

Higher Education, Prevent and Academic Freedom

John Holmwood

What is the relationship between the government's counter extremism strategy, Prevent, HEIs, and academic freedom? One answer is found in The Higher Education (Freedom of Speech) Act 2023 which applies only to universities and colleges in England. Its supporters argue that its provisions are necessary to counter a worrying 'cancel culture' within higher education. This is the view put forward by right wing thinktanks like Policy Exchange⁷¹, Civitas⁷² and the Legatum Institute⁷³. There is little evidence of a problem as described, or that existing legislation on academic freedom as it applies in other jurisdictions is insufficient. This chapter will show how one form of "cancel culture" which has been accepted by universities – and other public bodies – derives from the government's counter extremism strategy, Prevent. This is something that is largely

missing in discussions of academic freedom.

[Prevent and free speech](#)

Prevent was first introduced in 2005 as a scheme designed to promote community integration. It was significantly amended in 2015 to require all public bodies to safeguard vulnerable individuals from being "radicalised"⁷⁴. This included reporting any worrying signs of extremism to safeguarding officers for a possible referral of the individual to a local Prevent Panel. Here they would be considered for a further intervention through the Channel programme⁷⁵. The latter, is "about ensuring that vulnerable children and adults of any faith, ethnicity or background receive support before their vulnerabilities are exploited by those that would want them to embrace terrorism, and before they become involved in criminal terrorist

activity.”

Academic freedom has always been limited by criminal law, including that applying to counter terrorism. However, it is important to understand that the 2015 Prevent safeguarding duty operates in a pre-crime space⁷⁶. That is, individuals reported to Prevent have committed no criminal offence, nor have they indicated any intention to do so. If they had, they would be charged with the relevant offences. The claim – unsupported by any rigorous evidence – is that there are behaviours or “ideologies” which, although lawful in themselves, are possible precursors to the commission of terrorist offences (whether violent, or non-violent).

For most academic staff and student representative bodies, the most intrusive aspect of the Prevent duty in higher education is the monitoring of external speakers. This involves notifying a relevant officer within the university, providing background information on speakers and a description of the topic of any presentation. The requirement to do so is well in advance of the event (usually at least 14 days).

The Office for Students has collected data from universities on their speaker policies as part of their compliance with the Prevent duty since 2017. They note that in 2020-21 – the last year for which data is available – close to 193 speakers or events were rejected at English universities and colleges compared with 53 in 2017-18, 141 in 2018-19 and 94 in 2019-20⁷⁷. The total number of events reported in 2020-21 was 19,407.

Notwithstanding that rejections of speak-

ers or events in 2020-21 represented fewer than 1% of all cases, the interim CEO of the Office for Students (OfS) stated, “it is the case that the number and proportion of rejections sharply increased in 2020-21 ... We would be concerned if those cases suggest that lawful views are being stifled.”

This is worryingly disingenuous. All the views at issue under Prevent are lawful, *including in those cases – 47 in total – that gave rise to a formal Prevent referral*. But, as the People’s Review of Prevent argues, Prevent is intrusive even where it does not lead to referral. No data are collected on events and speakers that might have been considered, but are not taken forward on the grounds that they might be considered “extremist”⁷⁸. The impact of Prevent on the expression of lawful views is likely to be greater than indicated by raw numbers provided by the OfS.

The problem is not only associated with the invitation of external speakers, but also the expression of lawful opinions in other academic and social contexts. Most academic departments will have a safeguarding officer (most likely incorporated into the welfare role) and most academic staff will have received some training, probably in the form of a government provided e-learning module setting out the “signs” of radicalization for which they should be on the lookout.⁷⁹

This is a responsibility not only of staff in academic and support roles, but also of other staff in close contact with students, for example security and catering staff, staff in halls of

residence, and those involved in premises used by student societies and clubs.

Critics of Prevent have frequently argued that Prevent has a chilling effect on the expression of views by young people in educational settings. This is something which its proponents have denied. Nonetheless, the advocates of the new Higher Education (Freedom of Speech) Bill propose that there is a problem for the expression of conservative views.⁸⁰

To some extent, the findings from research reflect the impact of government and media campaigns against “intolerance on campus”. The Policy Institute at King’s College London, for example, found that 49% of their student respondents thought that universities were becoming less tolerant. However, 80% felt that they were free to express their views at their own institution. Among conservative-supporting students, 59% declared themselves reluctant to express their views.

In the most recent Advance HE student academic experience survey, the majority of students felt comfortable expressing their opinions on campus, with just 14% disagreeing or disagreeing strongly.⁸¹

However, the authors allow that there were “significant differences in answers to these questions when broken down by ethnicity. In particular, Black and Asian students were less likely to agree that they heard a variety of views on campus (58% and 61% agree versus 72% of White students).” Of course, given the government’s identification of the promotion of Islamic



values as potentially extremist, and similar charges made against Black Lives Matter, the response of Black and Asian students is noteworthy. It is also noteworthy that the report studiously avoids discussion of Prevent. The Policy Institute report, for its part, does acknowledge that Prevent is a restriction on free speech, but fails properly to address how it operates on campus. It uses the language of “left leaning” and “right leaning” opinion and party labels (Conservative, Labour, Green and Brexit Party, for example). The implication is that party identification is part of a normal democratic process. But so, too, are many views identified as “extremist” under Prevent.

The authors state that, “Prevent legislation – aimed at reducing radicalization in universities – inhibits free speech whilst arguably providing some form of protection for freedom from hate”. However, hate speech is a criminal offence and it is not the focus of the Prevent

duty. Earlier research by the Islam on Campus Research Group, found that students and staff self-censor their discussions to avoid becoming the object of suspicion under Prevent and are sometimes discouraged from exploring, researching, or teaching about Islam. Only a quarter say they feel entirely free to express their views on Islam within university contexts.⁸² Significantly, this research addressed the role of Prevent itself in the construction of views about Muslims and Islam among non-Muslim students, showing that students who see radicalization as a problem on campus are four times more likely to believe that Muslims have not made a valuable contribution to British life.

Moreover, the report argues that “Muslim students are more likely than Christian students to see their religion as core to their identity; they are also more likely than Christian students to see the purpose of universities and the values of faith as compatible, with a quarter saying they have become more religious since they started university”. Prevent guidance suggests that increased “religiosity” may be a potential sign of “radicalization”, indicating that the self-development of Muslim students at university and their student associations are likely to be a matter of particular scrutiny.

Indeed, the same thinktanks concerned about freedom of speech on campus have also regularly led campaigns about “extremists” on campus directed at Muslim student organizations such as the Federation of Student Islamic Societies (FoSIS) and Muslim civil society organizations

like MEND⁸³. Indeed, as I was writing this piece at the end of Islamophobia Awareness Month, Imperial College cancelled an event organized by FoSIS on the grounds of the alleged extremism of the speakers, of which I was one. This followed a media item about the event, in which the event’s implied criticisms of Prevent were described by the Home Office as “dangerous and irresponsible”.⁸⁴

[How did we get here?](#)

The response of universities in England to the Higher Education (Free Speech) Bill has been resigned and muted. In general, their view seems to be that academic freedom is well-established within UK universities and that separate legislation is unnecessary. Universities UK (the representative body for UK universities), for example, has expressed concerns about some of the new Bill’s clauses providing a charter for vexatious complaints.⁸⁵

In part, this is because they have for the last decade followed the government’s steer about academic freedom. They have sought to ensure that university statutes properly reflect the legal position and have provided further guidance in advance of government legislation. For example, in 2011 they published *Freedom of speech on campus: rights and responsibilities in UK universities*, and in 2013, guidance on *External Speakers in Higher Education Institutions*.

The reports are no longer available on Universities UK’s website, but a YouTube video of the launch of the first report is available⁸⁶. In

it, then Provost of UCL, Professor Malcolm Grant, describes how it was occasioned by media concerns when a former student had been arrested in December 2010 trying to blow up a plane over Detroit. Professor Grant proposed that universities had a duty to mitigate what he called, “malign forces leading young students on campus in the direction of terrorism”. This was set in the context of protecting freedom of speech for the expression of contentious views within the law. Professor Grant drew a comparison with the BBC’s invitation of Nick Griffin, the leader of the far-right British National Party, onto Question Time in 2009, stating that it was positive that his controversial, but lawful, views should be exposed and debated⁸⁷. The 2013 guidance on external speakers⁸⁸ set out the details of the duty to maintain free speech within universities under Section 43(1) of the Education(no2) Act 1986, supported by the Human Rights Act 1998 and the Equality Act 2010, limited only by the requirement that speech was *within the criminal law*.

In effect, Universities UK has acted proactively and consistently, both in relation to the maintenance of free speech and to perceived concerns about counter-terrorism. So what has changed? The introduction of a Prevent safeguarding duty on all public authorities in 2015 significantly altered the context in which free speech on campus was considered. It identified an issue of “extremism” that needed to be mitigated. The duty was part of the Counter Terrorism and Security Act 2015, but, as I have

already commented, the “offences” in question were not themselves “unlawful”. The Prevent Duty became part of University policies on free speech despite the fact that the views at issue are not proscribed by any law.

Given that the Prevent duty operates in the pre-crime space it is also subject to expansion as a consequence of new offences brought under the criminal law. So the Counter Terrorism and Security Act 2019 introduced new non-violent terrorism offences associated with the “reckless” display of flags and symbols associated with proscribed organizations, while the Police, Crime, Sentencing and Courts Act 2022 has introduced new restrictions on “disruptive protest”. Each of these creates an expanded pre-crime space in their wake, where actions associated with Palestinian rights, or calls for extra-parliamentary protest can be deemed “extremist”. The language may remain that of “challenging extremists”, but no longer is the “challenge” that of debating controversial or radical views – as set out by Professor Grant and envisaged by Universities UK – but of curtailing their expression and reporting those who espouse them. Worse, the government – more properly the Home Office – is able to determine which views are to be regarded as ‘extremist’ under Prevent guidelines. At various times, the views of environmental activists, such as Greenpeace or Extinction Rebellion, and of anti-racist groups, such as Black Lives Matter, have been described as “extremist”.

What is to come?

The Prevent duty has recently been subject to an independent review.⁸⁹ This was put in place as a condition of the passage of the Counter Terrorism and Security Act 2019. It finally reported in February 2023 (the People's Review of Prevent recently published its own detailed response), but the Home Office had been leaking details to its favoured thinktanks like Policy Exchange and Henry Jackson Society and to favourable press outlets. These leaks had indicated that the review would declare that Prevent to be "unfit for purpose".

Despite a recent report by the Intelligence and Security Committee of Parliament⁹⁰ suggesting that right-wing terrorism is on the rise, globally and within Europe and the UK, the review argues that Prevent needs to refocus on "Islamist extremism" with too many referrals being made for right wing extremism⁹¹. This is presumed to be because of "racism fears" on the part of liberal professionals charged with the implementation of the Prevent duty⁹². It has also been claimed that Prevent is too concerned with protecting vulnerable individuals and not enough with protecting the public⁹³.

These are all very worrying developments raising serious issues for higher education in England. The idea that Prevent should be re-focused risks being in breach of the Equality Act 2010. Given that the ideas and behaviours that might trigger action under Prevent are not illegal, it is also difficult to see how interventions could be justified in terms of "public safety". They are

currently regarded as legitimate only because they are defined as being about safeguarding vulnerable individuals. But there is worse. Policy Exchange has attacked Muslim civil societies for seeking to de-legitimize Prevent (in truth, it is thinktanks like Policy Exchange that are now doing most to delegitimize it)⁹⁴. They now propose that the Home Office should set up a unit concerned to evaluate and certify Muslim civil society organizations with the purpose of identifying those that can be in receipt of public funds or be engaged with by bodies in receipt of public funds. This will include engagement by universities. These recommendations have been endorsed by the review and accepted by government.

The questions that need to be asked of Universities UK are these:

- how will it respond to attacks on lawful freedom of speech by the government and its agencies?
- Will it continue to argue that freedom of speech in universities should be restricted only by considerations of what is lawful?
- Will it regard challenges to restrictions on speakers deriving from Prevent as vexatious?