

## The Higher Education (Freedom of Speech) Bill 2021

A submission to the Public Bills Committee  
by Professor Nigel Biggar, CBE

### The problem: real, not fabricated

1. Concern about threats to free speech and research in universities is sometimes dismissed as a manufactured distraction. So, in February of this year Jo O’Grady, secretary-general of the University and Colleges Union, responded to advance word of the White Paper announcing plans for legislation to bolster academic freedom, by accusing the Government of “fighting phantom threats to free speech” on campus.<sup>1</sup> And in their June submission to the *Times* Education Commission, Tony Blair and Andrew Adonis wrote that the Higher Education (Freedom of Speech) Bill now making its way through Parliament is “a reform in search of a problem since free speech is hardly a key issue on university campuses”.<sup>2</sup>

2. This is not true. There is empirical evidence that freedom to speak and research of significant minorities of university students and teachers in the UK are being inhibited. Those affected range from political and social conservatives on the right to feminist critics of transgender ideology on the left. The problem is by no means confined to the limited number of instances of the no-platforming of speakers. It is much wider and includes a variety of kinds of case.

3. For example,

- in the summer of 2017 the clinical psychotherapist, James Caspian, was forbidden by Bath Spa University to conduct “politically incorrect” research into transgender ‘de-transitioning’, because of its “risk to the University”.
- In May 2018 a junior research fellow attending a seminar on colonialism that I ran in Oxford, insisted that his name and face appear in no record, lest senior colleagues in the Faculty of History damage his career as punishment for associating with me.
- In October 2020 a student at the Centre of Teacher Education at Warwick University, after objecting to the suggestion of non-gendered classrooms for young children and disapproving of the imposition of transgender ideology on them, attracted complaints from fellow-students, was referred by the University to a ‘suitability panel’ and suspended until the panel’s hearing, suffered a collapse in mental health, and now, eight months later, remains formally absent on grounds of sickness.
- And in January 2021 Cambridge University’s School of Arts and Humanities wrote to all of its departments, requiring them to explain how they were going to promote decolonisation. Permitting no conscientious space to those doubtful of the inbuilt assumptions about colonialism and racism, the School marched ahead as if dissent was, literally, unthinkable.

4. For every individual who finds himself censored, ostracised, made ill, or bulldozed, there are hundreds of others who look on aghast and resolve to keep their mouths shut, lest they attract trouble. Moral courage is quite as rare on campus as it is everywhere else, and fear is no less prevalent. The public censoring of one generates the self-censorship of many. As Sir

Tom Stoppard put it recently, the problem “is not so much cancellation as it is self-cancellation”.

5. This is evidenced, not only by anecdotes, but by hard social scientific data.

- In 2017 a report on academic freedom produced by Jo O’Grady’s own union reported that 35.5 per cent of its members polled admitted to self-censorship, above all of their political views. (It also found that “[i]n sharp contrast with the other 27 EU nations, the constitutional protection for academic freedom [either directly, or indirectly via freedom of speech] in the UK is negligible, as is the legislative protection for the substantive [teaching and learning] and supportive [tenure and governance] elements of academic freedom”).<sup>3</sup>
- In its 2018 report, the parliamentary Joint Committee on Human Rights acknowledged that relatively few instances of the ‘no-platforming’ of speakers who challenge the assumptions of identity politics and the disruption of meetings organised by social conservatives “could be having a wider ‘chilling effect’ on free speech”.<sup>4</sup>
- A 2019 Policy Exchange study of academic freedom in the UK presented evidence of such an effect on students’ speech, such that “some [nationally] mainstream political views cannot be comfortably discussed in the classroom”.<sup>5</sup>
- A follow-up report in 2020 showed that the chill extends to professors. Since more than 80 per cent of academics lean to the left, right-leaning professors tend to perceive their professional environment as hostile.<sup>6</sup> Mindful of their careers, they censor themselves, going into inner exile and keeping their conservative thoughts to themselves.

6. The threats to freedom of speech and research are not right-wing fantasies; they are real. And their effect can only be to deepen the lack of political diversity in our universities and to widen the gap between the academic elite and the rest of the population.

### **The Higher Education (Freedom of Speech) Bill and its critics**

7. The Government’s Bill on freedom of speech in higher education promises to a long way toward thawing the chill.

- By creating a new post of Director for Freedom of Speech and Academic Freedom, it will enable the Office for Students to focus on analysing the various problems and working out a consistent set of solutions that will establish sector-wide norms.
- By authorising the Director to recommend redress, even sanctions, it will encourage busy vice-chancellors to push the issue closer to the top of their agendas.
- By allowing academic staff to appeal beyond their own institutions, it will at once support beleaguered individuals and render those institutions externally accountable.
- And by extending the duty to secure free speech directly to student unions, it will give student leaders pause before they yield to pressure to stifle dissent.

8. Since the Bill was published, however, it has attracted a number of criticisms.

- One is that legislation cannot change culture, so as to lift the fear of social or professional rejection that causes self-censorship. But that is not true. Legislation

can nudge culture in the right direction by reassuring dissidents that an external body stands ready to hold universities to account, by giving them the power to appeal outside of their own institutions, and by laying down a set of liberal norms over time, the new law would help to dissipate the climate of fear.

- Another objection is that persuasion would be better than the threat of sanctions. That is both true and untrue. It is true insofar as it would be ideal if universities could be persuaded to do what they should, without ever having to pick up the punitive stick. But it is untrue insofar as sight of that stick in the course of negotiations is often necessary to encourage serious nibbling at the diplomatic carrot.
- A third criticism is that the new law would burden universities with even more bureaucracy, by requiring the demonstration of compliance, especially in the promotion of free speech and academic freedom, in order to gain or maintain registration. This is true, but, unfortunately, it is also necessary and the issue is important enough to make it proportionate. Besides, if universities find themselves stretched for resources, they could always divert some away from such things as the promotion of reporting portals, whereby students are encouraged to lodge anonymous complaints about academics guilty of ‘microaggressions’ and the like. Moreover, after the relevant systems have been set in place and the norms established, the number of cases will decline and the burden will lighten.
- Some have even argued that the legislation would have the perverse effect of making both students and academics more cautious in issuing invitations, lest they be cancelled and invite trouble. But the Bill will shift the balance in favour of taking risks for free speech by imposing a duty to promote it. And besides, ‘cancellations’ don’t just happen; they are not Acts of God. Student unions and universities have the agency to disallow them.

### **How the Bill could be improved**

9. The Higher Education (Freedom of Speech) Bill promises to go a long way in addressing the real problem of the stifling of the freedom to speak in our universities. But it could go further still.

- As it stands, it adopts an extraordinarily narrow definition of academic freedom, confining it strictly to an academic’s “field of expertise”. Consequently, it fails to protect expressly the freedom of students and academics to voice critical opinions about their own universities, and in particular to dissent from politicised curricular change—such as ‘decolonisation’—without fear of disciplinary action on the ground of bringing their institution into ‘disrepute’.
- Further, in its current form it would still allow discussion in an academic context to attract allegations of having the effect of ‘harassment’ under section 26 of the Equality Act 2010.
- And it does not yet give academic staff access to affordable justice via an employment tribunal, in case of failure to be appointed or of being dismissed for speaking or researching freely within the law. Access to a tribunal is relatively straightforward and shields complainants from the threat of having to pay huge costs, if they lose. A tribunal can also order re-employment.

10. If it were amended so as to fill these gaps, the Higher Education (Freedom of Speech) Bill could make a vital contribution to reducing political polarization in our country. For what is at stake is not merely the freedom of individuals, but the preservation of universities as places where young citizens are educated to voice, entertain, and discuss controversial ideas and views, exciting fierce passions, and to do so in a civil, rational, and responsible manner—so that light might prevail rather than heat. What is at stake is the future of liberal public culture in Britain.

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#### NOTES

<sup>1</sup> Quoted in “Landmark Government proposals to strengthen free speech at universities”, *FNews.co.uk*, 16 February 2021: <https://www.fenews.co.uk/fevoices/63455-landmark-government-proposals-to-strengthen-free-speech-at-universities>

<sup>2</sup> Tony Blair and Andrew Adonis, *Education, Education, Education*, a submission to *The Times* Education Commission (London: Tony Blair Institute, June 2021), p. 11.

<sup>3</sup> Terence Karran and Lucy Mallinson, *Academic Freedom in the UK: Legal and Normative Protection in a Comparative Context* (London: UCU, 2017), pp. 1, 58.

<sup>4</sup> Joint Committee on Human Rights, *Freedom of Speech in Universities* (Westminster: House of Commons and House of Lord, March 2018), pp. 20 (para. 37), 41 (para. 97).

<sup>5</sup> Tom Simpson and Eric Kaufmann, *Academic Freedom in the UK* (London: Policy Exchange, 2019), p. 10.

<sup>6</sup> Remi Adekoya, Eric Kaufmann, and Tom Simpson, *Academic Freedom in the UK: Protecting Viewpoint Diversity* (London: Policy Exchange, 2020), p. 8.