

Embedding freedom of expression in legal education: rights-based pedagogy and participatory practice

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Abstract

This article argues that freedom of expression, protected under article 10 of the European Convention on Human Rights (ECHR), should be understood not only as a legal doctrine but as a pedagogical principle central to democratic legal education. Drawing on the Level 4 module LAW1024 Ethics, Discrimination and Human Rights, it examines how article 10 reasoning can structure classroom dialogue, assessment, and institutional practice. The analysis combines doctrinal interpretation with critical and discomfort-based pedagogy, proposing that students learn law most effectively when they practise justification, pluralism, and deliberation within the learning process itself. While lecture capture and digital monitoring enhance accessibility, they may also inhibit openness and dialogic teaching, producing self-censorship that limits academic freedom. Embedding article 10, therefore, requires re-examining classroom norms, assessment design, and institutional governance to ensure that expression is both protected and purposeful. The article advances a model for integrating rights-based pedagogy into law curricula, positioning legal education as a space for civic reasoning and democratic participation.

Keywords: article 10 ECHR, legal education, pedagogy of discomfort, academic freedom, deliberative democracy.

Introduction

The role of legal education in fostering democratic culture is under renewed scrutiny. As academic freedom is limited across Europe and authoritarian

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discourse re-enters mainstream politics, the question is no longer whether legal education should engage with civic values and human rights, but how it does so, and with what effect.¹ In this context, the teaching of human rights law demands more than doctrinal enquiry; it requires critical engagement with the institutional, political, and pedagogical frameworks that shape students' understanding of law and power. Freedom of expression is central to this task, not only as a fundamental human right under article 10 of the European Convention on Human Rights (ECHR),² but as a pedagogical condition for legal education itself. It is the right through which other rights are claimed, challenged, and publicly justified.

The domestic courts and European Court of Human Rights (ECtHR) have repeatedly characterised freedom of expression as the 'essential foundation' of a democratic society.³ The framework demands justification and proportionality of interference, even where the expression at issue is provocative or disruptive. Yet, despite its constitutional weight, article 10 is commonly taught detached from the environments in which legal knowledge, and, indeed, rules, are produced, debated, and developed. There remains little systematic exploration of what it means to practise freedom of expression within domestic legal education itself. It is submitted that legal educators should treat freedom of expression not only as a subject of legal analysis but as a principle that informs how law is taught. The authority to teach legal rules is not ideologically neutral; the act involves choices about content, framing, and legitimacy.⁴

Consequently, classrooms can inevitably reflect normative and political assumptions, and legal education conditions what counts as legitimate disagreement, acceptable speech, and authoritative knowledge. In doing so, it

¹ European Parliament, *EP Academic Freedom Monitor* (2023) PE 757.798; Michael Ignatieff and Stefan Roch, *Academic Freedom: The Global Challenge* (Amsterdam University Press 2018); Peter Maassen, Mari Elken and Jens Jungblut, 'De Facto Academic Freedom in the European Union – Threats and Trends' (2025) 33(S1) *European Review* S28.

² Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights ECHR as amended) (Adopted 4 November 1950, entered into force 3 September 1953) CETS 005; ECHR hereafter.

³ *R v Secretary of State for the Home Department Ex p Simms* [2000] 2 AC 115 [126] (Steyn LJ); *Handyside v United Kingdom* (1976) 1 EHRR 737 [754]; *Stoll v Switzerland* (2008) 47 EHRR 59 [155]; *Pentikäinen v Finland* App no 11882/10 (ECtHR, 20 October 2015) [87]–[88]; *Morice v France* (2016) 62 EHRR 1 [124].

⁴ Hilary Sommerlad, Richard Young, Steven Vaughan and Sonia Harris-Short, *The Futures of Legal Education and the Legal Profession* (eds) (Hart Publishing 2015) 1–22.

can either support or undermine the deliberative ideals on which democratic legality depends.⁵ Embedding article 10 within legal education means cultivating an environment where pluralism, dissent, and justification are not only taught but practised. This is not optional; it is a necessary consequence of teaching students about rights that derive their meaning from contestation and accountability.

The argument advanced in this article is grounded in practice. It draws on LAW1024 Ethics, Discrimination and Human Rights Law, a compulsory Level 4⁶ LLB (Hons) undergraduate module taught in an English university, in which freedom of expression is taught through case studies and structured classroom activities. In the 2024/25 academic year, activities included, inter alia, materials on protest, LGBTQ+ rights, and gender-critical speech. Article 10 pedagogy seeks to further the ‘marketplace of ideas’,⁷ in which students are encouraged to think for themselves through exposure to a plurality of views.⁸ The educational environment can be viewed as a microcosm of a democratic society, one that must accommodate dissent, plurality, and disagreement. Within LAW1024, this marketplace is structured around deliberation, with students acting as judges and advocates who test whether restrictions on expression meet the thresholds of legality, legitimacy, and necessity. Through this process, they learn that the freedom to express is inseparable from the responsibility to justify.

Nevertheless, there can be a reluctance to engage with political and so-called ‘identity-based’ speech, which is caused by prior educational and social

⁵ Joshua Cohen, ‘Deliberation and democratic legitimacy’ in Alan Hamlin and Phillip Pettit (eds), *The good Polity: Normative Analysis of the State* (Blackwell 1989) 23; Seyla Benhabib, ‘Toward a Deliberative Model of Democratic Legitimacy’ in Seyla Benhabib (ed) *Democracy and Difference: Contesting the Boundaries of the Political* (PUP 1996) 67–94.

⁶ First year.

⁷ For critical discussion of the ‘market place of ideas’ see Jill Gordon, ‘John Stuart Mill and the “Marketplace of Ideas”’ (1997) 23(2) Soc Theory & Prac 235; Jeffrey Howard, ‘Free Speech and Hate Speech’ (2019) 22(1) Annual Review of Political Science 93, 96–100; Jeremy Waldron, *The Harm in Hate Speech* (HUP 2012) 155; David O Brink, ‘Mill’s Liberal Principles and Freedom of Expression’ in C L Ten (Ed), *Mill’s On Liberty: A critical guide* (CUP 2009) 40–61.

⁸ See for example, *Tinker v Des Moines Independent Community School District* (1969) 393 US 503; Jacqueline A Stefkovich and William C Frick, *Best Interests of the Student: Applying Ethical Constructs to Legal Cases in Education* (3rd edn, Routledge 2021) 73.

environments in which ‘perceived’ dissent is avoided or penalised.⁹ This tendency disproportionately affects race, sex, gender, and sexuality discourse, where institutional avoidance of discomfort can result in the silencing of marginalised or contested perspectives. In the UK, school-level citizenship education prioritises order, compliance, and emotional safety over robust deliberation, leaving students underprepared for disagreement in higher education.¹⁰ When dissent is not practised early, discomfort becomes a barrier to discussion. Nevertheless, it is precisely these moments of tension that reveal the pedagogical risk of teaching freedom of expression, exposing who is permitted to speak, under what conditions, and with what forms of institutional support.

These pedagogical tensions are symptomatic of a broader institutional climate in which freedom of expression is defended in principle but constrained in practice by reputational concerns and managerial oversight. In the UK, recent developments such as the Higher Education (Freedom of Speech) Act 2023 and Office for Students guidance on ‘controversial’ content signal heightened political interest in regulating academic discourse.¹¹ At the same time, universities face increasing reputational pressure to avoid offence, manage dissent, and present a depoliticised image of legal knowledge. The result is a paradox. While legal education purports to train critical thinkers, it frequently fails to model the justificatory practices on which that ideal depends.

This article addresses that contradiction by bringing together doctrinal and pedagogical perspectives on freedom of expression. Drawing on the authors’ respective expertise in human rights law and legal education practice, it situates article 10 of the ECHR as a subject of study and a pedagogical framework. Its normative claim is twofold: first, that legal education should prepare students to understand the limits and demands of free expression in law; and second,

⁹ David Pilgrim, ‘Identity Politics and Freedom of Expression’, in *Identity Politics* (Karnac Books 2022) Ch 2; Kathryn Ecclestone and Dennis Hayes, *The Dangerous Rise of Therapeutic Education* (Routledge 2019); Olivier Roy, *The Crisis of Culture: Identity Politics and the Empire of Norms* (Oxford University Press 2024) 11–31.

¹⁰ Audrey Osler and Hugh Starkey, *Teachers and Human Rights Education* (Trentham 2010).

¹¹ Higher Education (Freedom of Speech) Act 2023; Office for Students, ‘Freedom of speech’ (Regulations and guidance for freedom of speech in English higher education) (*Office for Students*, no date) <<https://www.officeforstudents.org.uk/providers/freedom-of-speech/>> accessed 10 October 2025.

that it should embody those values in the way it structures debate, dialogue, and dissent in the classroom.

This analysis is informed by critical legal and discomfort pedagogy, which challenges the myth of neutrality in legal education and foregrounds the political dimensions of curriculum and assessment.¹² It also engages with deliberative democratic theory, which treats public justification and reason-giving as the foundation of legitimate authority within both law and education.¹³ These frameworks converge in article 10 jurisprudence, which demands that restrictions on expression be justified in ways that are accessible, transparent, and proportionate.

Article 10 of the ECHR – an introduction

The focus on article 10 of the ECHR reflects the institutional and legal context in which the case study module is taught. LAW1024 forms part of a UK undergraduate law programme in which the ECHR occupies a central place through the Human Rights Act 1998 and its incorporation into domestic legal reasoning. Article 10 provides a doctrinal framework that students are required to understand as part of their legal training. While comparable guarantees of freedom of expression exist in other instruments, such as article 19 of the International Covenant on Civil and Political Rights (ICCPR), the ECtHR jurisprudence offers a particularly developed body of case law concerning proportionality, democratic necessity, and pluralism. These features make article 10 of the ECHR especially suitable as a pedagogical framework for teaching justificatory reasoning in law. Nevertheless, the pedagogical model proposed here is not limited to the European system. The emphasis on justification, proportionality and democratic deliberation could be adapted to other freedom of expression frameworks, including constitutional free speech traditions such as the First Amendment to the United States' Constitution or

¹² Joy Twemlow, 'Let me introduce my friend, law: a pedagogical tool for supporting diversity and critical thinking in the legal classroom' (2023) 57(3) *The Law Teacher* 239; Richard Abel, 'Legal Pedagogy and Its Discontents' (2020) 16(1) *International Journal of Law in Context* 77; Kenneth A Armstrong, Maksymilian Del Mar and Sally Sheldon, 'Contextual Legal Pedagogy: Still Radical?' (2022) 18(4) *International Journal of Law in Context* 365; Susanna Menis, 'Non-Traditional Students and Critical Pedagogy: Transformative Practice and the Teaching of Criminal Law' (2016) 22(2) *Teaching in Higher Education* 193.

¹³ Joshua Cohen, above (n5); Seyla Benhabib, above (n5).

the Canadian Charter of Rights and Freedoms, as well as international human rights instruments such as article 19 of the ICCPR.

Article 10(1) of the ECHR protects ‘the right to freedom of expression’, including the freedom to hold opinions and to receive and impart information and ideas ‘without interference by public authority and regardless of frontiers’.¹⁴ It is framed in broad and inclusive terms, encompassing not only spoken or written words but a wide range of expressive conduct, from ‘obscene’ art, symbolic acts, journalistic reporting, to political protest.¹⁵ However, the right is not absolute. Under article 10 (2) of the ECHR, states may impose restrictions if they are (i) prescribed by law, (ii) pursue a legitimate aim (such as national security, public safety, or the protection of the rights of others), and (iii) are necessary in a democratic society. This three-part test creates the framework within which the ECtHR assesses limitations on expression.

The nature of this framework is distinctive when compared with other ECHR rights. For example, article 5 (liberty and security), article 8 (private and family life), and article 1 of Protocol 1 (property) are framed primarily as defensive rights; they operate to shield the individual against arbitrary interference by the state. Thus, if a person is detained, searched, or has their possessions seized, the ECtHR examines whether the state has crossed the threshold of the protected sphere and whether the interference falls within narrowly drawn exceptions. The presumption is one of non-interference. For example, liberty may not be curtailed save in accordance with lawful arrest or detention, private life must remain free from unjustified intrusion, and possessions may not be taken except under due legal process. These provisions are essentially structured as barriers against state action.

Article 10, by contrast, is designed around a positive justificatory burden. The presumption lies with freedom of expression, and restrictions are treated as exceptional.¹⁶ Whenever speech or conduct falls within the broad scope of article 10(1), the onus shifts to the state to demonstrate that its interference meets the strict requirements of article 10(2). In practice, this demands that States provide publicly reasoned justifications, open to scrutiny, showing why

¹⁴ ECHR, above (n2) art 10(1).

¹⁵ See for example, *Müller v Switzerland* App No 10737/84 (ECtHR, 24 May 1988); *Women on Waves v Portugal* App No 31276/05 (ECtHR, 03 February 2009).

¹⁶ *Reynolds v Times Newspapers Ltd* [1999] 4 All ER 609 [628] (Lord Steyn).

an interference is not only lawful but necessary in a democratic society. As Gunatilleke notes, freedom of expression has ‘special normative value’ within liberal constitutionalism, because the starting point is that expression is permitted, and only compelling reasons grounded in public reason can justify its limitation.¹⁷

The emphasis on necessity ‘in a democratic society’ positions free expression not merely as a private liberty, but as a condition for democratic governance. As the ECtHR held in *Lingens v Austria*,¹⁸ free political debate is ‘at the very core of the concept of a democratic society’. Similarly, in *Vogt v Germany*,¹⁹ the ECtHR found that the dismissal of a public employee for political affiliation required particularly strict scrutiny under article 10, as it implicated the legitimacy of public institutions themselves. Legal education has much to gain from engaging seriously with this justificatory structure. The proportionality test under article 10(2) demands more than procedural compliance; it requires the state to show that its interference responds to a pressing social need and is proportionate to the aim pursued.²⁰ This model of rights reasoning, emphasising justification, balance, and democratic accountability, offers a valuable pedagogical resource. In LAW1024, students are required to apply the article 10(2) test not only by identifying legitimate aims but by evaluating the quality of the justification offered for interference.

A core element of article 10 jurisprudence is the ECtHR’s insistence that expression deserving the highest level of protection is that which contributes to public debate. This includes political speech, journalism, and expression aimed at matters of legitimate public concern.²¹ In *Handyside v United Kingdom*,²² the ECtHR held that pluralism and tolerance are foundational democratic values, and that the protection of expression extends to ideas that ‘offend, shock or disturb’. The democratic rationale is not merely procedural: it affirms that disagreement and discomfort are integral to democratic life. In the context of legal education, this rationale compels educators to resist

¹⁷ Gehan Gunatilleke, ‘Justifying Limitations on the Freedom of Expression’ (2021) 22(1) Human Rights Review 91, 103.

¹⁸ (1986) 8 EHRR 407 [42].

¹⁹ (1996) 21 EHRR 205.

²⁰ *Sunday Times v United Kingdom* (No 1) (1979) 2 EHRR 245 [59].

²¹ *Thorgeirson v Iceland* (1992) 14 EHRR 843 [63].

²² (1976) 1 EHRR 737 [49].

curricular sanitisation and to engage students in complex, contested questions actively.

At the same time, the ECtHR's own jurisprudence has not been without criticism. In *Otto-Preminger-Institut v Austria*,²³ the ECtHR upheld the seizure of a satirical film critical of Catholicism based on religious offence, giving a wide margin of appreciation to the national authorities.²⁴ Similarly, in *Animal Defenders International v United Kingdom*,²⁵ the ECtHR upheld a blanket ban on political advertising, accepting the state's justification without clear evidence that less restrictive alternatives had been considered. These cases illustrate that article 10's justificatory structure is not always consistently applied, particularly where sensitive topics or institutional authority are implicated. From a pedagogical perspective, these cases present opportunities for critical engagement with judicial reasoning and the role of courts in managing contested expression.

One way to approach this in the classroom is through what legal theorists have called the 'speech hierarchy', the idea that certain types of speech (for example, political or journalistic) receive greater legal protection than others (for example, commercial, artistic, or offensive speech).²⁶ This distinction has helped structure student analysis, especially when exploring how the ECtHR balances article 10(2) against competing rights under articles 8 and 9. It also opens up space to discuss whether such hierarchies reproduce existing power structures or reinforce assumptions about what counts as 'legitimate' discourse.

When taught carefully, article 10 jurisprudence offers students a model of legal reasoning that values transparency, justification, and pluralism. These values should be reflected in the way law is taught, through deliberative discussion, open disagreement, and critical assessment of institutional authority. Understanding freedom of expression doctrinally is essential, but embedding it pedagogically is what prepares students to engage with law as a living practice

²³ *Otto-Preminger-Institut v Austria* (1995) 19 EHRR 34.

²⁴ The margin of appreciation allows for discretionary judgments that recognise that 'national authorities are in principle better placed than any international court to evaluate local needs and conditions': *Buckley v UK* (1997) 23 EHRR 101 [129]. See also *Reinboth v Finland* (2013) 57 EHRR 34; and Dominic McGoldrick, 'A defence of the margin of appreciation and an argument for its application by the Human Rights Committee' (2016) 65(1) ICLQ 21.

²⁵ (2013) 57 EHRR 21.

²⁶ Frederick Schauer, *Free Speech: A Philosophical Enquiry* (Cambridge University Press 1982).

of justification. The structure of article 10 reasoning is its presumption of freedom, demand for transparent justification, and emphasis on democratic necessity. This structure provides a model for how legal reasoning itself might be taught, which will be explored below. In the classroom, this means treating disagreement not as disorder but as evidence of active learning: a process through which students practise balancing rights, weighing legitimacy, and articulating reasons that others can contest. Embedding article 10 within legal education, therefore, moves beyond teaching its case law; it enacts the democratic values that the ECHR was designed to protect.

Teaching freedom of expression in practice: a case study and pedagogical reflections

LAW1024 Ethics, Discrimination and Human Rights is a compulsory Level Four²⁷ module on the LLB (Hons) and Law with Criminology BA (Hons) courses taught in England at the University of Northampton. In the 2024/25 academic year the module enrolled approximately 180 students across five workshop groups. The discussion that follows draws primarily on teaching activities delivered during that academic year, although the pedagogical structure described here reflects an approach that has developed across several iterations of the module. The case study is presented as a reflective account of pedagogical design rather than an empirical study of student responses. Ethical approval was not sought for the systematic collection of classroom data, and no identifiable student contributions are reproduced. The purpose of the analysis is therefore to illustrate the design of teaching activities and the pedagogical reasoning underpinning them, rather than to examine individual classroom interactions. While moments of disagreement or discomfort inevitably arise when discussing controversial questions of freedom of expression, the discussion does not reproduce individual student contributions to preserve anonymity. The focus instead is on how the teaching design seeks to structure and manage such tensions within a legal framework grounded in article 10.

LAW1024 introduces freedom of expression through case-based learning that obliges students to engage with the justificatory structure of article 10(2) of the ECHR. Rights are introduced through their application in reasoning, rather than

²⁷ First year.

as abstract principles. Classroom activities are deliberately structured around ECtHR case law to rehearse how justification operates in a democratic society.

The first workshop opens with a discussion of why expression matters in a democracy before turning to *Handyside*,²⁸ discussed above. This immediately unsettles students' assumption that offensive speech is excluded from protection. *Pentikäinen v Finland*²⁹ is then used to consider the detention of a journalist covering a protest, highlighting that the legality of restrictions depends on necessity and proportionality. These cases teach that article 10 presumes protection, while restrictions demand justification.

Later workshops use structured case studies to apply the article 10(2) test of legality, legitimate aim, and necessity in a democratic society. In *Lilliendahl v Iceland*,³⁰ where the applicant had posted online comments describing homosexuality in derogatory terms, characterising it as 'disgusting' and drawing comparisons between same-sex relationships, sexual deviance and animal behaviour, the ECtHR agreed with the national court that the comments were so 'serious, severely hurtful and prejudicial' as to fall outside article 10. Another exercise considers *Forstater v CGD Europe*,³¹ where the Employment Appeal Tribunal (EAT) ruled that gender-critical beliefs were protected under the Equality Act 2010, and that the expression of such beliefs does not in itself seek to destroy the rights of trans persons.

More recent controversies involving the burning of flags or religious texts, such as Qur'ans, have similarly tested the limits of tolerance under article 10, prompting debate about whether symbolic acts that offend deeply held beliefs remain protected expression or constitute incitement to hatred.³² A notable recent UK case involved Hamit Coskun, whose conviction for burning a Qur'an outside the Turkish consulate in London (while allegedly making anti-Islamic remarks) was overturned on appeal.³³ The appellate court (Crown Court) held that the act could not properly be found to be disorderly or to have

²⁸ Above (n22) [49].

²⁹ App no 11882/10 (ECtHR, 20 October 2015).

³⁰ App no 29297/18 (ECtHR, 12 May 2020) [45].

³¹ [2021] UKEAT/0105/20/JOJ [111] (Choudhury J).

³² *Donaldson v France* App no 60856/16 (ECtHR, 10 November 2022).

³³ *Rex v Hamit Coskun* (2 June 2025) WMC (*Courts and Tribunals Judiciary*, 2025) <<https://www.judiciary.uk/wp-content/uploads/2025/06/Rex-v-Hamit-Coskun.pdf>> accessed 10 October 2025; *Rex v Hamit Coskun* (10 October 2025) SWC (*Courts and Tribunals Judiciary*, 2025) <<https://www.judiciary.uk/wp-content/uploads/2025/10/Rex-v-Hamit-Coskun.pdf>> accessed 10 October 2025.

caused harassment, alarm or distress, emphasising that freedom of expression must include the right to offend, shock or disturb. This case demonstrates that while symbolic acts may in principle qualify as protected expression, in practice, the boundary can shift depending on context. Even when states attempt to restrict such acts through public order legislation, courts must assess whether aggravating factors (such as location, audience, accompanying speech, or proximity to sensitive sites) transform expression into a threat, harassment, or incitement.³⁴ Utilising scenarios based on such cases, students act as judges and advocates, rehearsing whether restrictions are defensible in legal terms. This requires them to articulate reasons, not preferences, and to test the quality of justification offered by the state.

Unsurprisingly, these activities provoke discomfort. Students may feel reluctant to defend positions contrary to their beliefs, especially on identity-based questions. Given the wider public hostility toward gender-critical individuals, and in particular women, there can also be a hesitation to articulate positions that might be misread as discriminatory. Such reluctance is itself legally significant, reflecting the tension article 10 seeks to regulate between the protection of belief and the prevention of hate speech, the exercise of expression depends on the ability to justify restrictions through law, not on the popularity of the view expressed. Yet discomfort is deliberately framed as integral to the pedagogy. Mercer and McDonagh argue that ‘growth comes from discomfort’, as students recognise ‘a knowledge gap between one’s social experiences and the experiences of other social identities’.³⁵ Drawing on Crenshaw’s intersectional analysis,³⁶ they emphasise how identities such as race, gender and ability are social constructs that ‘turn into prejudices and biases that become ingrained in our everyday lives’.³⁷ By situating case law on contested identity issues within classroom activity, LAW1024 requires students to confront those constructs in a structured legal framework.

Boler similarly describes a pedagogy of discomfort as one that asks students to critically engage with their own emotions, beliefs and perception of others as

³⁴ For example, under the Crime and Disorder Act 1998 and the Public Order Act 1986.

³⁵ Lisa Elzey Mercer and Deana McDonagh, ‘The Pedagogy of Discomfort: Transformational Experiential Learning’ (2021) 2(2) *International Journal of Design for Social Change, Sustainable Innovation and Entrepreneurship* 23.

³⁶ Kimberlé Crenshaw, *Demarginalizing the intersection of race and sex: A black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics* (University of Chicago Legal Forum, 1989) 139–167.

³⁷ Lisa Elzey Mercer and Deana McDonagh, *above* (n35), 24.

well as the beliefs of others.³⁸ Freire characterised this process as encountering ‘limit situations’ that produce critical consciousness (‘conscientização’).³⁹ Biesta frames education as a willingness to accept the risk of being interrupted by the other, to be ‘open to receiving the gift of teaching’ from what or whom we cannot control.⁴⁰ In this sense, discomfort is not incidental but essential to practising article 10 reasoning. During the LAW1024 workshops, students learn that what shocks or offends cannot simply be dismissed as unlawful but must be justified or lawfully restricted within a proportionality framework.

However, the literature also warns against uncritical celebration of discomfort. Zembylas notes that pedagogies of discomfort risk ‘ethical violence’ when students are compelled to participate without adequate care for their emotional well-being.⁴¹ While discomfort may prompt learning, it can also inflict harm, particularly where the encounter reactivates trauma. The burden of producing discomfort could fall unequally, with minority students expected to represent their group or relive painful experiences. Ahmed argues that those who do not inhabit the norms of the institution are more often required to take on the additional task of transforming those norms.⁴² In practice, this means that the responsibility for making institutions more inclusive falls on those already marginalised, making the burden of diversity unequal. As such, even where institutions claim to value dialogue, such practices risk reproducing the inequalities they purport to challenge.

There is also the risk of student disengagement. Boler cautions that the discomfort invited by critical inquiry can provoke resistance. Students may ‘retreat to defensive anger, or fall into the “guilt” side of the binary trap’, rather than remain engaged.⁴³ Without careful scaffolding, classroom discomfort can entrench division and hostility. Moreover, discomfort rhetoric can be co-opted if it is reduced to interpersonal encounters rather than linked to broader structures of inequality. Nevertheless, Hughes *et al* caution that approaches

³⁸ Megan Boler, *Feeling Power: Emotions and Education* (Routledge 1999) 176.

³⁹ Paulo Freire, *Pedagogy of Hope: Reliving Pedagogy of the Oppressed* (Robert R Barr tr, Bloomsbury Academic 2021) 109–140.

⁴⁰ Gert Biesta, *The Beautiful Risk of Education* (Routledge 2016) 57.

⁴¹ Michalinos Zembylas, ‘“Pedagogy of Discomfort” and Its Ethical Implications: The Tensions of Ethical Violence in Social Justice Education’ (2015) 10(2) *Ethics and Education* 163; see also, Judith Butler, *Giving an Account of Oneself* (Fordham University Press 2005).

⁴² Sara Ahmed, *On Being Included: Racism and Diversity in Institutional Life* (Duke UP 2012) 173.

⁴³ Megan Boler, above (n38), 186.

focusing on ‘minor adjustments’ risk leaving ‘the status quo’ intact, and that genuine pedagogical transformation requires a more fundamental challenge to institutional structures.⁴⁴ These critiques highlight that discomfort is pedagogically productive only when embedded in practices of justification and supported by attention to student welfare.

Further, recent debate about trigger warnings and safe-space statements highlights the need for a more measured understanding of care and discomfort in rights-based teaching. While such measures are intended to promote safety and empathy, empirical research consistently finds little or no measurable benefit to student well-being or learning outcomes. Studies show that trigger warnings do not reliably reduce distress or avoidance.⁴⁵ Within professional education, they may also limit exposure to ethically complex content, reducing opportunities to develop resilience, autonomy, and reflective judgment.⁴⁶ Students’ perceptions of the effectiveness of trigger warnings are also inconsistent with research findings, as they frequently report positive attitudes despite little evidence of benefit.⁴⁷

Recent scholarship suggests that alternatives lie in trauma-informed and inclusive pedagogies that integrate emotional awareness with academic rigour.⁴⁸ These approaches encourage transparency, informed choice, and intellectual risk-taking by clarifying the purpose of difficult material and providing structured support. Rather than treating warnings as protective devices, educators can use them as invitations to critical reflection, aligning with Boler’s conception of discomfort as a call to inquiry and with article 10’s

⁴⁴ Joanne Hughes, Rebecca Loader and James Nelson, ‘Fostering Harmony and Dealing with Difference in Education: A Critical Review of Perspectives on Intergroup Relations’ in Michalinos Zembylas and André Keet (eds), *Critical Human Rights, Citizenship, and Democracy Education: Entanglements and Regenerations* (Bloomsbury, 2018) 130.

⁴⁵ Helen Anne Nolan and Lesley Roberts, ‘Trigger Warnings as Tools for Learning—Theorising an Evolving Cultural Concept’ (2024) 58(2) *Medical Education* 185.

⁴⁶ Helen M Stallman, Diann S Eley and Amanda D Hutchinson, ‘Trigger Warnings: Caring or Coddling’ (2017) 25(2) *Journal of the Australian and New Zealand Student Services Association* 89.

⁴⁷ A Timur Sevincer, Leonie Tenbrueggen and Marvin Sokolis, ‘Students’ Beliefs About Trigger Warnings’ (2024) *Psychological Reports*.

⁴⁸ Emily J M Knox, *Trigger Warnings: History, Theory, Context* (Bloomsbury 2017); Catherine James, ‘Trigger Warnings: To Label or Not to Label?’ (2017) 13(4) *Public Services Quarterly* 295; Alison C Cares and others, ‘“The Subject Matter Should Be an Adequate Trigger Warning”: How and Why Criminology and Criminal Justice Faculty Use (and Don’t Use) Trigger Warnings’ (2022) 34(4) *Journal of Criminal Justice Education* 598.

emphasis on deliberation and justification.⁴⁹ In practice, educators can begin each module or workshop by setting engagement expectations: explaining why contested material is addressed, outlining sources of support, and modelling how disagreement can be expressed respectfully. This reframing converts caution into empowerment and ensures that the classroom guarantees safety within deliberation, not safety from ideas. It reinforces the norm-setting and reflexivity dimensions of the LAW1024 model (below), linking emotional awareness, civic reasoning, and article 10's justificatory structure.

Within LAW1024, these risks are managed by anchoring discomfort in ECtHR case law. Students are not asked to expose personal trauma but to reason through whether restrictions satisfy legality, legitimacy, and necessity. The aim is to convert emotional reaction into legal reasoning. This structure ensures discomfort is framed as an invitation to reason rather than an imposed performance.⁵⁰ Educational ethics also justifies this approach, and the 'best interests of the student' require equipping learners to confront moral dilemmas.⁵¹ Exposure to contested rights is therefore not reckless but part of preparing students for the justificatory practices of legal and civic life. By structuring this exposure within a proportionality framework, discomfort becomes an ethical opportunity to share ideas and opinions, rather than an arbitrary burden likely to cause harm within and outside the classroom.

LAW1024 demonstrates that freedom of expression can be taught as both a doctrine and a democratic practice. Through structured case study activities, students learn not only the ECtHR framework but also the civic responsibility of justification. The supportive literature⁵² affirms the pedagogical value of discomfort, while the critical literature⁵³ cautions that discomfort must be carefully managed to avoid reproducing harm. By anchoring discomfort in the justificatory method of article 10, LAW1024 attempts to realise a substantive engagement with conflict rather than its displacement. Nevertheless, the approach exposes the vulnerability of such pedagogical spaces. Although

⁴⁹ Megan Boler, above (n38).

⁵⁰ Michalinos Zembylas, above (n41)..

⁵¹ Jacqueline A Stefkovich and William C Frick, *Best Interests of the Student: Applying Ethical Constructs to Legal Cases in Education* (3rd edn, Routledge 2021).

⁵² See for example, Megan Boler, above (n38) 176; Paulo Freire, above (n39); Gert Biesta, above (n40) 57; Lisa Elzey Mercer and Deana McDonagh, 'above (n35), 24.

⁵³ See for example, Michalinos Zembylas, above (n41); Sara Ahmed, above (n42); Joan Poliner Shapiro and Jacqueline A Stefkovich, *Ethical leadership and decision making in education* (5th edn, Routledge 2021).

academic freedom is formally recognised, it remains dependent on institutional context and easily constrained by reputational or political pressures.

Thus, within LAW1024, law students learn not only to apply legality, legitimacy, and necessity as doctrinal tests, but to practise the civic responsibility of offering reasons that others can contest. In doing so, they engage both with the doctrinal content of freedom of expression and with the democratic practices upon which its legitimacy rests.

Institutional constraints, academic freedom, and inclusion tensions

Universities increasingly operate within audit-driven cultures that prioritise satisfaction metrics and quantifiable outputs. This creates a climate in which risk-taking in pedagogy is implicitly, or indeed, explicitly discouraged, narrowing the scope for the dialogic and discomfort-based teaching that rights-based approaches demand. However, ‘tick-box’ assessment regimes encourage performativity, placing the burden of care disproportionately on minoritised staff while discouraging the kind of experimental practice that may reduce satisfaction scores in the short term but deepen learning in the long term.⁵⁴ The expectation to provide care, reassurance, and emotional labour in the classroom frequently falls on women and staff in precarious or lower-status positions.⁵⁵ In practice, this means that those least securely placed within the academy are often tasked with maintaining the appearance of institutional inclusivity while absorbing the professional costs of student dissatisfaction.

Women are more likely to be channelled into roles involving pastoral or administrative duties that are essential but undervalued in promotion frameworks.⁵⁶ Within such contexts, women who use discomfort as a teaching strategy confront an additional dilemma: their deviation from the expected ‘supportive’ role may be penalised more harshly than that of colleagues whose institutional privilege shields them from scrutiny. As Rogers has argued, this dynamic reflects the persistence of ‘care-less’ institutions, where the

⁵⁴ Fiona Cullen, Mike Seal and Michael Whelan, *Critical Pedagogies of Discomfort in Practice and Professional Education* (Bloomsbury Academic 2025) 241–264.

⁵⁵ Fiona Cullen, Mike Seal and Michael Whelan, *ibid* 255; Jason Arday, ‘Understanding race and educational leadership in higher education: Exploring the black, minority ethnic (BME) experience’ in Paul Miller and Christine Callender (eds), *Race, Education and Educational Leadership in England: An Integrated Analysis* (Bloomsbury Academic 2019) 161–182.

⁵⁶ Julia Rowlands, ‘The Domestic Labour of Academic Governance and the Loss of Academic Voice’ (2019) 31(7) *Gender and Education* 793.

distribution of responsibility for student welfare and satisfaction is deeply gendered and rarely equitable.⁵⁷ Similar findings are reported internationally, with women and minority groups disproportionately occupying less secure and lower-paid teaching roles, compounding the risks associated with innovative or critical pedagogies.⁵⁸

Embedding contested cases and discussion in classroom activity also raises issues of academic freedom. ‘Academic freedom’ and ‘freedom of expression’ have themselves become buzz phrases in higher education.⁵⁹ Universities and regulators increasingly assert their commitment to these ‘core values’, yet such assertions offer symbolic reassurance rather than substantive protection for controversial scholarship.⁶⁰ Ahmed has described this as the ‘non-performative’ character of institutional discourse, policies that promise inclusion or freedom, but do not deliver the practices that would give them effect.⁶¹ The consequence is a gap between rhetoric and reality, visible in high-profile controversies where institutions, concerned about reputational risk, have restricted speech while simultaneously declaring their support for expression in principle.

The University of Sussex, for example, was fined by the Office for Students in 2025 after an investigation concluded that its equality policies created a chilling effect on staff and students, despite the university’s repeated public statements celebrating its commitment to free speech.⁶² Similarly, in the United States, the University of Southern California cancelled its valedictorian’s commencement speech in 2024, citing security concerns, while publicly affirming its

⁵⁷ Chrissie Rogers, “‘I’m Complicit and I’m Ambivalent and That’s Crazy’: Care-less Spaces for Women in the Academy’ (2017) 61 *Women’s Studies International Forum* 115.

⁵⁸ Fiona Cullen, Mike Seal and Michael Whelan, above (n54).

⁵⁹ For discussion of academic freedom framed as a human rights issue, see Klaus D Beiter, Terence Karran and Kwadwo Appiagyei-Atua, ‘Academic Freedom and Its Protection in the Law of European States: Measuring an International Human Right’ (2016) 3 *European Journal of Comparative Law and Governance* 254.

⁶⁰ Maria Slowey, *Academic Freedom in Higher Education: Core Value or Elite Privilege?* (Taylor & Francis Unlimited 2024).

⁶¹ Sara Ahmed, above (n42) 116–121.

⁶² Office for Students, ‘University of Sussex fined £585,000 for free speech and governance breaches’ (*Office for Students*, 26 March 2025)

<<https://www.officeforstudents.org.uk/news-blog-and-events/press-and-media/university-of-sussex-fined-585-000-for-free-speech-and-governance-breaches/>> accessed 3 October 2025.

unwavering support for free expression.⁶³ Such cases illustrate how freedom of expression is frequently invoked at the very moment when its substantive application is constrained.

Academic freedom entails freedom to determine what shall be taught (curriculum); how it shall be taught (pedagogy); who shall teach; and who shall be taught.⁶⁴ Barendt characterises it as a professional freedom, recognised by law, to teach and research without interference.⁶⁵ Yet institutional autonomy cannot be assumed to safeguard these freedoms. Badamchi has argued that administrators may prioritise ‘efficiency and profit’ over academic integrity, leaving academic freedom incomplete and precarious.⁶⁶ Mégret and Ramanujam warn of ‘the chilling consequences of a climate of fear in which one never really knows if one is crossing the line’, a problem exacerbated by politicised debates over higher education in plural societies.⁶⁷ In the UK, the Prevent duty risks ‘preventing critical thinking’, producing a chilling effect on open dialogue, particularly around topics of terrorism, religion, or state power.⁶⁸

Post-pandemic practices add further risks. The normalisation and increasing use of lecture recording and digital monitoring render classroom discussions more permanent and, as a result, may inhibit open participation by students and staff. Such conditions reduce the capacity for dialogic teaching, strip away the non-verbal cues needed to read the room and increase the risk that disclosures will occur without adequate contextual sensitivity. While lecture capture can enhance accessibility and flexibility for many learners, particularly disabled

⁶³ Lipika Pelham, ‘US university cancels Muslim valedictorian’s speech’ (BBC News, 16 April 2024) <<https://www.bbc.co.uk/news/world-us-canada-68863345>> accessed 3 October 2025.

⁶⁴ Chavan Sharma Kissoon and Terence Karran, ‘Academic Freedom: Swimming against the Technological Tide’ in Frédéric Mégret and Nandini Ramanujam (eds) *Academic Freedom in a Plural World* (Central European University Press 2024) 414; Terence Karran, Klaus D Beiter and Lucy Mallinson, ‘Academic Freedom in Contemporary Britain: A Cause for Concern?’ (2021) 76(3) *Higher Education Quarterly* 563.

⁶⁵ Eric Barendt, *Academic Freedom and the Law: A Comparative Study* (Hart 2010) 15-49.

⁶⁶ Devrim Kabasakal Badamchi, ‘Academic Freedom: How to Conceptualize and Justify It?’ (2022) 48 (4) *Philosophy & Social Criticism* 619, 621.

⁶⁷ Frédéric Mégret and Nandini Ramanujam, above (n64) 8.

⁶⁸ Emily Danvers, ‘Prevent/ing Critical Thinking? The Pedagogical Impacts of Prevent in UK Higher Education’ (2023) 28(6) *Teaching in Higher Education* 1264.

and neurodivergent students,⁶⁹ its pervasive use also amplifies reputational anxieties and the sense of being constantly observed. When combined with such concerns, this can foster self-censorship and a reluctance to test difficult arguments in real time, effects noted across recent studies of surveillance and self-censorship in higher education.⁷⁰ These dynamics are especially relevant to modules such as LAW1024, which aim to develop students' ability to reason through contested moral and legal questions in a respectful but open environment. If students and staff moderate their contributions for fear of permanent scrutiny, the capacity to practise article 10 reasoning, and to articulate, defend, and challenge ideas within a democratic learning space is diminished.

These institutional and systemic constraints highlight the fragility of academic freedom in practice. While article 10 of the ECHR frames restrictions on expression as permissible only if prescribed by law, pursuing a legitimate aim, and necessary in a democratic society, universities often operate with less transparent criteria. A rights-based pedagogy rooted in justification provides a framework for navigating these tensions. Institutional restrictions on so-called 'controversial' teaching should, like restrictions under the ECHR, be justified as lawful, legitimate, and proportionate. In this way, article 10 reasoning supplies a normative anchor for balancing academic freedom, inclusion, and institutional constraint.

A model for article 10 pedagogy: practical framework for embedding expression-based democratic practice in law teaching

Building on the preceding discussion of democratic and rights-based pedagogy, this section proposes a structured model for embedding article 10 reasoning within legal education. It translates the logic of freedom of expression (legality, legitimacy, and necessity) into participatory teaching practices that cultivate deliberation, reflexivity, and expressive agency among law students.

The model presented here was not the starting point for the teaching design. Rather, it emerged inductively from reflective analysis of the LAW1024

⁶⁹ Chiara Horlin, Barbora Hronská and Emily Nordmann, 'I can be a "normal" student: the role of lecture capture in supporting disabled and neurodivergent students' participation in higher education' (2024) 88 *Higher Education* 2075.

⁷⁰ Hayden Godfrey, 'Intellectual Humility and Self-Censorship in Higher Education; a thematic analysis' (2023) 8 *Frontiers in Education* 1; Danielle Keats Citron, 'The Surveilled Student' (2024) 76 *Stanford Law Review* 1439.

module described above. The pedagogical practices developed within the module were shaped iteratively in response to specific challenges, in particular how to structure disagreement, justification, and discomfort when teaching freedom of expression. The model therefore represents a conceptual synthesis of those practices, through which the underlying logic of article 10 (namely legality, legitimacy, and necessity) became visible as a pedagogical structure.

In this sense, article 10's three-part test can be understood not only as a doctrinal framework but as a pedagogical logic. In teaching terms, the requirement that interferences be lawful, pursue a legitimate aim, and be necessary in a democratic society translates into three corresponding practices: structuring dialogue through shared norms and legal frameworks; evaluating the purposes and values that underpin competing claims; and critically assessing proportionality through reasoned justification. The model below makes this translation explicit by showing how these dimensions are enacted in classroom practice.

The three pedagogical dimensions identified in this section are democratic pedagogy, the pedagogy of legal reasoning, and critical pedagogy, and they should be understood not as discrete or pre-designed approaches, but as analytical lenses through which the underlying structure of this practice can be interpreted. Each dimension captures a different dimension of article 10 reasoning as it operates pedagogically: democratic pedagogy foregrounds pluralism and deliberation; legal reasoning pedagogy structures justificatory analysis; and critical pedagogy interrogates power, exclusion, and the limits of justification. Together, they provide the conceptual foundation for the model presented in Table 1.

Importantly, the model is not a purely abstract proposal. It reflects and systematises practices already implemented within LAW1024, while also extending them into a more explicit and transferable framework. The intention is therefore both descriptive and normative: to articulate what is already occurring in practice and to offer a structure that can be adapted across legal education contexts.

Democratic pedagogy and deliberative education

In the context of article 10 pedagogy, democratic pedagogy operationalises the value of pluralism by structuring classroom dialogue as a form of public

reasoning. Democratic pedagogy and deliberative education are complementary and overlapping approaches which focus on equipping students with the skills needed to engage meaningfully in complex and reasoned discussions, make trade-offs, and reach informed decisions. Nelson-Hurwitz and Buchthal⁷¹ have demonstrated in their context that adding a reflective session between two deliberative pedagogy sessions ‘was found to enhance student skill development’.⁷² In the specific context of legal education, Kennedy⁷³ suggests that ‘law schools have a unique and regularly overlooked obligation to cultivate students’ civic capacities and dispositions’⁷⁴ and that using a deliberative pedagogical design would help to embed this.

Legal reasoning as pedagogy

This dimension reflects article 10’s requirement of legality and structured justification, training students to evaluate restrictions through doctrinal reasoning. Wallace suggests that that developing competence in legal reasoning ‘should form a central part of an undergraduate legal education’.⁷⁵ Constructivist theories of learning argue that individuals are active in the construction of their knowledge, rather than being passive recipients of it. Social constructivists echo the active nature of knowledge construction, but argue that this is done in a group context rather than an individual one. Both can be classified as ‘situated learning theories’ which Lave and Wenger⁷⁶ argue are a ‘bridge’⁷⁷ between older views on teaching as a more transactional operation between the teacher and the taught, and ‘legitimate peripheral participation’, where learning is more community based. Wallace argues, convincingly, that ‘a combination of constructivist and social constructionist approaches to learning which best enables a legal pedagogy which is robust, critical and democratic’.⁷⁸ The model builds upon this, encouraging students to

⁷¹ DC Nelson-Hurwitz and OV Buchthal, ‘Using Deliberative Pedagogy as a Tool for Critical Thinking and Career Preparation Among Undergraduate Public Health Students’ (2019) 7 *Frontiers in Public Health* 37.

⁷² *ibid* 7.

⁷³ Jeffrey Kennedy, ‘Deliberative Experience and the Civic Aspirations of Legal Education’ (2023) 19(4) *International Journal of Law in Context* 498.

⁷⁴ *ibid* 498.

⁷⁵ Chlöe J Wallace, ‘The Pedagogy of Legal Reasoning: Democracy, Discourse and Community’ (2018) 52(3) *The Law Teacher* 261.

⁷⁶ Jean Lave and Etienne Wenger, *Situated Learning: Legitimate Peripheral Participation* (Cambridge University Press 1991).

⁷⁷ *ibid* 34.

⁷⁸ Wallace above (n 75) 271.

‘speak back’ to judgments, propose alternative framings, and debate rhetorical moves within doctrine.

Critical pedagogy and democratic lawyering

This dimension corresponds to the necessity and proportionality stage of article 10, requiring students to interrogate power, exclusion, and the adequacy of justifications offered. Critical pedagogy is, of course, an approach which is used far more widely than in legal education. Freire⁷⁹ introduced the concept in the late 1960s, and argued that education was traditionally viewed as a narrative process:

‘four times four is sixteen, the capital of Pará is Bélem.’ The student records, memorises and repeats these phrases without realizing the true significance.⁸⁰

Critical pedagogy challenges this, arguing that students should be challenged to question existing power structures and inequality. In the context of legal education, Grose⁸¹ takes it further to suggest a justice-oriented framework that interrogates exclusionary norms, hierarchy, and the institutional role of legal education.

These three dimensions supply both normative backing and a broader methodological orientation for the model. The pedagogical commitments articulated earlier can now be more firmly justified from this literature.

⁷⁹ Paulo Freire, *Pedagogy of the Oppressed* (The Continuum International Publishing Group Inc 2005).

⁸⁰ *ibid* 71.

⁸¹ Carolyn Grose, *Critical Lawyering Pedagogy: Transformational Legal Education* (2026) 44(2) *Minnesota Journal of Law and Inquiry* article 2.

Table 1: Embedding article 10 through democratic pedagogy

Focus	Article 10 Dimension	Rationale & Theoretical Basis	Indicative Practices
1. Norm-setting and Voice	Legality (structuring the conditions of expression)	Draws on democratic pedagogy to create a classroom ‘public sphere’ ⁸² reflecting article 10’s requirement that expression operates within a clear and accessible framework	Early sessions co-create dialogue norms; expressive prompts such as ‘ <i>If law could speak, what would it say?</i> ’
2. Deliberation and Shared Leadership	Legitimacy (public reasoning and pluralism)	Builds civic reasoning through structured dialogue and rotating facilitation ⁸³ reflecting article 10’s emphasis on pluralism, tolerance and the legitimacy of diverse views.	Small-group debates on free-speech limits; students take turns moderating and summarising arguments.
3. Expressive and Multimodal Learning	Legitimacy (widening participation in public discourse)	Encourages plural communication styles and disrupts formal hierarchies ⁸⁴ aligning with article 10’s protection of diverse forms of expression.	Alternative outputs: infographics, video briefs, or dissenting-voice case annotations.

⁸² DC Nelson-Hurwitz and OV Buchthal, above (n71).⁸³ Jeffry Kennedy, above (n73); Chlöe J Wallace, above (n75).⁸⁴ Carolyn Grose, above (n 81).

Focus	Article 10 Dimension	Rationale & Theoretical Basis	Indicative Practices
4. Reflexivity and Discomfort	Necessity (critical evaluation and proportionality)	Draws on critical pedagogy ⁸⁵ to interrogate power and exclusion, mirroring article 10's requirement that restrictions are necessary and proportionate	Guided reflection on who speaks, who stays silent, and how disagreement is managed.
5. Integration	Legality, Legitimacy and Necessity	Synthesises legal doctrine with democratic participation and critical reflection, demonstrating the full justificatory structure of article 10.	Student-led forums or mock hearings on contested article 10 issues; self- and peer-assessment of reasoning quality.

⁸⁵ Paulo Freire, above (n79).

The model presented in Table 1 reflects and extends the participatory methods already trialled within LAW1024, where students engage article 10 jurisprudence through deliberation and structured dialogue. By articulating these practices as a broader pedagogical framework, the approach provides a transferable model for embedding rights-based reasoning across legal education.

Implementation of the model is designed to unfold progressively across a semester, following principles of scaffolded and situated learning,⁸⁶ and reflecting the staged development of legality, legitimacy, and necessity in article 10 reasoning. Early sessions focus on establishing expressive norms and co-creating dialogue agreements through low-stakes deliberative activities. Mid-semester, scaffolding gradually recedes as students assume facilitative roles, engage in structured debates, and connect doctrinal study with article 10's justificatory reasoning. In later stages, students take greater ownership of discussion and assessment through peer review and simulations that integrate doctrinal analysis with expressive agency. This phased progression mirrors article 10's emphasis on reasoned justification and supports the development of civic and professional autonomy within legal education.

While embedding expressive pedagogy offers significant benefits, several structural challenges remain. Doctrinal curricula often prioritise coverage over deliberation, and institutional risk-aversion may discourage engagement with contested expression. Uneven participation, emotional discomfort, or concerns about assessment fairness can also inhibit open dialogue. These tensions mirror the justificatory structure of article 10 itself, as reflected in the model: expression may be limited, but only where necessary and proportionate to legitimate aims. A rights-based pedagogical framework, therefore, requires transparent justification for any institutional or curricular constraint and deliberate scaffolding to support equitable participation. In this sense, challenges to expressive teaching are not merely obstacles but opportunities to model the very reasoning article 10 demands.

The expressive pedagogy proposed here integrates naturally with legal reasoning, citizenship, and professional formation. By treating doctrinal analysis as a dialogic process, students practise justification and debate, which

⁸⁶ Jean Lave and Etienne Wenger, above (n76); Chloë J Wallace, above (n75).

mirror the reasoning article 10 demands of democratic societies. Expressive annotation of judgments and scaffolded deliberation – aligned with the model’s emphasis on deliberation and reflexivity – mirror legal reasoning as public justification, while collaborative assessment and reflective dialogue cultivate civic responsibility and professional integrity. In this sense, teaching freedom of expression is not an add-on to legal education but a method of forming lawyers as democratic participants; that is to say, professionals capable of reasoning in public, engaging disagreement, and grounding authority in justification.

Embedding article 10 as a pedagogical framework offers measurable and conceptual benefits. Students develop expressive confidence and analytical depth through structured deliberation, while learning to navigate pluralism and normative uncertainty as integral features of legal reasoning. This approach reframes legal education as a civic practice: one that forms professionals capable of public justification and reasoned disagreement. As Table 1 illustrates, these benefits arise from the integration of norm-setting, deliberation, and reflexivity within a structured justificatory framework. Future work could examine these outcomes empirically through reflective and discourse-based methods. Still, even without a formal evaluation, the model provides a template for aligning the teaching of law with the democratic values that sustain it.

The following conclusion draws these dimensions together to consider the civic and institutional implications of embedding article 10 within legal education. The model thus renders explicit the pedagogical logic already embedded within Article 10 reasoning, linking doctrinal analysis, classroom practice, and civic formation.

Conclusion: legal education’s role in shaping civic and legal participation

This article has argued that embedding freedom of expression within the legal curriculum involves transforming how law is taught, discussed, and justified. Treating article 10 of the ECHR as both doctrinal subject matter and method reveals that legal reasoning and pedagogy share a common foundation: the duty to justify interference with freedom in transparent, proportionate, and democratic terms. When applied to education, this framework exposes how institutional and pedagogical choices themselves reflect judgments about what

kinds of expression are valued, tolerated, or suppressed. As the model presented in Table 1 demonstrates, this involves structuring legal education around the same justificatory logic of legality, legitimacy, and necessity that underpins article 10 itself.

The analysis of LAW1024 Ethics, Discrimination and Human Rights demonstrates that freedom of expression can be practised pedagogically as well as studied doctrinally. When students reason through proportionality, they learn that justification is the measure of democratic integrity. The deliberate use of discomfort, structured deliberation, and reflective dialogue operationalises article 10's principles within the learning process. These practices correspond directly to the pedagogical dimensions outlined in Table 1, where norm-setting, deliberation, and reflexivity operationalise article 10 reasoning within the classroom. These classroom encounters show that disagreement and tension, if carefully scaffolded, are not threats to inclusion but necessary conditions for democratic learning. The pedagogical challenge is therefore not to eliminate discomfort but to ensure it occurs within an ethically designed environment that converts emotion into reasoning and opinion into justification.

A first conclusion is that rights-based pedagogy clarifies the limits of neutrality in legal education. Institutions often assume that the avoidance of controversy protects equality and inclusion. Yet, as critical pedagogy and Apple's analysis of educational hegemony suggest, neutrality frequently sustains dominant norms.⁸⁷ Avoidance of conflict does not produce equality. Embedding article 10 as a teaching principle makes explicit that education is never ideologically neutral. Every curriculum, assessment, and classroom rule already expresses judgments about what counts as legitimate speech and who is authorised to make it. Recognising this transforms neutrality from an aspiration into a topic of inquiry. Students learn that impartiality is not the absence of values but the fair and reasoned application of them.

A second conclusion concerns the relationship between freedom of expression and inclusion. The two are often positioned in tension, as if protecting emotional safety requires restricting lawful expression. Yet the LAW1024 model demonstrates that these aims can be reconciled through justification. By anchoring discussion in legal reasoning rather than opinion, discomfort

⁸⁷ Michael Apple, *Knowledge, power and education: the selected works of Michael Apple* (Routledge 2013).

becomes analytical rather than adversarial. Ethical teaching does not avoid contentious speech; instead, it structures it. The goal is not to provoke students but to train them to distinguish between disagreement and harm, and to respond with reasoned argument. In this sense, article 10 provides a vocabulary for inclusion that is deliberative rather than prohibitive.

A third conclusion concerns assessment and curriculum design. The tendency for human rights and discrimination problem questions to focus narrowly on minority identities risks confining equality discourse to the margins. This inadvertently teaches that rights are situational rather than structural. Re-framing assessment to include majority speech, institutional accountability, or conflicts between competing rights communicates that human rights law applies universally and continuously. As such, assessment becomes an extension of pedagogy. Evaluative tasks based on justification rather than correctness reinforce the civic dimension of legal education and mirror the deliberative reasoning demanded by article 10 jurisprudence.

A fourth conclusion concerns the technological and institutional environment in which such pedagogy must operate. The post-pandemic university has normalised recording and digital monitoring in ways that reshape participation. While lecture capture enhances access and supports disabled and neurodivergent students, it also introduces a form of surveillance that can chill debate. The awareness of being recorded alters the quality of discussion, particularly in sessions on identity, belief, or professional ethics. As Godfrey's and Citron's research indicates, constant observation encourages self-censorship and conformity.⁸⁸ The challenge is therefore to integrate digital accessibility without eroding expressive freedom. This may require negotiated recording policies, unrecorded deliberation spaces, or reflective alternatives that preserve spontaneity while maintaining inclusivity.

The fifth conclusion concerns institutional practice. Universities frequently treat freedom of expression as a matter of regulatory compliance, and academic freedom is often expressed through policy statements rather than professional autonomy. As Barendt observes, genuine academic freedom involves independent judgment over content, method, and participants.⁸⁹ Institutional autonomy, however, does not necessarily safeguard individual freedom. A rights-based pedagogical approach requires that any institutional restriction on

⁸⁸ Hayden Godfrey, above (n70); Danielle Keats Citron above (n 70).

⁸⁹ Eric Barendt, above (n 65)

teaching or discussion be justified according to the same criteria applied under article 10 of the ECHR: it must be lawful, pursue a legitimate aim, and be proportionate. When concerns about reputation or risk management limit the scope of critical and discomfort pedagogy, the institution's commitment to freedom of expression becomes procedural rather than substantive. Applying article 10 reasoning, therefore, offers a framework for assessing whether educational practices and policies remain consistent with the values they are intended to uphold.

When considered together, these conclusions point to a reframing of legal education as civic education. Freedom of expression is not a discrete topic but a structural condition for democratic learning. Teaching article 10 doctrinally trains students to identify when restrictions are lawful and proportionate; teaching it pedagogically trains them to apply those same standards to their own reasoning and institutional contexts. This dual perspective bridges the gap between law and lived democratic practice. The model developed in this article makes this relationship explicit, showing how legality, legitimacy, and necessity can be operationalised through pedagogical design, classroom practice, and student engagement. It shows that legal education can both describe and perform the justificatory culture on which constitutional democracy depends.

Future research should test the outcomes of such pedagogical approaches empirically, examining whether structured deliberation improves students' confidence, analytical precision, and tolerance for ambiguity. It should also explore how institutional frameworks, workload policies, and digital infrastructures affect educators' ability to practise rights-based teaching. Without systemic support, individual pedagogical innovation cannot sustain itself. The next step is institutionalisation, by embedding article 10 reasoning not only in classroom practice but in quality assurance, assessment policy, and staff development.

The purpose of embedding freedom of expression in legal education is to cultivate a profession and a citizenry capable of reasoned disagreement. The democratic strength of law lies not in unanimity but in its capacity for justification. By aligning pedagogy with article 10's principles of transparency, proportionality, and necessity, legal educators can model the form of public reasoning that sustains both human rights and democracy. The task is neither

purely doctrinal nor purely pedagogical; it is civic.⁹⁰ Through this integration, the future of legal education can move from teaching about rights to enacting them, and it avoids reproducing the structures of power that govern society.⁹¹ Thus, it ensures that future lawyers and scholars recognise freedom of expression as both a legal guarantee and a shared responsibility within a democratic society.

⁹⁰ Tonia Hap Murphy, *Fostering Civic Knowledge in Introductory Business Law and Legal Environment Courses: A Closer Look at Freedom of Speech* (2018) 35 *Journal of Legal Studies Education* 195

⁹¹ Paula McElearney, 'What Makes Them Do It? Using Discomforting Pedagogies' in Fiona Cullen, Mike Seal and Michael Whelan above (n54) 204.