The 'Free Speech' Law will Create Courtroom and Classroom Chaos *by Dr David Renton*, barrister & Prof Alison Scott-Baumann (1 June 2021) https://doi.org/10.25501/SOAS.00037525

Summary: The government has published its higher education (freedom of speech) bill. Despite the lack of evidence of a free speech crisis in the sector[1], and the use of no platform elsewhere and on digital platforms[2], under the bill, universities will have a new duty to secure freedom of speech for staff members, students and visiting speakers. A new Director for Freedom of Speech and Academic Freedom will be given powers to decide if courses, talks or university policies maintain academic freedom. Most troublingly, **anyone ("a person") will be able to sue ("bring civil proceedings") where they believe that a university or student union has failed to protect free speech.**

Under the proposed bill, any lecture, seminar or guest speech could end up in a lawsuit. The Higher Education (Freedom of Speech) Bill is almost unique in British law in the breadth of its provision. Compare, for example, the rules on judicial review: **if someone wants to challenge a decision of government they must have "standing" – they must be affected by the decision they challenge. But in this bill there is no standing requirement. Any person, any business, any campaign can sue.**

The bill is incompatible with other government policies. This will have dangerous implications for ministers' other policies: for example, the desire to prevent Holocaust Denial. **If the bill is passed, then any university that refuses platforms to Holocaust Deniers would be making themselves vulnerable to being sued, by a student, a lecturer, by anyone, for an order requiring the university to rewrite its policies and allow them to speak. And the same problem of encouraging litigation will apply to all the big free speech issues of the day: Israel/Palestine, trans rights etc.**

In the courts it will be a weapon for the powerful. In civil litigation, the loser must pay the winning side's costs. The law is always, therefore, more attractive to the sorts of public campaigns that can find a wealthy sponsor to pay the bills if they lose**. Individuals and campaigners will use the bill as a shield, demanding that their own speech is protected. They will also use it as a sword, complaining that any radical speech is an attack on them. If the bill passes, then every time a university celebrates International Women's Day there will be men's rights organisations insisting that the university platform them, too. Every historian found to be teaching a course on the slave trade will give rise to demands that another lecture is provided, prioritising the slave owners' view.**

The role of the free-speech tsar must not become politicised: maintaining a university community in which as many people as possible get to speak requires tact, political sophistication, and the ability to see each individual event on its own terms.

ACTION: Members of both houses should vote to reject the bill. Universities are already subject to stringent legal duties. These are sufficient to protect academic freedom.

Or, members should amend the litigation to remove clause 3 and the individual right to sue.

[1] Scott-Baumann, A and S. Perfect. 2021. *Freedom of Speech in Universities. Islam Charities and Counter terrorism.* Routledge: London and New York

[2] Renton, D in press. *No Free Speech for Fascists Exploring 'No Platform' in History, Law and Politics*. Routledge.