connections and duties to her discipline and to the professional field in which she trains her students. As a professor of criminal justice, Professor X has a responsibility to be mindful of the various circumstances and scenarios her students will encounter postgraduation. Although her teaching ought to be marked by diligence, care, and equity, Professor X would do her students no favors by leaving aside controversial topics or perspectives. Students of criminal justice must understand the rules of evidence and criminal procedure, even if some aspects of acquiring that understanding are difficult or troubling. It is thus crucial, in thinking about academic freedom, to situate analyses within collegial and disciplinary contexts, and the various networks and obligations that exist therein. A law professor has to teach, and a law student has to learn, core juridical doctrines and tenets. It is only by understanding and engaging with these doctrines and tenets that scholars and students alike can begin to think about them critically, assess whether they yield just outcomes, and work to transform them where they fail to do so.

Drawing on a relational approach, which at once creates space for recognizing divergent experiences and emotions while at the same time centering responsibilities alongside rights, Professor X stood to do better at centering her students' learning. This approach would have been possible regardless of Professor X's views on some of her student's critiques. Focusing on pre-

17 On academic freedom of students, see Bruce Macfarlane, *Freedom to Learn: The Threat to Student Academic Freedom and Why It Needs to Be Reclaimed* (London: Routledge, 2017).

serving her relationship with students, which is grounded in the vocation of teaching, Professor X could have demonstrated that her students' claims, rooted at least in part in emotion and experience, are worthy of being taken seriously in academic contexts. Further, while under no obligation to share her own identity and experience as a survivor, this factual element complicates the discourse that all too often, in the context of campus debates, sets up reductive "us vs. them" or "ally vs. foe" camps. As a result, the nuance and messiness inherent to human identity and human relationships risk being neglected, even though grappling with these complexities is a crucial part of the learning that can happen through rich and robust campus dialogue.

PROFESSOR X'S STUDENTS

Having looked at how a relational approach might have shaped Professor X's engagement with her students, I turn now to the converse question: How would an emphasis on relationship have affected the students' ability to preserve their basic right to safe and dignified learning spaces?¹⁸ Before delving into this question, I think it is helpful to draw a distinction between formal and informal power. *Formal* power refers to the power that accompanies institutional positions that afford knowledge, access, and influence related to institutional governance and formal decision-making within institutions.¹⁹ *Informal* power refers to the influence exercised outside of institutional systems and can be equally or more impactful than formal power in affecting outcomes.²⁰ A good example of formal power within higher education settings is the power a graduate supervisor exercises when she assesses her student's dissertation or writes a reference letter for that student. A good example of informal power is the influence that can be exerted by students through petitioning institutional actors and by relying on mainstream or social media campaigns to shine a light on institutional challenges and shortcomings.

18 John Palfrey, *Safe Spaces, Brave Spaces* (Cambridge, MA: MIT Press, 2018); Karin K. Flensner and Marie Von der Lippe, "Being Safe from What and Safe for Whom? A Critical Discussion of the Conceptual Metaphor of 'Safe Space,'" *Intercultural Education* 30 (2019): 275; Eamonn Callan, "Education in Safe and Unsafe Spaces," *Philosophical Inquiry in Education* 24 (2016): 64.

19 José M. Peiró and José L. Meliá, "Formal and Informal Interpersonal Power in Organisations: Testing a Bifactorial Model of Power in Role-Sets," *Applied Psychology: An International Review* 52 (2003): 14.

20 Peiró and Meliá, "Formal and Informal Interpersonal Power in Organisations," 14.

When thinking about the professor–student relationships, some might reject the proposition that students hold any power and that they could be compelled to bear responsibility to sustain the health of this relationship. Those who hold this view might even use terms such as “institutional gas-lighting” and “victim-blaming” if asked to identify the obligations of students in the Professor X case study. There is some political utility to terms like this; they draw attention to and underscore the strength of emotion and conviction at play in a debate. Less helpful are absolutist or incendiary labels that serve to depict power as existing solely in its formal, institutionalized form. That approach does little to cultivate critical campus relationships, especially in situations of controversy and conflict. It also can minimize the actual power of the student body at large and its ability to publicize episodes to which it objects.

Without question, students have far less formal power than their professors. At the same time, students do enjoy some formal power vis-à-vis faculty, for example, in the context of assessing their instructors in the context of course and teaching evaluations. They also might enjoy considerable informal power.²¹ Students’ political capital and energy have allowed them to lead social movements over time.²² Thus, while students are the beneficiaries of the relationships of trust and a duty of care in higher educational settings, they also hold responsibilities within this context.

Student responsibility translates, in the context of the case study presented here, into a duty to engage with their instructor with empathy and openness to hearing her perspectives.²³ Just as students have every right to expect respect and civility in their interactions with professors, the reverse is true. Here, a focus on relationships could have spurred the students to

21 The issue of whether a faculty member is tenured or untenured will also have some influence over the degree of power—be it formal or informal—students might exercise in her regard. See Saul, “Beyond Just Silencing,” 120.

22 James Paterson, “Student Activism on the Rise,” *NEA Today*, March 9, 2021, www.nea.org/advocating-for-change/new-from-nea/student-activism-rise; Our Turn National Action Plan, “Students for Consent Culture,” www.sfcccanada.org/action-plan; Karen Bartko and Emily Mertz, “Edmonton Students Rallying for Action on Climate Change Converge on Alberta Legislature,” *Global News*, September 27, 2019, <https://globalnews.ca/news/5959833/edmonton-student-climate-change-protest/>.

23 I acknowledge the persuasive critique that has been levied against this proposition, underscoring the inequity of asking students who are racialized or otherwise from minority groups to show empathy and civility in the face of injustice. See Heather Igloliorte et al., “Killjoys, Academic Citizenship and the Politics of Getting Along,” *Topia* 38 (2017): 187; Chanda Prescod-Weinstein, “Tone Policing & the Sound of Equality in STEM,” *Medium*, December 5, 2019.

begin by explaining their goals, that is, to learn the subject matter in question within a setting that did not leave them feeling psychologically vulnerable. Furthermore, students could have asked Professor X about the rationale for her controversial views on rape-shield laws, thereby demonstrating curiosity about Professor X and a presumption of good faith.

Put simply, like Professor X, the students missed the chance to frame the challenge before them as circulating around a common goal: to teach and learn in a way that at once preserved the professor's academic freedom and the students' psychological safety. As witnessed in many other campus debates, the entrenchment of each party's own position deepened the undermining of the other's ability to enjoy their respective freedoms. An alternate approach, focused on conciliation through caring for the necessary connection between the parties, could well have generated a richer outcome for all that would have furthered the academic goals in this setting.

The social media dimension of the case study is also important. The tactic of "calling out" or denunciation through public platforms is not new or unusual. While social media can contribute to participatory democracy and the advancement of social justice in some critical ways, it rarely allows for nuanced or contextualized interaction. And while calls to organize through social media can be effective at spurring quick and powerful mobilization, in the situation under study here, the costs of this rapidity merit reflection.

The drafters of the open letter were entitled to express themselves as they did. Likewise, any student who heeded the open letter's call to wear black to class was within their right to do so. While the extent to which students enjoy academic freedom remains relatively undertheorized—at least compared to faculty members—students have a right to freedom of expression, conscience, and association. This is the right Professor X's students exercised. But the way they did so stood to wield lasting and potentially irreparable damage on their relationships with a professor. It also carried a real risk of dividing students within the class, some of whom might disagree with the framing of the open letter. Those students might deeply resent being forced either to conform by wearing black to class or to appear to support Professor X by not doing so. Among those students, some might perceive the cost of making this choice as too great and simply abstain from attending class. Hence, the result is a compromise of at least some students' freedom to learn, and that is problematic.

An approach focused on relationships should not be seen as curtailing student power in this case. Instead, it would force a recognition that students' freedoms are best preserved by recognizing the social context in which they learn and engage with one another and their professors. That is, by leaning exclusively on the "basic right to safe and dignified learning spaces" to ground a call for Professor X's removal or silence, the students' open letter pitted their rights and their professor's academic freedom as zero-sum, impossibly coexisting. That oversimplified approach removed the potential for creative, conciliatory problem-solving that could have been achieved through a focus on the relationship between the parties. In turn, a relational approach would have made space for explicitly recognizing the deep emotions at play and the responsibilities of each party to achieve the objective of creating an effective and psychologically safe environment for teaching and learning.

What's more, a relational approach could acknowledge the reality that vulnerability is transversal and can exist even for the party that seemingly holds greater power in each context (here, Professor X). Vulnerability also exists for those affected by conflict despite not being the protagonists of the storyline (here, all students in "Criminal Justice 135"). A recognition of vulnerability and frailty as a universal complicates the analysis but is essential to meaningful and textured approaches to human relationships that seek to avoid or mitigate harm. In this context, such an approach makes room to recognize Professor X, the apparent antagonist, as herself a member of the same group—survivors—that the letter-writers claimed to represent. All of this is of course complicated and more difficult to reconcile conceptually than the predominant approach of the day, which calls upon us to look at a situation and determine which parties' rights should prevail. But the methodology proposed herein promises deeper authenticity, care, and reflection of true human experiences and conditions, and of the varied, and sometimes ephemeral, forms of power that can exist in institutions of higher education.²⁴

24 Martha Albertson Fineman, "The Vulnerable Subject," *Yale Journal of Law and Feminism* 20 (2008): 1; Martha Albertson Fineman, "The Vulnerable Subject and the Responsive State," *Emory Law Journal* 60 (2010): 251; Martha Albertson Fineman, "The Limits of Equality: Vulnerability and Inevitable Inequality," in *Research Handbook on Feminist Jurisprudence*, ed. Robin West and Cynthia G. Bowman (Elgar Online, 2019); Nina A. Kohn, "Vulnerability Theory and the Role of Government," *Yale Journal of Law and Feminism* 26 (2014): 1. See also Judith Butler, Zeynep Gambetti, and Leticia Sabsay, eds., *Vulnera-*

SOCIAL FRAMEWORKS

Rights are not exercised solely within private settings and relationships. They also exist within—and their capacity to be enjoyed is affected by—social and institutional frameworks. This reality is always true, regardless of whether that framework is a family, the workplace, or a public institution. In the context explored here, it is the university.

Thus, for the purposes of the analyses traced throughout this essay, it is critical to look beyond Professor X and her students' direct interactions to also consider the institutional context that frames this relationship.²⁵ The university, while not a party to the professor–student relationship, plays a critical role in shaping it. Notably the university setting gives students and their professors access to one another. The university also determines the obligations and freedoms of these parties, both in the abstract and in relation to each other. Finally, the university has a duty to intervene, course-correct, and sometimes even impose sanctions where this is warranted to protect the interests of a party whose rights have been compromised, pursuant to appropriate processes. For these reasons, universities cannot be understood as bystanders to academic freedom discussions and controversies that unfold in teaching or research settings. Rather, universities have a key role to play in such situations and must take up this role in a proactive, principled, and procedurally oriented manner so as to uphold the relationships that are crucial to their academic mission.

Most likely would agree that universities have some role to play, and some responsibilities to shoulder, in relation to questions pertaining to academic freedom. When controversy arises, campus actors—regardless of the position they espouse—often will look to university leadership for answers and actions. There is thus some consensus about the existence of institutional roles in such situations. Consider the case study: Professor X and the students alike called for institutional action to support their interests and position.

bility in Resistance (Durham: Duke University Press, 2016); Benjamin Davis, "Precarity and Resistance: A Critique of Martha Fineman's Vulnerability Theory," *Hypatia* 36 (2021): 1.

25 Ahmed, *On Being Included*; Maki Kimura, "Non-performativity of University and Subjectification of Students: The Question of Equality and Diversity in UK Universities," *British Journal of Sociology of Education* 35 (2014): 523.

More fraught, however, is the issue of what shape the university's role and responsibility should take in these situations. It is this question—that is, the nature and scope of a university's obligations where the exercise of academic freedom appears at odds with matters of equity and inclusion—that is at the root of extensive tension and debate. To address this question, I suggest that the university's role includes three main responsibilities, which relate to resource allocation, communication, and courage. In the discussion that immediately ensues, I describe these responsibilities and link each to the relational understanding of rights explored earlier, and to the Professor X case study.

Decisions about how an institution engages in *resource allocation* signal institutional priorities. The designation of resources within universities is increasingly focused on EDI as a means to foster student wellness and academic success. This is appropriate for a range of reasons. If, however, universities are serious about allowing the pursuit of knowledge and ideas even where some proposed concepts or arguments might engender offense, it is worth considering the resources needed to permit debates to occur even while institutions simultaneously affirm their commitments to student wellness. Concretely, this means allocating resources to student wellness and to free debate and exchange, even when these two goals appear to be at odds with each other.

For instance, consider a case where members of the Queer campus community and their allies contest and feel harmed by an invited speaker who takes the view that gender-nonconforming or gender-questioning children should be medically treated to accept their biological sex. How can an institution address this situation in a way that allows the speaker space on campus, repugnant as some might find the views pronounced, while also showing support to 2SLGBTQ+ members of the campus community? While challenging, there are in fact no bounds on the ideas that can be formulated in this context. They could include: robust population-specific support for those who feel harmed by the ideas in question; extending institutional support for concurrent events specifically designed by, with, and for the 2SLGBTQ+ campus community; recognition of the hurt and anger the invited speaker will have caused even if there is no institutional obstruction to stop the event; mediated discussions between those who feel hurt and those who organized the talk, each of whom likely believes their rights are at

risk; facilitated dialogue about the history, meaning, importance, and limits of free expression and academic freedom, and why its erosion presents such a threat, including to socially oppressed groups; and facilitated dialogue about gender identity and the harms and oppressions that continue to be experienced by trans or gender nonconforming or nonbinary people worldwide, including within our own communities.

Likewise, in the context of the Professor X case study, such approaches would have worked to show support for individuals and the relationships in question. For example, enhanced support for students through the campus sexual violence support staff/center, or a facilitated discussion between Professor X and her learners, would have demonstrated that the university took seriously students' concerns while not standing in the way of a faculty member's academic freedom. Such approaches would have called upon time, energy, people, creativity, and money—all resources in short supply even in the most established of higher education institutions. At the same time, the allocation seems worthwhile, bearing the potential to strengthen relationships at the heart of the university's mission while affirming its commitment to both academic freedom and EDI.

Universities further have a responsibility to *communicate* clearly and consistently about expectations that attend members of the campus community and the principles that guide institutional decisions. This is true at both the level of campus-wide communications and those that occur when administrative leaders interact with and make decisions that affect individual campus actors. Reinforcing key values—which usually circulate the concepts of respect, responsibility, equity, and excellence—helps provide a touchstone for campus actors about the requirements they are expected to uphold vis-à-vis conduct. It also provides a reference point for universities when called upon to provide reasons for decisions in controversial cases. On the issue of academic freedom, these values underpin the breadth of protection extended to the freedom to pursue and express ideas as well as any limits on that freedom. Where to draw a line that separates academic freedom from intolerable expression is a contested question. Yet, there ought to be a consensus that where academic freedom veers into the terrain of research misconduct, harassment, or discrimination, the university has a duty to step in and take measures to uphold its obligations vis-à-vis institutional integrity and equity.

In Professor X's case study, the university has minimal institutional presence. The two moments of contact include the chair's response to students' request to replace Professor X for the class on rape-shield legislation, and the communication from Professor X to her chair requesting institutional support and intervention. In this example, the university arguably missed opportunities to set expectations through effective communication with key stakeholders. Notably, we have no evidence of how the university in question might have endeavored to commit itself both to academic freedom and the creation of inclusive learning environments. Moreover, after being contacted by students, the chair's "cursory" response suggested minimal regard for their position. The chair also failed to provide reasons for the decision not to replace Professor X. This response hence did little to cultivate confidence and trust. It was not anchored to an approach that favored relationship building in this classroom setting. Finally, while we do not know how the university would have responded to Professor X's communiqué seeking intervention and protection, ideally it would have prioritized the instructor's well-being and that of her students, inviting exploration to identify a path forward that would at once uphold the responsibility to teach the content in question, while at the same time supporting and striving for inclusion of all class members, including Professor X.

A final call on universities relates to the theme of *courage*. It is not easy to tell a student who is genuinely hurt and aggrieved that the conduct causing their distress is permissible and that the institution will not proscribe it. Likewise, it is hard to tell a professor that the way they have chosen to exercise academic freedom undermines some students' learning experience, or that the university will not intervene to curb students' expression of discontent in the classroom setting, even though the instructor finds it rattling. Universities in North America are under consistent, intense pressure to take positions on controversial topics. Success in navigating such circumstances requires a principled approach that resists succumbing to public pressure and criticism while also showing openness to necessary change that serves the needs and interests of a campus community. All of this takes tremendous institutional courage.

In the case study, student groups and sexual violence survivor advocates seek the institutional curbing of the instructor's freedom to share her controversial scholarly views with her students. But Professor X will also have

supporters, within and beyond the classroom, even if she does not go looking for them. These may well include some students who may be frustrated that their peers claim to speak in their name. Those supporters, likely frustrated with so-called cancel culture and a perceived trend toward “coddling” university students,²⁶ may press the university to do more than refrain from interfering with Professor X’s teaching. Quite possibly, they would seek the university’s express support of their colleague and denunciation of the students’ tactics as tantamount to harassment or defamation of Professor X.

Neither of these positions—one challenging, the other supporting, Professor X—can effectively guide institutional leaders seeking to find a way through situations like the one the case study offers. More constructive for those leaders is the recall of the institution’s core mission focused on inquiry, discovery, and knowledge. In the classroom context, this can only be pursued where the relationship between teacher and learner allows for the presentation and exchange of ideas and views. Universities thus have a vested interest in protecting and supporting that relationship.

Controversial cases, like that of Professor X, require institutions to sift through calls for posturing and positioning to determine the true interests that compel attention and action. This in turn calls for careful listening to campus stakeholders with a view to informing measures that seek to establish and preserve trust and understanding within the relationships—like that between professors and their students—which are core to a university’s academic mission. That kind of careful listening can be difficult. It requires institutional leaders to hear stories of lived experiences of pain and exclusion, to make space for positions that we as individuals might find unpalatable, to recognize that an institution’s past or current stance on a given question is misguided, to identify divides and the hard work needed to bridge them, to admit to having more questions than answers, and to slow down, even in situations of apparent urgency or crisis. Such an approach focused on relationship building is much more complex, nuanced, resource-intensive, and demanding than naming a winner and a loser in a perceived contest of

26 John McWhorter, “Academics Are Really, Really Worried about Their Freedom,” *The Atlantic*, September 1, 2020, www.theatlantic.com/ideas/archive/2020/09/academics-are-really-really-worried-about-their-freedom/615724/; Pippa Norris, “Closed Minds? Is a ‘Cancel Culture’ Stifling Academic Freedom and Intellectual Debate in Political Science?” HKS Working Paper No. RWP20-025, SSRN, <https://ssrn.com/abstract=3671026>; Mark Carl Rom and Kristina Mitchell, “Teaching Politics in a Call-Out and Cancel Culture,” *PS: Political Science & Politics* 54 (2021): 610.

rights. Just the same, this way forward, which calls for administrative gump-tion, offers greater promise for an institutional context that fosters healthy and nourishing relationships that facilitate the rights and interests of different stakeholders, even in situations where these rights and interests appear to compete.

CONCLUSION

This chapter proposed an analytical framework to contemplate and engage in discussions about the intersections between the values of academic freedom on one hand, and EDI on the other, in contemporary campus settings. Conventional approaches to this topic are anchored to perspectives that prioritize individual rights. These approaches have presented academic freedom and EDI as operating at cross-purposes. This essay contemplated an alternate analytical lens for exploring the sites where academic freedom and EDI meet by privileging relational theory.

Drawing on a case study that served as a consistent point of reference, this essay considered how academic freedom and EDI can be meaningfully and simultaneously pursued even in situations where these values appear to clash. The case study centered on Professor X and her students, divided over whether the former should be permitted to share her scholarly views in her classroom since, for at least some students, doing so would compromise the psychological safety and inclusiveness of their learning environment.²⁷ Conventional approaches to a situation like this would involve examining the rights of each party directly concerned (Professor X, her students) and the strength of their respective claims, leading to a conclusion about which ought to prevail. The analysis developed herein traced a different course. It centered the relationships that are of deepest concern to the situation at

27 While in this chapter some of Professor X's students interpret her position on rape-shield laws as "un-orthodox," the reality is that it is the rape-shield laws to which Professor X objects that in fact run against the grain of foundational criminal justice principles. Such principles establish an accused's right to present a fulsome defense through all available evidence, to which the rape-shield laws present an important limitation. The point here is not to offer a suggestion on the moral value of liberalism's approach to criminal law or on the rape-shield exception. Rather, it is to highlight the risks of absolutist moralistic positioning on topics that can elicit a range of nuanced and justified positions, as well as the evolving nature of disciplinary standards that require due regard as we endeavor to uphold academic freedom while concurrently seeking to establish rich and inclusive learning environments.

hand, assessing how these can be meaningfully sustained. It further explored the social context in which the debate unfolds and examined the role of institutional players—here, the university—in framing key relationships.

This analysis illuminated how zeroing in on core relationships within the academy can ground a refined approach that allows one to uphold academic freedom without subverting one's commitment to EDI. The work involved in taking such an approach is nuanced and complex. It calls for empathy on the part of the actors concerned and a focus on responsibilities over rights. The analysis demonstrated that our ability to exercise meaningfully our individual rights is contingent on our ability and willingness to engage with others, even those whose interests appear to threaten or undercut our own objectives and freedoms.

Beyond private relationships, the analysis developed in this essay calls for an examination of the social framework in which they are situated. Thus, in debates about academic freedom and EDI, we are advised to zoom out and look at what institutions of higher education can and must do to preserve the relationships that are crucial to the concomitant preservation and pursuit of both academic freedom and EDI. The institutional work will be grounded in thoughtful decisions about resource allocation, developing and delivering clear communications about institutional values and commitments, and having the courage to live by those values and commitments, even when pressured to act otherwise.

This chapter does not purport to put to bed debates about academic freedom and EDI as campus values. It has merely emphasized that both of these values merit focus and energy in contemporary higher education settings. It proposes a framework that offers an alternative to our default approach that has, until now, typically juxtaposed these values in opposition to each other, forcing decisions that lead to prioritizing one while the other gives way. It has suggested a framework that seeks to enable the simultaneous foregrounding of these two values through a focus on core relationships in academe. The approach demands greater resources—notably time, creativity, compassion, and energy—than many university leaders and decision-makers feel they have at their disposal, especially when operating in the throes of a public campus controversy or crisis.

But as stressed herein, all institutions including universities allocate their resources according to the things they value most. In the context of contem-

porary higher education, it is difficult to imagine values more deserving of recognition and care than academic freedom and EDI, both of which are essential to establishing academic settings that foster ambition, rigor, and inclusion for scholars and students alike.

