

Freeish Speech

Speaking out in the
twenty-first century

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FREEER

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Preface

My views on freedom of expression were formed growing up in a country where speech was suppressed, often violently, and sometimes by the state. I recall the mood and riots following the state-sanctioned unlawful killing of Ken Saro-Wiwa, which resulted in Nigeria's suspension from the Commonwealth, in 1995 just a year before I moved to the UK. I can also remember the exact moment I knew I wouldn't return to live in Nigeria. It was 2002, and a young journalist called Isioma Daniel had received death threats after writing an article criticising protests about the Miss World competition that was being hosted in the country. She had glibly written that had Mohammed been alive, he'd have been more likely to pick a wife from among the contestants than to complain about their presence. Outrage, mob demonstrations, and a *fatwa* later, Daniel was living in exile in Europe, unable to return. The story is largely forgotten, but, at the time, I was struck by how easily that could have been me: I thought to myself, "This would never happen in the UK. Do I want to live in a country where I'll get death threats for being irreverent?"

16 years later, however, I notice similar trends here in the UK and other Western countries. Thankfully, not regarding state violence, but rather the virtual lynch mobs that are congregating to intimidate people of all walks of life, and in particular those who hold strong political opinions.

What's happening here and now?

Contrary to popular opinion, the limiting of free speech is not a niche issue confined to students and other millennials. It is easy to blame the young for the problems we face in this area, but the most worrying instances stem from the actions of older members of our society. If younger people are less tolerant of dissent, today, then that is largely because such behaviour has been legitimised by those before them, whenever convenient. The frequent attacks on younger generations, in which they are dismissed as 'snowflakes', is emblematic of a time in which pejorative labelling has replaced the rigours of argument.

Some have asked whether we are witnessing an emergence of a 'new puritanism', which restricts rather than liberates.¹ Certainly, long-held principles regarding the freedom of association and the presumption of innocence, as well as an understanding and respect for due process, are coming into conflict with modern inclinations to out alleged wrongdoers, and also wrong-sayers and wrong-thinkers.

A university professor who received abusive messages via social media after writing an article commented:

[I]f I did not have tenure at my university, I would not have written [the article]. My department had to shut down its Twitter account because they were getting so many complaints and calls for me to be fired.²

1 Jenny Brown, Times Red Box Comment, 8 March 2018 <https://www.thetimes.co.uk/article/our-pupils-must-ask-whether-metoo-is-also-creating-a-victim-culture-mm5bdgnjv>

2 Ibid

Of course, expressing opinions that are different or unpopular should not protect anyone from robust debate or refutation. Freedom of speech applies to both sides of any argument, and a right to state an opinion does not invalidate another's right to disagree or mock. There is no right not to be offended. However, the sheer volume and public nature of vilification that takes place via social media warrants a second look, if it is indeed creating a climate of fear. Statements made in passing, which would previously only have been seen by a few, now have the capacity to go viral to a worldwide audience of millions, instantaneously.

Even more concerning, however, is when institutions, especially those of the state, intervene with the aim of policing speech that is not illegal, but rather has failed a test of 'appropriate' opinion. While lawful freedom of expression does not confer a right to respectful reception from other members of society, it certainly should not warrant an intervention from the state.

This is not just about the state, however. For instance, it's commonplace for radio phone-in programmes to feature people voicing unpopular or unusual opinions — but there are now incidents of individuals who've phoned in to give personal views about news items then losing their jobs, following campaigns from people who've discovered and publicised those individuals' identities. This is new, and it is not normal. We've never expected people to be sacked because of their views on religion or matters of conscience, yet these are cases in which mobs have decided that someone did indeed have to lose a job.

Corporations are also struggling to respond to online mob pressure. Last year, the stationery company Paperchase released a public apology on Twitter after it received criticism from online activists for advertising in the Daily Mail:

We've listened to you about this weekend's newspaper promotion. We now know we were wrong to do this — we're truly sorry and we won't ever do it again. Thanks for telling us what you really think and we apologise if we have let you down on this one. Lesson learnt.³

Was this just good old-fashioned consumer pressure? Or does it represent a campaign to restrict funding sources for one of the most widely-read newspapers in the country — and, by extension, to reduce the plurality of media sources? Given that Paperchase was widely criticised online by many of its own Daily Mail-reading customers, its public apology backfired, and arguably alienated a larger number who said nothing at all. This is an incredible and telling story, not least regarding the swiftness of the grovelling apology issued by the company.

The censorship or 'no-platforming' of high-profile individuals rightly makes the headlines, but what is particularly societally insidious are the relentless campaigns that aim to diminish people through discomfort — dismissing them as various types of 'ists' — rather than debating the rights and wrongs of their opinions. It's relatively easy for academics and senior politicians to defend themselves, and many others usually come to their aid. It's less easy, however, for those without a high profile: they might not bother to make arguments, or even fear that doing so would not be allowed. Instead, these people may well choose to vote, in protest, for populism and for political parties with which they may not necessarily agree, but which nonetheless seem to express the emotions they want to convey.

³ <https://twitter.com/frompaperchase/status/932541140657688577?lang=en>

Haven't we been here before?

How much of what we are seeing here is new? There have always been limits to freedom of speech. As Robert Hargreaves emphasises in *The First Freedom*:

Only a Robinson Crusoe can have complete freedom of speech, the right to shout blasphemous obscenities, utter libels or racist insults. The rest of us have to live within Holmes's constraint of not being allowed to shout 'Fire!' in a crowded theatre.⁴

What is striking about today's climate, however, is the move from society's disapproval to sanctioned bullying by self-selecting groups, which are more akin to lynch mobs than to society as a whole. Old debates around free speech could be summarised as "We disagree"; we then moved to "We disagree *and* I hate you"; and now, we seemed to have reached the stage of "We disagree, I hate you, *and* I will make sure you suffer for it". It would be bad enough if the vitriol of such an approach was limited to social media, but the way in which mainstream media takes an increasing amount of its reportage from online sources lends this nastiness a veneer of respectability. This, in turn, leads to institutions feeling the need to act because there's been coverage by a national newspaper or broadcaster.

Mainstream media has also begun aping the shrill and accusatory tones more commonly found online. Brexit, for example, has turned formerly stiff-upper-lip broadsheets into places describing politicians on both sides of the referendum as mutineers, saboteurs, and traitors.

4 Robert Hargreaves, *The First Freedom: A History of Free Speech*, Sutton, 2002

Much of the blame for all this can be laid at the door of identity politics. The rise of this phenomenon has resulted in the sorting of people into groups, in which voluntary or involuntary membership brings obligations to subscribe to particular views. Furthermore, pejorative labels are given to other groups, to legitimise abuse as a replacement for rebuttal in debate. Neologisms such as ‘terf’, ‘snowflake’, and ‘cissexual’, for example, were coined initially to box people into such groups. These terms then became negative, with forced group membership implying automatic guilt for perceived crimes in the virtual court of public opinion that is social media.

This behaviour is not confined to the left. The American politician Paul Ryan recently refused to stand for re-election as Speaker of the House of Representatives. In the run-up to this announcement, he had been being accused of being a ‘RINO’ (Republican In Name Only), and found himself out of step with a Trump-led Republican Party whose *raison d’être* is identity politics. Ryan could not easily be called a ‘snowflake’, but this is an example of someone vacating the political space because their identity had been questioned in a polarising environment — an environment in which, if you do not choose a group, you are left to fend for yourself. This is another triumph of collectivism over the freedom of the individual.

Another relatively recent trend relates to a detachment from the impact of our actions on the lives of others, which has come through the rise of social media. Previously, people and communities could see the consequences of their actions on other individuals and families. But, as with allegations of sexual harassment in the media, people — including those in positions of responsibility — are now often not particularly bothered whether the ensuing investigations of misconduct are conducted fairly and based on fact. One literary magazine editor tweeted about others getting the sack on the basis of allegation alone:

‘I get the queasiness of no due process. But [...] losing your job isn’t death or prison.’

Intent, which was once a mainstay in deciding illegality, or whether offence had been caused, no longer seems so critical. Similarly, the act of advocating on another’s behalf as a character witness — or even simply speculating about possible explanations for someone’s actions or views, without necessarily endorsing them — has seemingly become reason to be attacked on the same scale as the accused. There is no proportionality of response when confronted by a coalition of the outraged, and this form of guilt by association is unprecedented and dangerous.

Worryingly, the only way to encourage a more sympathetic response to alternative points of view seems now to be to reveal that you are, or have been, a victim, yourself. This inoculates you from the worst accusations, as victims can, to some extent, mitigate criticism of their alternative observations within a limited framework. Non-victims are not allowed to comment, however, and when they do, are asked to check their privilege.

This paper is not focused on the rights and wrongs of any particular views, but rather on problems such as the extreme levels of abuse and harassment suffered by those who dissent from the opinions and orthodoxy currently deemed ‘acceptable’. This is true to the extent that holding certain points of view has become mandatory even in order to obtain or keep some forms of employment.

A counter-argument to those on both sides of the political spectrum who believe that freedom of speech trumps any right not be offended, comes from those who believe this freedom is being used as a cover for hate speech. Or, in other words, from the belief that this defence of free speech is proposed by those coming from groups that have never suffered discrimination, and are, therefore, inadvertently reinforcing their own privilege.

As someone who is both black and female, this is an argument that I understand and have sympathy with, but which, ultimately, is difficult to accept. Bigotry and prejudice are not unique to groups that have held privilege, and ascribing privilege to entire groups rather than to specific individuals is fundamentally illiberal. The use of pejorative terms, such as ‘Uncle Tom’ and ‘coconut’, to describe individuals from ethnic minority groups who do not conform to stereotypes of how they ‘should’ behave, often comes from fellow members of these groups, who cannot easily be labelled as having privilege.

If our aim is to prevent bigotry, then the best way is through free expression, so that noxious views (as opposed to abuse) can be publicly debated and challenged. Silencing others does not eliminate bigotry — it merely leads to bigotry manifesting itself in different ways. However, if that is a given, then it is critical that the centre-right does not make excuses for its own bad eggs under the guise of freedom of speech. There is much hypocrisy from certain members of the right who treat negative responses to unpopular comment as censorship rather than legitimate, albeit robust, criticism.

Identity politics is not the only cause of these problems. The twenty-first century mantra ‘Don’t think...feel’ is also a culprit. There is now a reliance, cutting across the generations, on how passionately we feel about issues — related to a ranking of the hierarchies of disadvantaged groups — rather than objective

evaluations of the rights or wrongs of particular situations. This is not just a millennial concern.

There is also a general lack of understanding, even among proponents of free speech, of what exactly is currently protected by law. For instance, many people believe that ridiculing a particular religion is a hate crime, whereas, actually, such forms of expression are protected under section 29J of the 2006 Racial and Religious Hatred Act:

Nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system.⁵

5 <http://www.legislation.gov.uk/ukpga/2006/1/contents>

What's the solution?

What should be the centre-right's approach to new assaults on freedom of expression and diversity of thought? Do we need to draw a clearer line to show where parody stops in cases such as that of the comedian Count Dankula and his Nazi-saluting pug?⁶ The youngest people in our society are growing up with a digital footprint more extensive than anything we have seen before, even among millennials. Is the social media history of individuals — even if it goes back years or decades — fair game when deciding who should get a job?

These are questions involving subjective judgement, but there are liberal ways of approaching these issues without giving carte blanche to hate speech or the incitement of violence. In a House of Lords debate on freedom of speech in universities, Baroness Deech stated:

[I]n sum, freedom of speech is what is left only after the law is taken into account — no harassment, defamation, hate speech, discrimination and incitement to violence. Encouragement of terrorism and inviting support for a proscribed terrorist organisation are criminal offences.

This short paper is not the place to offer a comprehensive review of terrorism laws or hate crimes legislation. Deech's comment seems a good place to start when assessing the current situation, however, although questions remain as to whether the law could be refined further.

6 For a summary of this case, see <https://www.independent.co.uk/news/uk/crime/count-dankula-nazi-pug-salutes-mark-meechan-fine-sentenced-a8317751.html>

One way of determining whether the ‘free speech’ line has been crossed could relate to when causing offence becomes harassment — but this wouldn’t necessarily have to constitute harassment in the sense of being demonstrably illegal. It could include, say, sustained attacks on an individual simply for holding an opinion, which cause financial or reputational harm, and in which those carrying out the attack are either anonymous or so numerous that they might as well be, and are completely detached from the consequences of their actions.

A distinction certainly needs to be drawn between three types of actions: i) those actions that were clearly not meant to cause offence, even if offence was taken, ii) those where offence *was* intended, and iii) those where repeated and sustained actions are tantamount to harassment. The last of these most clearly requires a state response, and there are already provisions in law to address such instances.

The new Office for Students is right to investigate instances of no-platforming at universities,⁷ but determining where free speech begins and ends is not just a matter of law or for the state. It is important to differentiate between moral wrong and illegality. Classical liberals are instinctively opposed to the belief that the government needs to get involved in everything; just because we think something is bad doesn’t mean it should be against the law.

We should also remember that norms outside and inside of the law differ depending on context. As with the example of shouting “Fire!” in a crowded room, moral rights and wrongs related to free speech may differ depending on whether we’re talking about academic speech, political speech, speech in the

⁷ See, for instance, <https://www.telegraph.co.uk/education/2018/05/03/universities-no-platform-controversial-speakers-will-face-government/>

classroom, and so forth. Heckling a political candidate on a soapbox is different from heckling during a formal conference or theatre production. There is a strong argument for forms of political participation to be specially protected, however, and the government's proposals for new powers to tackle abuse and intimidation of candidates are justified.

There are no proposals in this paper for freedom from consequences, or even freedom from society. Rather, its aim is to reiterate the liberal view that the state should limit and justify its restrictions on our freedom. A state response is also not the same as a legitimate societal response. We must criticise the mob that pretends to be society and show it for what it truly is: a loud and agitated subset. And we must be free to shun views we don't like. But the state should not act to enforce preferences rather than law.

What will happen if we do nothing?

If we do not address these issues now, we face a depressing future. There are many whose views rarely, if ever, are confronted by strong counter-arguments. This is too often because those who oppose these people are silenced by a climate of fear. Unopposed thinkers become so unfamiliar with alternative arguments that they are unable to comprehend these arguments, or find them shocking, when they are finally presented to them. Cathy Newman's now infamous interview with Jordan Peterson is a good example of this,⁸ not because of the rights or wrongs of Peterson's views, but rather owing to the way in which Newman — an experienced interviewer — had clearly never come across Peterson's (often, standard) arguments before, and was, therefore, unable to defend her position or to scrutinise his thoroughly.

This paper does not make a case for the superiority of right-wing arguments over left-wing ones — although, self-evidently, that is what I believe — not least because what we are discussing here relates more to degrees of liberalism. But there is an important point to be made about the worrying way in which the left often seems to be unaware of opposing arguments, which results in a lack of debate. Worse, the scarcity of right-wing voices in academia means that those few right-wing academics can even find their work environments hostile. Winning not on the strength of reasoning, but because of a lack of opponents, leads to false confidence of the kind that left Newman literally dumbstruck by points Peterson made.

8 Watch it here: <https://www.youtube.com/watch?v=aMcjxSThD54>

Labour MPs and party members are currently finding themselves persecuted by a party membership that has been taken over by the hard-left group, Momentum. It is extraordinary that a left that fought so hard against antisemitism now finds that long-fought position challenged from within. The Bristol West MP, Thangam Debonnaire, stated in April 2018, after being bullied into leaving a meeting of her local party:

I did leave last night's BW Lab meeting when shouted down whilst trying to give explanation [sic] for attending the rally against antisemitism.⁹

When only orthodox opinions are allowed to be expressed, then, eventually, only the facts that fit those orthodox opinions can be expressed. Challenging or difficult facts won't be heard or understood. And if empirical evidence is needed to solve a problem, having an incomplete picture means you are unlikely to find a workable solution.

The use of aggression or intimidation, either when making points or responding to them, also has adverse consequences. The Economist refers to Dame Louise Casey's official review into integration in 2016, and her view on Enoch Powell's 'rivers of blood' speech:

As Dame Louise argues, by talking about immigration in such menacing tones, Powell shut down sensible debate about the subject for decades. One consequence is that some problems have not been tackled, leading to outcomes like the relative isolation of Pakistani women.¹⁰

9 <https://twitter.com/ThangamMP/status/982339121954938880>

10 <https://www.economist.com/news/britain/21740761-enoch-powells-words-1968-changed-course-britains-debate-racebut-not-way-he>

Effectively restricting free expression also creates artifice in our discourse. As Camilla Long said, after demands that she apologise for offence caused by a column she wrote:

With insincere apologies, you see, come insincere emotions, and the thing the internet was meant to be becomes a place of hollow, haggard role-players pretending to be something they're not. Making people apologise does not make society more honest; it just makes the apologies less so.¹¹

Free speech is an essential part of liberal society, although, throughout the ages, there have always been necessary qualifications to this. The need, in our time, for renewed consideration and debate is eloquently stated by Robert Hargreaves:

The heresy of one age often becomes the intolerance orthodoxy of the next. Thus, a man who stood at the top of the capital steps in ancient Rome and declared "I am a Christian" faced instant arrest and being thrown to the lions. A millennium and a half later, a man who stood on the same spot and declared "I am not a Christian" faced an equally speedy arrest followed by death at the stake as a heretic. [In] neither of these societies nor in any of the intervening centuries was there anything approaching a belief in free speech with the freedom of conscience. True free speech must always leave room for the expression of opinions with the test of arguments we find blasphemous. The principle has to be thought out by each succeeding generation. The battle is never over.¹²

11 Camilla Long, *The Sunday Times*, March 2018

12 Robert Hargreaves, *The First Freedom. A History of Free Speech*, 2002

Conclusion

If this paper has multiple references to lynch mobs, it is because when I was nine years old I saw a man lynched to death at a street market in Lagos. It happened so quickly: an accusation of theft, multiple shouts in Yoruba of “Thief! Thief!”, and a mob appeared out of nowhere, surrounded the alleged criminal and beat him to death. And just as quickly as it appeared, it disappeared. No trial, no defence, no jury, just multiple executioners who faded back into anonymity as soon as a life was destroyed.

The metaphor is a violent one, but the similarities to how a group of individuals online can act to destroy reputations, if not lives, are striking.

Free speech cannot be dismissed as a problem simply related to students, but neither should we look for a solution simply provided by lawyers or the state. In order to cultivate good societal norms, we each need to exercise personal responsibility. We need to make good choices about how we behave based not on fear of extensive legal repercussion or fear of the mob, but out of respect for ourselves and our society. This paper does not call for new government legislation; rather, it calls for an urgent assessment of where we are and what we need to do. It calls for increased rigour of argument, and for increased awareness of others and of the consequences of our actions. Freedom of expression is central to a liberal society, but it comes with a need for personal responsibility.

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