

Table of Contents

<i>Preface</i>	v
<i>Notes on Abbreviations</i>	xv
<i>Table of Cases</i>	xvii
<i>Table of Legislation</i>	xxiii
1. INTRODUCTION	1
I. The Puzzle of Academic Freedom	1
II. A Vulnerable Freedom	5
III. The Scope of the Book.....	10
2. WHAT IS ACADEMIC FREEDOM?	15
I. Introduction	15
II. Academic Freedom Distinguished from Freedom of Speech	17
III. The Varieties of Academic Freedom Claims	22
A. The Rights of Individual Scholars	23
B. Institutional Autonomy	26
C. The Rights of Academics to Self-Rule or to Participate in Academic Government.....	32
IV. Academic or Intellectual Freedom?	35
V. Conflicts between Academic Freedom Claims	38
VI. Academic Freedom as a Constitutional Value.....	45
3. JUSTIFYING ACADEMIC FREEDOM	50
I. Introduction	50
II. The Case for Intellectual and Scientific Freedom.....	53
III. The Case for Scholarly Freedom	57
A. Consequentialist Arguments.....	57
B. Non-consequentialist or Deontological Arguments	61
IV. The Case for Institutional Autonomy	63
V. The Case for Academic Self-Rule	69
VI. Conclusions	71

4. ACADEMIC FREEDOM IN THE UNITED KINGDOM.....	73
I. Introduction	73
II. An Historical Account of Academic Freedom in the United Kingdom	76
A. The Early History before 1919	76
B. The University Grants Committee and University Autonomy	78
C. Individual Academic Freedom before the 1960s	80
D. Academic Freedom in the 1960s and 1970s.....	84
III. The Education Reform Act 1988	89
A. The Background to Statutory University Reform.....	89
B. The Replacement of the UGC by the Universities Funding Council	91
C. The Abolition of Tenure and the Provision for Academic Freedom.....	92
D. Removal of the Jurisdiction of University Visitors	95
IV. Individual Academic Freedom after 1988	96
A. General Principles	96
B. University Statutes and Articles of Government	98
C. The Davies Report on Swansea University.....	99
D. Other Academic Freedom Cases	101
E. Academic Freedom and Official Quality Controls.....	104
V. Institutional Academic Freedom after 1988.....	106
A. Statutory Provisions.....	106
B. The Courts and University Decisions	109
C. University Governance.....	110
D. The Debate over the Oxford Business School.....	113
VI. Conclusions	114
5. ACADEMIC FREEDOM IN GERMANY.....	117
I. Introduction	117
II. The History of Scientific Freedom in Germany.....	120
III. Interpreting <i>Wissenschaftsfreiheit</i>	123
A. Relevant Provisions of the Basic Law	123
B. The Terms of Article 5(3).....	124
C. <i>Wissenschaftsfreiheit</i> in Relation to Other Article 5 Freedoms.....	128
D. Who is Bound to Respect Scientific Freedom?	132

IV. <i>Wissenschaftsfreiheit</i> in Universities	133
A. The <i>Hochschulurteil</i>	133
B. Subsequent Decisions on University Organisation.....	136
C. Balancing <i>Wissenschaftsfreiheit</i> with Other Values.....	138
D. The Specific Rights of University Teachers	141
V. University Legislation	144
VI. Recent University Reforms and <i>Wissenschaftsfreiheit</i>	147
A. The Strengthening of Central Management Powers	149
B. University Councils	150
C. Evaluation of Teaching and Research	152
VII. Scientific Freedom Outside State Universities	153
A. Constitutional Principles.....	155
B. Conflicts between Employers and Their Researchers.....	157
VIII. Conclusions	158
 6. ACADEMIC FREEDOM IN THE UNITED STATES	161
I. Two Definitions of Academic Freedom	161
II. Professional Freedom	165
A. History and the 1915 AAUP Declaration	165
B. The 1940 AAUP Statement of Principles.....	167
C. The Interpretation of Academic Freedom by Committee A	169
D. The Legal Status of AAUP Principles	172
III. Constitutional Academic Freedom in the Supreme Court.....	173
A. The Early Cases in the 1950s and 1960s	174
B. The Recognition of Institutional Academic Freedom.....	177
C. Decisions Rejecting Academic Freedom Claims	180
D. The Coherence and Scope of the Constitutional Freedom.....	181
IV. Conflicts between Professors and Universities	187
A. The Free Speech Rights of Employees.....	187
B. Decisions Upholding Individual Academic Freedom	189
C. Decisions Upholding Institutional Academic Freedom	191
D. The Scope of Institutional Freedom in Cases of Conflict.....	194

V. The Relationship between Professional and Constitutional Freedom.....	195
A. Differences between Professional and Constitutional Academic Freedom.....	196
B. Academic Bills of Rights	198
C. The Effective Protection of Academic Freedom.....	200
7. RESTRICTIONS ON FREEDOM OF RESEARCH.....	202
I. Introduction	202
II. Licensing and Ethics Committees	206
III. Academic Freedom and Intellectual Property Laws	213
A. General Principles	213
B. Ownership of IPRs	215
C. Defences to Infringement Actions.....	223
IV. Research Contracts.....	226
A. The Dangers of University–Industry Collaboration.....	226
B. The Nancy Olivieri Case	229
C. The David Healy Case.....	231
D. The Aubrey Blumsohn Case.....	232
E. Legal Discussion.....	234
V. Government Research Contracts and Advice	237
VI. Freedom of Research and Data Protection.....	241
8. ACADEMIC FREEDOM IN THE AGE OF TERRORISM.....	247
I. Introduction	247
II. UK Terrorism Laws	250
A. Terrorism Act 2000	250
B. Terrorism Act 2006.....	252
C. The Impact of the ECHR.....	255
D. Two Episodes at Nottingham University	258
III. Academic Freedom in the United States after 9/11	263
A. The PATRIOT Act	263
B. University Decisions after 9/11	266
IV. Conclusions	268
9. FREEDOM OF EXTRAMURAL SPEECH	270
I. The Problem of Extramural Speech.....	270
II. Should Academic Freedom Cover Extramural Speech?	272
A. The Arguments for Coverage	272

B. The Arguments against Coverage	275
C. The Separate Treatment of Political Speech in German Law	277
III. UK Law	279
A. Statutory Provisions and General Principles	279
B. Extramural Expression Cases in the United Kingdom	287
IV. US Law	291
A. Constitutional Principles	291
B. Case Law	293
C. AAUP Jurisprudence on Extramural Expression	295
10. THE CHRIS BRAND CASE	297
I. Events before the Tribunal Hearings	298
A. The General Background	298
B. The Paedophilia Email	302
II. The Tribunal Hearings and Report	302
III. The Principal's Decision and the Appeal	307
IV. The Unfair Dismissal Claim	309
V. Assessment of Academic Freedom Aspects	311
<i>Select Bibliography</i>	315
<i>Index</i>	321