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# Arguing for Free Speech in the 21st Century

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It is a great honour to address the Australasian Study of Parliament Group. And you could not have chosen a more timely and important subject. That is your theme for this year: freedom of speech, debate and information.<sup>2</sup>

I want to begin by thanking you and especially Isla Macphail. Isla got in touch with me in late 2022 to invite me to speak. As you all know she is most persuasive, so of course I accepted, and since then I have had a chance to observe just a little of her work on this conference. Even from my perspective from the other side of the world, the enormous care and hard work that she has put into this event have been obvious. So I want to begin by paying tribute to her dedication and thanking her. My only regret is that I can not be there in person to say thank you.

My past experience as an academic has of course informed my thinking on this subject, of freedom of speech, debate and information. But this event is also among my earlier public appearances in the newly created role of Director for Freedom of Speech and Academic Freedom at the Office for Students, the independent regulator of higher education in England. It might therefore be worth my saying a little about myself, and more about that role.

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<sup>1</sup> This is an edited transcript of a speech Professor Arif Ahmed delivered in Perth, Western Australia on 29 September 2023 to the Australasian Study of Parliament Group's Annual Conference. The Conference theme was 'Freedom of Speech, Debate and Information'.

<sup>2</sup> Although some of the material is changed for this occasion, and the material on Burke is new, the text of this article overlaps in large part with that of a speech given at King's College London on 9 October 2023. See A Ahmed, 'Transcript of Arif Ahmed's speech at King's College London' Speech to Office for Students, Kings College London, published 10 October 2023. Accessed at: <<https://www.officeforstudents.org.uk/news-blog-and-events/press-and-media/transcript-of-arif-ahmeds-speech-at-kings-college-london/>>.

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I have worked in higher education for the last 20 years or more, mostly at Cambridge University, as a university teacher. A lot of the teaching involved lecturing on philosophy, logic and probability, to large groups. But one distinctive feature of Cambridge is that you also have one-on-one hour-long sessions with a student, to discuss an essay. I must have done about two thousand of those!

Additionally, for about 15 years until 2020 I acted as a Trade Union representative and caseworker for the University and College Union. This work was interesting and fulfilling. I was always happy to advise employees who either didn't know their workplace rights or were afraid to exercise them.

Both experiences gave me a vivid sense of why free speech matters, especially for those most likely to be victimised. And so for many years I've campaigned for freedom of expression in higher education. This has been through internal committee work and public engagement.

Turning to my role. The post, Director for Freedom of Speech and Academic Freedom at the Office for Students, the independent regulator of higher education in England, is perhaps the longest job title anyone has ever had outside the Mikado. It is also a creature of statute. It exists by virtue of section 10 of the *Higher Education (Freedom of Speech) Act 2023* (UK). This legislation on free speech passed through Parliament to become law in May.

The Act is not yet fully implemented. In fact we are expecting the implementation to be phased over the next two years. But the part establishing the Directorship *is* in force. It states that the Director shall have responsibility for overseeing the free speech functions of the Office for Students. Those functions relate to new duties, around securing and promotion of free speech, that will fall upon English universities and colleges.

Turning to the Office for Students itself The Office for Students is an independent public body. It is not part of central Government, but we report to Parliament through the Department for Education. It is a creature of the Higher Education and Research Act 2017, which also sets out its powers and general duties.<sup>3</sup>

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<sup>3</sup> Office for Students, 'Home - Office for Students', Website. Accessed at: <<https://www.officeforstudents.org.uk/>>.

The mission of the Office for Students is to ensure that every student, whatever their background, has a fulfilling experience of higher education that enriches their lives and careers. In pursuit of this mission it has four objectives:

- All students, from all backgrounds, with the ability and desire to undertake higher education, are supported to access, succeed in, and progress from higher education.
- All students, from all backgrounds, receive a high quality academic experience, and their interests are protected while they study or in the event of provider, campus or course closure.
- All students, from all backgrounds, can progress into employment, further study, and lead fulfilling lives, in which their qualifications hold their value over time.
- All students, from all backgrounds, receive value for money.<sup>4</sup>

At the Office for Students, we think that all students should have a high quality academic experience that broadens their knowledge and skills and equips them for the future – work or study. We think all students, regardless of their background, should be able to benefit from a high quality education and have the confidence to express their views – this is equality of opportunity.<sup>5</sup>

All staff and students are entitled to teach, learn and research in a culture that values vigorous debate including in relation to difficult, contentious or discomfoting topics. A student will not have a high quality education if it's not grounded in freedom of expression for themselves, for fellow students and for those who teach or supervise them. Freedom of speech and academic freedom are embedded in our work as a regulator.<sup>6</sup>

Let me now say a little about what I think a role like mine must mean in practice.

The first thing to say about it is in my view the most important. This is that it is not political. It must be completely impartial. There can be no question of my taking sides, or of the Office for Students taking sides, in any culture war.

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<sup>4</sup> Office for Students, 'Home - Office for Students', Website.

<sup>5</sup> Office for Students, 'Home - Office for Students', Website.

<sup>6</sup> Office for Students, 'Home - Office for Students', Website.

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In slightly more concrete terms, this amounts to something like *viewpoint neutrality*. Within the law, we will protect the speech rights of speakers at universities – students, staff, visiting speakers – independently of the viewpoint that they are expressing. It makes no difference whether you are in favour of Brexit or against it. It makes no difference what side you take on statues or pronouns or colonialism, or abortion or immigration or animal rights. You can castigate the monarchy or defend it. You can argue that Britain, or Australia, or any other nation, is fundamentally racist – or that it never was. You can write as a post-colonial theorist or as a gender-critical feminist, or as an opponent of either of these approaches, or as both, or as neither. As long as you do so within the law. You can even be rude about me – up to a point.

There are now persistent and widespread concerns that many in higher education are being silenced, either by the activity of the university or by its inactivity. And that silencing may fall disproportionately on those who are most vulnerable. On the student who might join university eager to debate contentious issues about gender identity, or gay rights in Islamic law, or the Black Lives Matter movement. To discover that those issues are avoided, that seminars steer away from such topics. Or on the lecturer who may face a disciplinary process following complaints from students about their inclusion of certain texts in the course reading list. Or on the trainee who is told that they are ‘unfit to practise’ in a particular profession because of lawful, but contentious, views that they have expressed in a class.

The debate over free speech, as it plays out in the media, in politics and in universities and colleges themselves, often connects to broader societal issues and concerns. This includes issues relating to identity and equality, harassment and discrimination, the regulation of social media, and even geopolitics. The implications of these concerns for free speech in universities are varied and often complex. For some, the key concern is the erosion of free speech. Universities must be places where students and staff can openly and rigorously question current orthodoxies and beliefs, and explore new areas of intellectual enquiry, regardless of whether this involves or leads to the expression of views and opinions that may be uncomfortable, offensive or upsetting. Students, it is suggested, are being shielded from exposure to difficult and controversial subject matter, for instance in the denial of a platform to controversial speakers. There are

fears that a climate of self-censorship among academics and students has taken hold, in which the discussion of certain topics has become taboo.<sup>7</sup>

Some commentators have suggested that an emphasis on free speech is at odds with work to reduce inequalities and tackle discrimination in higher education.<sup>1</sup> Some have drawn attention to the impact on groups who may feel silenced or threatened by the expression of certain views and perspectives. They believe that campuses should be inclusive environments or 'safe spaces', and they worry that an emphasis on free speech, which may encompass lawful but offensive or hurtful speech, might undermine work being done in this area.<sup>8</sup>

Others have challenged claims of a free speech 'crisis'. They say that the debate is a distraction from other pressing issues in higher education. Let me address these two points in turn.<sup>9</sup>

First, on the relation between freedom of speech and the rights of minorities. Freedom of speech is in fact essential to two ideals: democracy and minority rights. It ought to be clear enough how free speech is an underpinning value in a democracy. In fact it is so, in two ways. First: because without it there cannot be an engaged and informed citizenry. A world in which some agency – whether the state or a special interest group – controls the flow of ideas is a world where voters only learn what that agency wants you to learn.

Free speech matters to democracy in another way. A large democracy could not function by direct plebiscite. Instead, voters elect one or more chambers of representatives that deliberate and decide on the matters before them. In the UK for instance, about 55 million voters are divided into about 650 constituencies. At each election the main parties each field a candidate in every, or nearly every, constituency. (Some parties compete only in Northern Ireland, Scotland or Wales). Every voter in a constituency casts one vote for a candidate to represent that constituency. The winner is decided by a simple plurality. That candidate is then returned to Parliament until the

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<sup>7</sup> Office for Students, 'Insight Brief: Freedom to question, challenge and debate' Insight Brief 16, December 2022. Accessed at: <<https://www.officeforstudents.org.uk/media/8a032d0f-ed24-4a10-b254-c1d9bfcfe8b5/insight-brief-16-freedom-to-question-challenge-and-debate.pdf>>.

<sup>8</sup> Office for Students, 'Insight Brief: Freedom to question, challenge and debate'.

<sup>9</sup> Office for Students, 'Insight Brief: Freedom to question, challenge and debate'.

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next election, as the MP for that constituency. The MP is the representative of the voters – all of them. The voters – all of them – are her constituents.

What matters in this context is the idea that MPs are not expected simply to reflect the views of their constituents. They ‘represent’ constituents in the sense of having been selected by them. But this does not mean that on any issue that comes before parliament itself, they are bound to vote as the constituents would wish. At least, that is one view of the matter. In a famous speech on this subject, Edmund Burke said:

*it ought to be the happiness and glory of a representative, to live in the strictest union, the closest correspondence, and the most unreserved communication with his constituents. Their wishes ought to have great weight with him; their opinion high respect; their business unremitting attention. It is his duty to sacrifice his repose, his pleasures, his satisfactions, to theirs; and, above all, ever, and in all cases, to prefer their interest to his own. But, his unbiassed opinion, his mature judgment, his enlightened conscience, he ought not to sacrifice to you; to any man, or to any set of men living. These he does not derive from your pleasure; no, nor from the law and the constitution. They are a trust from Providence, for the abuse of which he is deeply answerable. Your representative owes you, not his industry only, but his judgment; and he betrays, instead of serving you, if he sacrifices it to your opinion.<sup>10</sup>*

This principle, that MPs make their own *judgment* serve the public *interest*, plainly requires freedom of both conscience and speech for MPs in the conduct of parliamentary business.

So much for democracy. What matters more in this context is that the ideals of democracy and minority rights are not entirely harmonious. Democracy is a *majoritarian* principle. It rests power, directly or indirectly, with whatever majority or large minority can most effectively mobilize. But this creates a danger. As Madison has written:

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<sup>10</sup> Edmund Burke, ‘Speech to the electors of Bristol - On Being declared by the Sheriffs duly elected one of the Representatives in Parliament for that City’, 3 November 1774, Bristol, UK as quoted in. Edmund Burke, *The political tracts and speeches: of Edmund Burke, Esq. Member of Parliament for the city of Bristol*. Dublin: Wilson, 1777, pp. 347-356.

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*It is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure.<sup>11</sup>*

Minority rights is an *anti-majoritarian* principle. It insists that there are some lines that neither a despotic prince nor a despotic *majority* can cross. The will of the majority can never by itself justify depriving a minority of dignity, liberty, life or property. Even a minority of one. And history has taught us that free speech matters even more to the protection of minority rights, than it does to democracy.

For it is minorities, in particular *disempowered* minorities, that benefit most clearly from freedom to express your views. A recent illustration is the Civil Rights movement in the United States. Speech and expression were essential to Civil Rights protestors, just as censorship was their opponents' most convenient weapon. The American Civil Liberties Union reminds us that thousands of black Americans were arrested or imprisoned in the 1960s for speech – for protesting racial segregation. This includes the leaders of the Albany Movement, Dr Martin Luther King and Ralph Abernathy, who in 1962 were imprisoned for leading a prayer vigil outside Albany City Hall.<sup>12</sup>

More famous, and perhaps in the end more consequential, was a full-page advertisement placed in 1960 the *New York Times*. In it, supporters of Dr King criticized police in Montgomery, Alabama for their treatment of civil rights protestors. The advertisement contained some inaccuracies. For instance, it asserted that the police had arrested Dr King seven times. In fact, it was only four times. And it asserted that the police had 'ringed' the Alabama State College Campus. In fact, they had not actually surrounded it.

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<sup>11</sup> James Madison, 'The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments', *The Federalist Nos 51-60*, 8 February 1788, via Library of Congress Research Guides. Accessed at: <<https://guides.loc.gov/federalist-papers/text-51-60#:~:text=It%20is%20of%20great%20importance,in%20different%20classes%20of%20citizens>>.

<sup>12</sup> American Civil Rights Movement, 'Civil Rights Movement Is a Reminder That Free Speech Is There to Protect the Weak' News and Commentary Website, 26 May 2017. Accessed at: <<https://www.aclu.org/news/free-speech/civil-rights-movement-reminder-free-speech-there-protect-weak>>.

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As it happened, these inaccuracies prompted the Montgomery Public Safety Commissioner to sue for libel. He won at the state trial court and the state supreme court agreed in 1962. Then in 1964, in a unanimous decision that counts among the most important judicial decisions of modern times, the US Supreme court vacated the decision. The effect was to secure exceptionally strong protection for speech that is critical of public officials. Quoting Brandeis, the Court wrote:

*Believing in the power of reason as applied through public discussion, [the Founding Fathers] eschewed silence coerced by law – the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed.*<sup>13</sup>

As has been commonly asserted: Freedom of speech matters the most precisely to the powerless: to those whom present political, religious and social arrangements most closely oppress. Freedom of speech matters most if speech is all you have.

Indeed there is evidence that this effect applies more generally. It is not just that freedom of speech benefits oppressed minorities. It also benefits those with the fewest material resources. A recent study from New Zealand measured this by combining four extensive datasets.<sup>14</sup> These were the WVS, ‘a repeated cross-sectional survey involving samples of people from over 90 countries covering 7 waves over 36 years’, the Latino barometer, a repeated cross-sectional survey involving samples of people from 17 countries covering 18 waves over 23 years, the CIRIGHTS database, which includes data on free speech and other human rights across the world between 1981 and 2017, and the VDEM database, which provides annual data on free speech and human rights for more than 150 countries, going back in some cases as far as 1789.<sup>15</sup>

The authors of the study regressed verbally expressed concerns for free speech over other priorities (e.g., fighting rising prices) against levels of material resources and education, controlling for other factors. And they regressed benefits to well-being from free speech against levels of material resources and education, controlling again for

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<sup>13</sup> *New York Times Co V Sullivan*, 376 U.S. 254 (1964).

<sup>14</sup> D A Voerman-Tam, N Grimes and N Watson ‘The economics of free speech: Subjective wellbeing and empowerment of marginalized citizens’, *Journal of Economic Behaviour and Organization* 212 (2023), pp. 260-74.

<sup>15</sup> Voerman-Tam et al, ‘The economics of free speech’, p.261.



other factors such as other human rights. What they found was, first, that people with higher incomes were more concerned about free speech than they were about many of the other priorities that they were asked to rank, in contrast with those on lower incomes. And second, that higher free speech is associated with better positive outcomes for the worse off than for the better off. So that free speech has, in their words, an ‘empowerment effect for more marginalized groups.’ In other words – those who are better off tend to worry more about freedom speech, but those who are worse off really benefit more from it.<sup>16</sup>

As the authors remark, these results are not necessarily incompatible. Indeed on reflection the apparent conflict is hardly surprising. One plausible mechanism by which it might arise is that other material concerns – such as unemployment and inflation – may ‘crowd out’ free speech for the less well-off. Still, it is ultimately through free speech that those other concerns get transmitted into public policy.

So free speech clearly matters – for democracy, for minorities and for those who are worse off, in general terms. Turning to the context of universities and colleges, it is not always the case that promoting free speech and supporting inclusivity are mutually exclusive. It might be argued, for example, that creating an inclusive environment in a university or college in which all are able to put forward their views and arguments, and each contributor to a discussion is heard, facilitates and encourages free speech rather than stifling it. The question arises of how best to achieve this in practical terms.<sup>17</sup>

Instead of addressing that question, let me turn to the second objection, about whether there is a problem. There is evidence to support concerns about free speech. For instance, a recent study published by Finlay Malcolm, Bobby Duffy and Constance Woollen at King’s College London showed that 48% of students agree with the statement ‘Students avoid inviting controversial speakers to my university because of the difficulties in getting those events agreed’, compared to 38% in 2019.<sup>18</sup>This, and

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<sup>16</sup> Voerman-Tam et al, ‘The economics of free speech’, p.261. Having said that, and as the authors note later in the paper, we should be cautious about drawing causal conclusions from an associational study (see p. 272).

<sup>17</sup> This paragraph is taken from Office for Students, ‘Insight Brief: Freedom to question, challenge and debate’.

<sup>18</sup> Finlay Malcolm, Bobby Duffy, Constance Woollen, ‘Freedom of speech in UK higher education: Recommendations for policy and practice’ Policy Paper, The Policy Institute, Kings College London, September 2023. Accessed at: <<https://www.kcl.ac.uk/policy-institute/assets/freedom-of-speech-in-uk-higher-education.pdf>>.

other statistics in Professor Duffy's study, certainly do raise concerns. As Professor Duffy writes:

*Our current research on this topic presents a mixed picture. But, in the end, there are enough signs of an increased sense of threat to free speech among significant minorities to warrant action to bolster it.<sup>19</sup>*

Things are no better when we turn from freedom of speech to academic freedom. This concept, which is related to free speech but distinct from it, concerns the freedom of academics to teach, research and discuss theories and ideas without external pressure from their employer, from the state or from the public. The Academic Freedom Index 2023, conducted by the Institute of Political Science at FAU Erlangen-Nurnberg in Bavaria, finds that academic freedom in the United Kingdom has fallen significantly in the last ten years. The UK now ranks around sixtieth in the world for academic freedom, well below nearly all EU countries. By the way, Australia comes in at about thirtieth.<sup>20</sup>

So much for the two arguments with which I began. A third argument is as follows. There is such a thing as progress. We know more about most things than we did fifty years ago; and we know more about almost everything than we did a hundred years ago. This includes scientific progress; but it also includes moral progress. Britain at least is a more open, tolerant and welcoming place for all people than it was 50 years ago; and probably much more, along all these dimensions, than it was 100 years ago.

But if there *is* such a thing as progress (the argument continues), then what is the point in hearing people repeat – what is the point in *letting* them repeat – views that are outdated and wrong? If universities exist for the sake of knowledge, then why do universities have an interest in allowing the defence and dissemination of claims that could not advance anyone's knowledge because they are not even true?

There are two answers. The first is that progress, if it happens at all, does not happen evenly. Although in some circles a scientific advance might be universally accepted once verified, much scientific progress, and perhaps most social and political progress, meets resistance before it gains acceptance. For instance, there is, and for a long time is likely to remain, considerable disagreement about the nature and prospects of AI.

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<sup>19</sup> Malcom et al, 'Freedom of speech in UK higher education'.

<sup>20</sup> Friedrich-Alexander-Universität Erlangen-Nürnberg (FAU), and the V-Dem Institute, 'Academic Freedom Index', Website, December 2022. Accessed at: <<https://academic-freedom-index.net/>>.

Those who reject the truth on any subject will for a long time co-exist with those who have grasped it. If those people cannot express their views, they will never change them. And this is true about those whose views on social matters are different from yours.

It is possible, and may be reasonable, to be cynical about this. In a very thought-provoking recent book, Matteo Bonotti and Jonathan Seglow have said that this argument only works if we assume that everyone involved in the debate is taking part in good faith. We have to assume that they want to arrive at the truth and that they are open to challenge. But when we look at some of the bubbles and echo chambers that the internet has created, we find that this is not so (they say).<sup>21</sup>

But even if it is true that these ‘hate speakers’, as Bonotti and Seglow call them, are not interested in challenge and debate whilst in their own echo chambers, it does not follow that they cannot be drawn into constructive conversations outside those contexts. Nor does it follow that their minds cannot be changed. The process by which this happens, however, may be gradual. I know this from my own experience as a teacher of philosophy and from numerous debates about all kinds of question. It is rare, in any particular debate, for either side to change its mind. But over a period of time you *can* plant a seed in someone’s mind; and over numerous conversations with you and with others, their attitudes do change.

I know of people who through such a process have profoundly changed their religious and political views. And the view that they reached through this process, whether sympathetic to religion or hostile to it, whether socially conservative or socially liberal – whatever it was, it was authentically theirs. For many students, university might be the only time in their lives when they have both the time and the relative freedom to embark on this exploration. A generation deprived of that freedom may never truly appreciate what it has lost. And once it is both lost and forgotten, it may never come back.

The second answer, as Mill saw, is that even if you have grasped the truth, you can hardly be said to know it if you cannot defend it against objections. In short – you cannot know that something is true unless you know why it is true; and you cannot know why it is true unless you know why at least some alternatives are false.

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<sup>21</sup> J Seglow and M Bonotti, *Free Speech* (Polity Press, 2021). p. 39.

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In the teaching of my own subject, it is vital that you are willing to challenge the student's most basic assumptions, even (perhaps especially) if you share them. Both the student and the tutor might be convinced, for instance, that economic immigration is a net positive for developed countries, that capital punishment is a net negative, and that abortion raises no serious moral concerns. And yet in teaching these subjects the tutor may have a pedagogical duty to play devil's advocate – to question the arguments for these positions and to put the best possible case for the opposite. Probably there is no more effective way to get the student to think for themselves. An atmosphere in which no visiting speaker can, and no tutor has the confidence, even in teaching to, voice these objections, is one where it is hard to see how education – at least that kind of education – can happen.

I will close with perhaps the most eloquent statement anyone ever made of the general spirit behind all of these points. I earlier quoted a passage by Supreme Court Justice Louis Brandeis. Let me now set it in context. Brandeis was writing in 1927 in effect defending a communist who had been arrested after she gave a speech attacking racist lynch mobs.

*Those who won our independence [he wrote] believed that the final end of the State was to make men free to develop their faculties; and that in its government the deliberative forces should prevail over the arbitrary. They valued liberty both as an end and as a means. They believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government.<sup>22</sup>*

I would only add that it ought to be a fundamental principle of every government, and every public body, everywhere.

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<sup>22</sup> *Whitney v. California* 274 US 357 (1927), 375 as per Brandeis J concurrence.