

## 9

## Freedom of Speech

### Righting Epistemic Wrongs for Citizens of the Campus

#### Introduction

Speaking from a position of active engagement in his Student Union, a male British Arab Sunni Muslim student describes here the importance of taking responsibility for the words we speak, of having an ethical understanding of the power of language and the fact that speech is never free:

I always say it's always about power. It's about who holds the power and who is able to criticize and how much weight, how much damage can your words do. Yes, you know, you should have the freedom to speak, but there should be a consciousness that some people hold power and their words hold power and their words have consequences.

He is not alone in his concerns. Here we use our extensive qualitative and quantitative data to explain campus conflicts and events beyond the campus. In March 2018, the Joint Committee on Human Rights (JCHR) published a report about the state of 'free' speech on university campuses. Free speech is clearly and unequivocally protected by law, yet the JCHR's decision to conduct an investigation was determined by public unease about students: some media and some government groups have been accusing students for some years of damaging free speech, ostensibly by being either too restrictive or too liberal.

Students are accused of chilling free speech by no-platforming visiting speakers. Often the alleged no-platforming did not actually take place but is perceived in the public imagination as being a common and typical occurrence—as with the much publicized 'banning' of Germaine Greer by Cardiff University students. This episode is an example of an incident reported by the press and then cited as an example of no platforming, when Greer was actually permitted to attend, albeit after some dispute among protesting parties. Student Unions deny a platform to those organizations proscribed by the National Union of Students (2017, 2015) (on 'no platforming'—see Morris 2015). Alternatively, students are

accused of reckless and risky behaviour, overheating free speech by inviting extremist speakers onto campus, who push free speech too far. We see this with Cambridge University's decision to deny a Palestinian academic the role of chair at a session on Boycott, Divestment, and Sanctions (see Middle East Monitor 2018).<sup>1</sup>

Students are thus depicted as using either too much 'no platforming', or of being too libertarian (speaking freely with no restraint). The Muslim student quoted previously adopts a different view. He believes that speech must be negotiated and proportionate: power and influence must be recognized and not exploited. Power, mutual recognition, and being allowed to have an opinion (enjoying epistemic trust) will be key features of the following discussion.

In this chapter, we will analyse what students think about free speech on campus and use our findings to propose future steps to increase face to face conversations about topics currently discouraged. We cite the conservative Islamic scholar Mohammed Hashim Kamali in his consideration of Islamic traditions of free speech and the modernist Islamic scholar Intisar Rabb in her consideration of Islamic law and human rights law. Muslim scholars are engaged here to make plain the value of contesting stereotypical representations of Islam: engaging seriously with traditions of Islamic thought dispels prejudice. Their work also throws into sharp relief the way in which state regulation of free speech must always be understood in its historical context; so we look at pre-modern Islam in the context of our work on free speech in postmodern Britain. We also use European philosophy and specifically French philosopher Paul Ricœur's hermeneutics of suspicion to show the need for proportionate doubt, and the need to moderate excessive, destructive suspicion as embedded in processes of securitization. Ricœur's hermeneutics of suspicion provides a robust scaffolding that we can identify, dismantle, and rebuild differently. He argued that we use, at our peril, such an overly powerful bivalve mechanism (hermeneutics *and* suspicion) that creates a pincer grip for passing judgement on others: this happens when we believe that we know more about someone than they know about themselves. Here, we show with our qualitative findings how the counter-terror measures are based on a counterproductive and poorly evidenced hermeneutics of suspicion. Following Ricœur, we replace this with an interpretive model that assumes we can never, nor ever should expect to know everything about others or even about ourselves and therefore we must strive to communicate better. In his *Lectures on Ideology and Utopia* (1986, 255), Ricœur recommends conversation as a means of achieving better mutual recognition:

In conversation we have an interpretive attitude. If we speak of ideology in negative terms as distortion, then we use the weapon or tool of suspicion. If, however, we

<sup>1</sup> Although Cambridge later apologized, their ban was seen as a way of silencing the Palestinian voice, rather than of ensuring balance.

want to recognize a group's values on the basis of its self-understanding of these values, then we must welcome these values in a positive way and this is to converse.

Our ethical research methods, set out in Chapter 2, allowed us to have conversations with students that would otherwise not have been possible and that highlighted their concerns about free speech. They explained how silencing on campus is more the result of politicized processes and government intervention than the result of student activities. It affects minorities most markedly. We believe this topic requires analysis along lines already delineated by feminist thinkers Rae Langton and Miranda Fricker, and philosopher Edward Craig. These writers identify the mechanisms by which individuals and even groups can be excluded from the conversation and thus the epistemic trust that would authorize them to explain themselves to the majority. We will show how Muslims can be intimidated into silence and excluded from public discourse by securitization and general Islamophobia as demonstrated in Chapter 7. Some students' unions provide possibilities for dissent through engagement with *Students not Suspects* or *Preventing Prevent* activism. However, if such channels of dissent are not available, students (who spoke to us reasonably freely once promised anonymity) do not publicly question the hermeneutics of suspicion they experience. This unwillingness to challenge discrimination may be related to the fact that they are aware of their marginalized positioning and how they are considered by some academics to be unable to understand the concept of knowledge: they are not allowed to be 'knowers.' We see this traced in Chapter 8 with the academic othering of Muslims as flawed students on account of their Muslim identity (which is assumed to be incompatible with a 'critical' perspective). Speaking is a form of action, and speech makes it possible for us to show who we are, to express ourselves, as Arendt shows in *The Human Condition* (1959). If we cannot communicate relatively freely by some means; spoken language, sign language, the plastic arts, etc., then we cannot be ourselves and we cannot learn from others.

Hermeneutics, originally theological, expects to find valuable meaning in language or actions, whereas suspicion of the human motives behind these meanings erodes trust amongst humans in ways that may be irrevocable (Ricœur 1974, 402–24). Craig (1990, 130), shows how we make subjective judgments about who we trust to be reliable sources of information, and Munnik (2019) demonstrates this in terms of Muslim sources for media stories, showing how journalists find it difficult to decide which Muslims or Muslim groups to approach when there is a 'Muslim' story in the news. Fricker, in her book *Epistemic Injustice: Power and the ethics of knowing* (2007), shows how those who are suspected of not being reliable or authoritative by those with power, will therefore not receive the epistemic trust that allows them to be members of society. This is a 'pre-emptive testimonial injustice,' which is unrelated to the person's intrinsic value but may be connected to their perceived status as outsiders, as experienced currently by Muslims and

many People of Colour in Britain and Europe. Definitions of power abound, and perhaps predictably we suggest that Foucault's approach (1979) is helpful here, since he proposes that power flows within previously ignored arenas of social life and requires harnessing through perceptive recognition, for example, of the 'regimes of truth' that society tells itself about itself. However, positions such as those adopted by Foucault need to be made 'real' and the additional challenge facing us is how to analyse, understand, and avoid power being used for silencing when suspicion of religion is its trigger, especially when religious identity is politicized by state actors using current counter-extremism measures known as 'Prevent.' This situation also brings into question the very ideas of interpersonal communication, sources of knowledge, and what it means to 'know,' at a time when the digital world is creating apparently infinite quantities of plausible realities.

Our findings facilitate understanding of current public and political discourse about universities and the roles played by religion and secular positions within them. We will measure the intensely moralizing public conversation about free speech on campus against several different forms of language: legal requirements, state policy and ideology, media narrative, philosophy, and our own thinking as researchers. We also propose that open discussion, within 'shared breathed space' where conversation, debate, and discussion take place face to face, makes a vital contribution to a better understanding of the religious, social, and political pluralisms reflected in the lives of students and staff on modern campuses.

### **Ethical Language**

Freedom of speech on UK campuses has been explored elsewhere in research (e.g. Weller, Hooley, and Moore 2011); in surveys (e.g. Hillman 2016); in official reports on higher education institutions (e.g. 'Patterns and Trends in UK Higher Education' 2011); and papers (e.g. Cram 2012; Scott-Baumann 2017). During the lifetime of this project (2015–18) the debate in the public arena became heated and polarized. There are indications that there is more at play than the right to speak freely; therefore, to clarify the debates, we will consider issues around individual identity, agency, free will, and the nature of knowledge. Let us briefly consider some key philosophical approaches and then analyse how we might employ these principles to take this debate further.

#### **'Liberal' and 'Guarded Liberal' Models of Free Speech**

We propose that there are broadly two core models for freedom of expression, and each has an extreme version. These are developed in detail and with practical applications in Scott-Baumann and Perfect (2020). The 'liberal' model is based on

a democratic understanding of free speech and asserts the legal right of speakers to think and speak freely and be questioned on their beliefs, in order that others can evaluate the probity of their arguments. Spinoza demanded this in his (anonymized) *Theologico-Political Treatise* and his *Political Treatise* of 1669 (see Spinoza 2013). In a more limiting version of the liberal model, the philosopher John Stuart Mill developed a model of free speech based on the ‘harm principle’, in which he argued that someone’s right to free speech can only be curtailed if they use it in wishing harm to others. Mill’s idea of harm, published in *On Liberty* in 1859, is unclear and seems to rely upon banning language that leads to physical harm (see Mill 1985). These positions of Spinoza and Mill are relatively liberal, in that both wanted speech to be as open as possible, with dissent—even religious dissent—accepted and a broad belief in human capacities to resolve issues through open discussion. Joel Feinberg (1988) and Jeremy Waldron (2012) propose alternative models based upon offence and hate speech principles respectively, which we can call ‘guarded liberal’ models. They assert that obnoxious views, even if legally permissible, must not be given a platform because that enhances their influence and detracts from public benefit as well as causing offence. This accords with a prevalent Islamic view: Kamali explains that hate speech, together with all forms of slander and insult, is discouraged in the Qur’an (Kamali 1992, 53: 117, 167).

Each of these arguments, the liberal and the guarded liberal, deserve to be taken seriously, not least because they are useful indicators of two frequently used approaches—the liberal one asks for as much freedom of expression as seems reasonable and practical, and the guarded liberal one recommends that certain specific topics should not be discussed without some measure of restraint. They are both reasonable, yet they can become problematic when they become exaggerated forms of themselves. Exaggerated versions of Spinoza and Mill can become libertarian, insisting upon the citizens’ right to speak as freely as they wish, as long as it is legal and cannot be proven to cause physical harm to individuals or the state. At the other end of a notional spectrum, Feinberg’s and Waldron’s guarded liberal views and those of Kamali can be exaggerated to the point where they become restrictive by encouraging and justifying censorship of difficult topics, thus justifying ‘no-platforming’. We will explore how these different approaches affect people’s behaviour on university campuses, and we propose various strategies for avoiding these turns from the liberal to the ‘libertarian’ and the guarded liberal to the ‘no-platforming’ positions respectively.

### Libertarian and ‘No-Platforming’ Approaches

Our field research for this project took place during a heated and confusing proxy free speech war of words waged upon the student body. There is a recent and growing worldwide tendency on behalf of the listener/reader to suspect the

motives of the speaker, manifesting itself in taking offence: feeling insulted has become the default mode of communication, exacerbated by the digital licence to abuse strangers on screen, which avoids the moderation of face to face conversation. This runs hand in hand with the refusal to allow other people the right to an opinion. In our campus context, no citizen/student born this century had a vote on the EU referendum in 2016 and this could partly explain why students may be currently refused the right to an opinion: the student body receives the testimonial injustice of not being considered to be reliable or relevant witnesses because they are irrelevant to the Remain/Leave dispute. Students are told by media, by state and by groups working with the state that they embody two contrasting characteristics. They are both too reckless (inviting ‘extremist’ speakers onto campus who will radicalize vulnerable students, as argued in reports published by the Henry Jackson Society—Henry Jackson Society 2015; Fox 2019) and too cautious (Spiked Online’s accusations of inhibiting free speech with no-platforming, safe spaces and trigger warnings, inviting the Secretary of State’s censure of student activities—see Spiked Online 2018; Department for Education 2017). Both the Henry Jackson Society and Spiked Online focus on campus events that they find offensive. Henry Jackson Society author Emma Fox chooses events that are Islamic in character which are thus deemed dangerous: she lists sessions that include surviving exams during Ramadan, which do not seem dangerous to us. The Henry Jackson Society is here demanding a no-platforming approach. In 2017–18, The School of Oriental & African Studies (SOAS) Students’ Union received 2,645 room booking requests for events. Less than 2% of SOAS Students’ Union events (forty-three) were judged to be ‘extreme’ by the Higher Judicial Service (HJS) in 2017–18. Of the forty-three, twenty-seven were given by the same speaker as part of a weekly course on the Qur’an (Scott-Baumann and Perfect 2020). On the other hand, Spiked Online chooses campus events that it believes are censoring free speech, such as a students’ union at a university declining to sell the *Sun* newspaper: Spiked thereby adopts a libertarian approach supporting an unconstrained freedom of expression. This conflicting and confusing debate is also often reflected in the cultures of practice in the media. Those with a public platform can be considered to abuse the privilege, as happened in October 2019 when journalist Ron Liddle stated: ‘My own choice of election date would be a day when universities are closed and Muslims are forbidden to do anything on pain of hell, or something’ (Jackson 2019).

Indeed, non-Muslims on campus often commented to us about discriminatory practices cloaked in libertarian approaches which they found offensive. Here, a White male Christian post-doctoral researcher exemplified his understanding of the free speech platform, which is his critique of a libertarian position:

The far right, in fact, they’re the most vocal, they’re the defenders of free speech. But, actually, what they say, when they have free speech is, Black people are this, or that, or the other, or women are bitches.

In other words, an unconstrained freedom of speech is often advocated by those who then use it to voice opinions that would be acknowledged as obnoxious and ignorant by mainstream standards of propriety (Scott-Baumann 2018c). This is very different from the responsible care Kamali advocates.

### Students' Opinions about Free Speech on Campus

This post-doctoral researcher's view about the problem with libertarian free speech helps us to explain the apparently confused or at best ambiguous responses about free speech on campus that emerged from the national survey conducted as part of our research. We will show how the data are not ambiguous but imply sensitivity to context. Some 2,022 students from 132 universities were asked about their attitudes concerning religion and campus life, and towards freedom of expression in university settings. Their views are sometimes different to those reported from interviews and focus groups, reflecting differences of questioning and data collection in our two data sets. In the survey students were asked to rate their agreement on a five-point scale with the following statement:

'Universities should never limit freedom of expression.'

Figure 9.1 shows how students responded to this statement. A large majority of students, 72%, indicated *some* level of agreement that universities should never limit freedom of expression (32.9% strongly agree, 39.1% agree). If there were a *majority* who 'strongly agreed' then this might suggest a majority in favour of a libertarian view; this more moderate response suggests, instead, a liberal approach tending towards a guarded liberal approach amongst the student body.

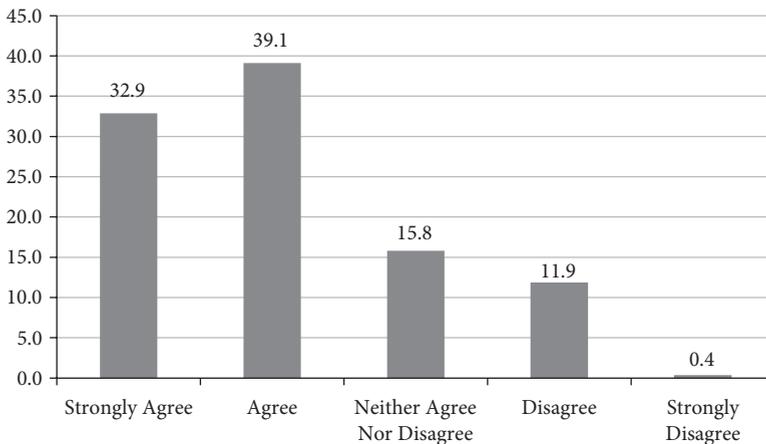
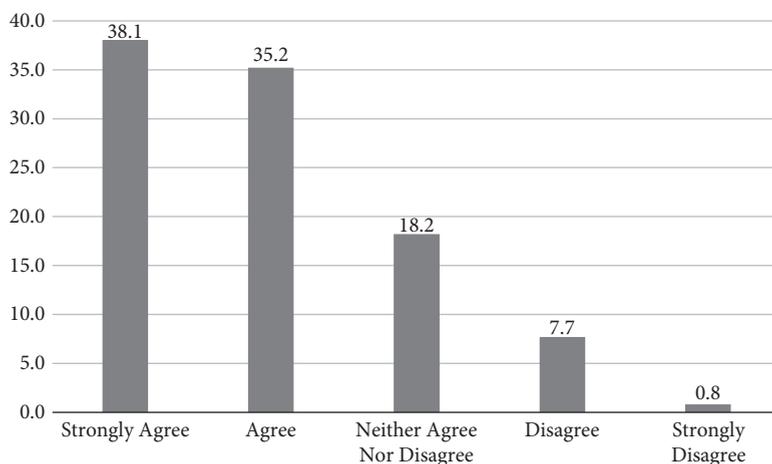


Figure 9.1 Students' attitudes on universities limiting freedom of expression



**Figure 9.2** Muslim students' attitudes on universities limiting freedom of expression

Muslim students were also examined as a sub-population of interest, and the distribution of their responses are presented in Figure 9.2. In general, the results are similar to the overall sample: support for unqualified freedom of expression in universities is slightly higher among Muslim students than it is among students generally.

This questionnaire, which tapped into the thinking of a representative sample of the national student population in 2017, suggests many students have complex views on this difficult topic of free speech. Over a third believe that universities should never limit freedom of expression, although a significant minority gave responses suggesting that there may be a case for universities to limit freedom of expression, at least in some instances. This suggests to us an awareness of the complexity of such choices. When the question is posed differently, 94% of students agree (over 50% strongly agree) that universities should be places in which all kinds of ideas are discussed openly, regardless of how unfamiliar or uncomfortable they might be. So there appears to be a strong majority level of support for permitting freedom of expression and a strong opposition to limiting it.

However, in a question about protection from discrimination and ensuring the dignity of minorities, the majority adopt a position that seems to go against support for freedom of expression. Over 75% agree or agree strongly that protecting individuals against discrimination can be more important than unlimited freedom of expression, which resembles the intolerant liberal and may even endorse the 'no platforming' approach. They are strongly supportive of the idea that universities should be places where a free exchange of views takes place, and most do not want universities to limit freedom of expression, although most also seem to agree that there might be exceptions to this, and that students should be able to exclude themselves from situations they find uncomfortable. The majority (79%)

support to some extent the use of trigger warnings, i.e. students should be given prior warning of material in class and at events that may upset some students—which suggests endorsement of safe spaces and no-platforming on occasions. Among those who agree that universities should never limit freedom of expression:

- 73.1% also agree that protection from discrimination and ensuring the dignity of minorities can be more important than unlimited freedom of expression.
- 79% also agree that students should be given prior warning if a class will feature material that some students might find upsetting or uncomfortable.

So, there is strong evidence to suggest that a good number of students (over 50% of the total) are tacitly aware of the importance of different approaches to spoken language in different situations e.g. an issue that affects a minority group may require careful handling. This sounds obvious, but in fact the prevailing tendency is to decide on a policy e.g. the guarded liberal approach that is then applied to all topics that come into question.

Thus, it would appear that freedom of expression does not, for these students, allow or endorse freedom to offend, exemplified by the student who gave the example of far-right free speech as being damaging: ‘Black people are this, or that, or the other, or women are bitches.’ Our research shows variations in responses which suggest that students are not confused: they may simply be responding to the need to evaluate different situations differently, as with debates around ‘racialization’ and gender. This invites a provisionality and flexibility that necessitates negotiating the right to a *process* of discussing how to approach a topic: the parameters of that topic may be free or not and require clarity that may take a different shape depending on the topic and the target audience. It is beyond the scope of this book to develop a new model for campus regulation of free speech, yet it is clear from these apparently contradictory responses that there is an urgent need for more systematic approaches than currently exist; Scott-Baumann and Perfect (2020) propose a working model that takes account of the need for different approaches in different situations and thus builds on the research reported here.

### **Prevent Duty Guidance, Power, and Testimonial Injustice**

To balance our extensive survey data on free expression, our evidence from interviews and focus groups allows us to present a more subtle picture. For example, we show clearly that securitization policies are causing students and staff to self-censor, and the Prevent Duty Guidance was mentioned with concern in this context by more than half of our interviewees and focus group participants (253 in total). The background to Prevent is neither known nor understood by

many of the students who spoke to us—i.e. most do not read the legislative documents on counter terror; they are quite simply responding to the impact that this policy has upon them, which gives their testimonials authenticity and immediacy.

On campuses, Prevent is used as a way to control controversial topics, whilst influential (broadly liberal, even libertarian) critical voices like Ken Macdonald QC, who protest at this infringement of free speech on campus, are ignored (Macdonald 2016). Instead of opening up debates on difficult issues there is undoubtedly a rising tendency to deal with controversy through silencing, marginalizing, and delegitimizing positions with which one disagrees. This is undeniable as a trend across the higher education sector in recent years. The trend is neither ubiquitous nor uncontested, yet it is clear that state policy is responsible for a chilling effect on free speech at university (Scott-Baumann 2017; Townend 2017).

### The Chilling of Speech

The connection between counter-terrorism measures and free speech inhibition is a significant pattern in our research findings. In our 2016–17 fieldwork conducted on six campuses with 253 participants, the reported attitudes towards free speech were framed in conversation within the context of radicalization, with direct or indirect reference to the Prevent counter-terrorism measures. Attitudes towards Prevent were significantly negative (expressed by over half our participants and interviewees) and not only in the perception of Muslim staff and students.

In our fieldwork, participants' critical attitudes towards Prevent were predominantly expressed by Muslims, and yet Christians and those of other faiths and none also noted concern. For these participants, Prevent is frequently associated with themes such as 'challenges to freedom of speech or civil liberties' and 'prejudice'. The words that came up frequently in association with Prevent (i.e. in the same sentence) are strategy, policy, (government) agenda, campaign, interrogated, accused, and affected. Prevent was often not mentioned by name, but participants expressed feeling under surveillance and Muslim students and academics argued that those who were perceived to be visibly Muslim were being particularly targeted, whether because of skin colour, clothing, or religious observance—or a combination. In addition, the perceived impact of this approach on free speech is also clear to those who are White like this male doctoral student who identifies as both Muslim and Jewish:

I think there's a marked sense of people being much more careful around what discussions they are having, [and] where. And I'm often reminded of the fact that, whatever conversation we're having in public, I won't be the one who's reported or picked up or asked to justify himself when I'm in conversations with a large group of Muslims.

Thus, individuals and groups can be excluded ‘from participation in the practice that defines the core of the very concept of knowledge’ (Fricker 2007, 16). We propose that both libertarian and no-platforming approaches to free speech can implement what Spivak (1988) calls ‘epistemic violence’, i.e. the societal harshness than can lead to self-censorship and self-silencing. Langton expresses it as ‘locutionary silencing’, explaining that: ‘members of a powerless group may be silent because they are intimidated, or because they believe that no one will listen. They do not protest at all, because they think that protest is futile... [these] speakers fail to perform even a locutionary act’ (Langton 1993, 315).

These feminist thinkers, and Craig, explain that the individual (in this case the student, and especially the Muslim student) is thereby doubly discriminated against: they are not invited to give an opinion that will be taken seriously and they are not considered to have a valid opinion; so the very core of what it means to be a knower is denied them. There is no epistemic trust. We found no evidence that staff or students on any campus had been consulted by government in a consultation procedure about the appropriate implementation of Prevent in any of our case studies (El-Enany 2019). We have seen this epistemic injustice or locutionary silencing already in our earlier chapters on gender, inter-religious relations, radicalization, and Islamic Studies.

Our analysis demonstrates that the deployment by the state of securitization policies has a negative effect on freedom of expression. Students such as the White Jewish/Muslim student quoted previously recognize the negative link between the Prevent Duty Guidance and free speech:

Many people know about the Prevent Policy, which is the government anti-radicalization policy, which has turned a lot of mosques and prayer rooms in universities into kind of like quite surveilled spaces. And so I actually think the trajectory is a negative one.

However, the law proposes no such link. Indeed on the contrary the 1986 Education Act (2), to which the Counter Terrorism and Security Act 2015 refers, pays particular attention to the importance of free expression: it confers on universities not just a duty to ‘have regard’ to freedom of speech but a much stronger duty to ‘take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees... and visiting speakers.’ Universities must ensure, insofar as is reasonably practicable, that no individual is denied use of university premises on any ground connected with ‘the beliefs or views of that individual.’

This Jewish/Muslim interviewee shows how a metaphysics of violence has been created, whereby the campus has become securitized on the basis of the unproven assumption that the conditions are primed for the eruption of violence. In addition, this presumed risk creates risk-averse behaviour, forcing students and staff

into a defensive mapping, a topography of war, whereby staff and students map their understanding of the campus and change their behaviour in order (ostensibly) to be safer than if they had not. In this topography of war, the geography of the campus is characterized by phenomena that implement securitization, such as the use of guards, surveillance cameras, swipe card entry, and academic risk avoidance. We see this in the 2018 Geras case at Reading University, where students were instructed not to leave a particular academic paper open on screen and unattended, in case someone was radicalized by seeing it inadvertently (Courea 2018). We see this in the student we interviewed who reported that she asked a friend to take reading list books out of the library on her behalf because she was an Asian Muslim woman who sought to avoid drawing attention to herself. We see this in well-reported difficulties experienced by students seeking to invite external speakers to talk about Islam-related matters. This risk-averse inhibition of free speech and agency has three deeply worrying consequences. It impairs free speech by students and staff, especially Muslims; it reduces the capacity for debate amongst non-Muslims on many topics; and it inhibits reasonable discussion of how 'free' speech can be. Ultimately, these effects will also prevent clarification of what radicalization might look like, as this White female undergraduate student of no religion explains:

I think Prevent is, if anything, preventing discussion. And if you don't display what radicalism stands for, what it is, how are you supposed to uncover, how are you supposed to prevent people from going[to Syria], or from falling for it?

### This Confectured Metaphysics of Violence

Empirical evidence is available from our research data to show that an imagined imminent and immanent violence is created as part of the implementation of state securitization policy. By this means, a generalized hermeneutics of suspicion is encouraged that enables a sort of imagined performance of radicalization, which Heath-Kelly describes:

[T]he radicalization discourse produces (discursively) the threats it claims to identify for the performance of governance, rather than [as] reacting to the existence of such risks. (Heath-Kelly 2013, 408)

The connection made by staff and students between free speech and counter-terrorism measures suggests that free speech, protected by law, is being compromised within universities as a result of the securitization measures. As such, our project sheds light on unprecedented involvement of state actors in campus life, which shows the power of government rhetoric to influence how public bodies

function, especially when reinforced by fear of terrorism and prejudice against minorities. Herboth warns us that ‘processes of securitization are processes of de-democratization’ (Herboth 2016, 139). Indeed, the connection between constraints on freedom of expression and Prevent Duty Guidance suggests such a process, given that free speech is considered inherent to the democratic functioning of a nation state.

Our research shows how the situation on the campus as a semi-public space has become more discriminatory under Prevent over the last decade when we compare our findings with earlier work, such as that of Saeed (see Brown and Saeed 2015), conducted on UK campuses from 2010–12. Saeed analysed Islamophobia in higher education institutions. Her findings show that institutional Islamophobia was by this time well established and took the form of distorted identity politics, with the beginnings of informal monitoring triggered by the 7/7 bombings and further justified on campus by UCL student Abdulmutallab’s attempt to blow up a plane—this monitoring was then crystallized into the Prevent Duty Guidance. Freedom of expression was not raised as an issue for concern in Saeed’s work but had become a significant issue by the time of our research in 2015–18, which significantly followed the passing of the Counter Terrorism and Security Act (CTSA) 2015. In Saeed’s work, Muslim students and staff and those of colour were already experiencing restrictions on what they could say or discuss as a result of Islamophobia, unconscious bias, and stereotyping. But this chilling effect, as described by Townend (2017), was more clearly expressed on multiple occasions by our respondents in 2016–17, and they often associated it with the official surveillance of Prevent. As signalled by Baroness Warsi with the ‘dinner table test’ described in Chapter 6, our interviewees show that there is a new phase of Islamophobia in Britain, legitimated by means of its institutionalization within public bodies. Yet, public bodies are legally bound to protect and enable free speech.

### **Law, Human Rights, and Religious Tradition**

Freedom of expression is considered to be a necessary though not sufficient condition for the functioning of democracy. The United Nations 1948 Universal Declaration of Human Rights spearheaded the rights movement which was an attempt to move away from protecting human rights by force, as in war, towards doing so by peaceful means. Moreover, in the human rights framing of the human condition, the absence of free speech would be dangerous and is illegal (Duranti 2017). Free speech and academic freedom are both robustly protected in British law by the 1986 (2) Education Act, which issues universities with an obligation to actively protect these human rights. Section 6 of the Human Rights Act 1998 states that it is unlawful for public authorities (and universities count as such) to act in a way which is incompatible with a Convention Right. Section 6 incorporates

Article 10 (right to freedom of expression) and Article 11 (the right to freedom of association by assembly) from the European Convention of Human Rights. Thus, a university, in performing functions of a public nature, must respect the rights and freedoms set out in the Convention. Tension arises between this legal obligation on universities to have *particular regard* to protect free speech and to have *due regard* to prevent people being drawn into terrorism. In legal language *particular* is stronger than *due*.

The current situation on campus can be understood when we consider the natural vacuum that exists between a law and its implementation, a vacuum which is often filled by guidance. Currently it is a securitization narrative that fills that vacuum, based upon the inductive fallacy that if some Muslims are terrorists then all Muslims may be terrorists: this narrative exceeds the Act and should in law be challenged, yet it is not (O'Toole 2015). This can be clearly understood by analogy with Giorgio Agamben's version of Schmitt's state of exception, whereby risk aversion is used to justify extra-legal state control. In England and Wales, parts of the government argue that the terrorism risk is so great that it merits a national surveillance programme, where every child and every citizen is vulnerable and every public space is a 'pre-crime' space, carrying the potential for the eruption of violence (Agamben 2008; Heath-Kelly 2013; Scott-Baumann 2017).

Thus, although the right to self-expression forms a core value of the university, it faces powerful, yet different, pressures, and remains remarkably under-researched, particularly when issues around faith and identity are at stake (Barendt 2007). Academics often feel unable to discuss issues that encroach upon faith, belief, identity, and politics (Dinham and Jones 2010). As a White female British academic commented in our research, when describing a student's complaint about her showing in class the Danish cartoons (Nielsen 2010) that mock the Prophet Muhammad :

It was very salutary, you know, and I still think today, was it the wrong or right thing to do, but I won't do it again, that's for sure, you know, I'm not going to show the images in any teaching context, I don't think.

This academic was acting within the law, felt fully supported by her university, and was exonerated, yet felt increasingly constrained in teaching a controversial matter related to Islam.

The governing discourse of the university is more influenced than it should be by counter-terrorism policy, and this has an impact upon the social contexts of teaching and learning that may be counterproductive. The student who complained about discussion of the Danish cartoons perceived a risk to his right to faith and the government's approach to counter terrorism also fosters a risk-based approach to Islamic issues: the end effect is that such issues are less and less discussed, debated, and taught. The campus interaction order is also affected by such

risk aversion: the right to free speech in semi-public campus areas like cafés is constrained by security personnel and security machinery that expand this risk from Islam to apply to all on campus, as identified by a White male Christian post-doctoral researcher:

Well, there's definitely the existence of a security guard, he's probably not watching that closely what's happening, but he's present, and then there's definitely a security camera, or a network of security cameras. There's also... the creation of a habit without that argument, without shouting, without public speech.

There is also a religious tradition in most cultures that urges caution and may restrict free speech as if it is harmful. Christian thought has traditionally often excluded the free expression of other religions: Milton's *Areopagitica* (1644) pleads for a free press for all except Roman Catholics, whom Milton explicitly excludes. The idea of free speech as possible harm is significant in religious circles, including Islam. An extreme example of harmful free speech is religiously injurious speech. The Qur'an explicitly discourages harm to others through speech (Qur'an 49:11–12; 4: 148) and provides many other limitations on the use of language to harm others (Kamali 1992).

Two Muslim scholars, Rabb and Kamali, take a different approach from each other when analysing the two main strands of Islamic law related to freedom of speech: there is one strand which restricts certain social-religious expressions (to protect Islam as a faith), and another strand which protects particular political expressions (to make the ruler accountable) (Rabb 2013). As in other religions, then, historically Islamic scholars saw freedom of speech as something that is both risky and to be upheld within limits. In the first strand, jurists condemned various kinds of blasphemy (Rabb 2013, 158–61). In the second strand related to freedom of speech, Islamic law provides a certain level of protection for legitimate political dissent in the form of rebellion. Jurists advised that rebels with a just cause should not be treated as treasonous criminals to be punished, and that rulers should respond to them with restraint. Rabb sees this defence of the right to rebellion as analogous to a modern defence of political speech that criticizes the ruling authorities (Rabb 2013, 148–51). In considering these two strands, Rabb suggests that the classical Islamic rules on just revolt enshrined the rights of citizens to be critical of unjust government, but that these have been suppressed in certain modern authoritarian Muslim-majority countries, contributing to the Arab Spring. At the same time, she suggests that the other strand, of restrictions on social-religious expression, has been exaggerated in some Muslim-majority states into unnecessary over-application of blasphemy laws, as was seen in the case of Pakistani Christian Asia Bibi (who in 2010 was convicted of blasphemy and sentenced to death). Thus Rabb argues that suppression on the one hand and exaggeration on the other have 'flipped' the classical Islamic understanding of freedom

of speech into an inverted and extreme version of itself (Rabb 2013, 167), and she shows this vividly in a modern historical setting of Muslim majority states.

Kamali, like Rabb, is writing now, but his work must be understood as a faithful reworking of pre-modern Islam: in pre-modern times laws on free speech and all other aspects of life were designed to stabilize richly multi-religious and multi-ethnic societies that were fragile and required calming use of speech. Hallaq describes the role of the judge in such courtly societies as creating a 'circle of justice' within which different powerful groups and different interests could be regulated peaceably (Hallaq 2009a, ch. 5). Kamali works within such ideational structures when he recommends that a balance needs to be struck between modern commitments to democratic governance and the classical Islamic legal tradition which protects political dissent. In his comprehensive book *Freedom of Expression in Islam*, Kamali (1992) provides copious evidence of the ways in which Shari'ah law, enhanced by the Sunnah, encourages free speech as long as it is based upon affirmative evidence and takes the form of freedom of expression underpinned by freedom of belief within Islam and Hallaq again shows the regulatory and peace brokering role for the court in pre-modern times (Hallaq 2009b). Careful use of group decisions is also recommended, for example in council meetings known as shura, consultation carried out by a group (Kamali 1992, 40–4). These are non-binding, advisory, and may partly resemble a cross party parliamentary group that debates a troublesome issue, has no power but must be taken seriously when it provides rationalizations of evidence collected. In pursuit of classical protection of political freedom, Kamali strongly recommends shura, arguing that such consultative groups of citizens 'should be seen as a hallmark of Muslim culture, and as a model for its socio-political development' (Kamali 1992, 44). If we lose the shura-like role that can be played by tutorials, group discussions, and student activities, and if we fail to make use of these parliamentary structures that resemble the shura, then we lose this opportunity to debate political matters. However, if some modern young Muslims follow Kamali's interpretation of conversation as desirably conservative when it is about social mores then there may be unwillingness to debate sociology etc., in a class-as-shura. The concept of shura arouses strong opinions being claimed by both Muslims and secularists, which suggests that it has potential value for both. Given the importance of context when understanding free speech debates and laws, it is thought provoking to wonder how we find ourselves in our current state where far right, exclusionary and discriminatory populist forms of speech are riding rough shod over liberal laws. And we can see how this affects student use of language: if debates, shura-type gatherings in class (opportunity denied) and in parliament (opportunity poorly understood), are not accessible to students, then an epistemic wrong may be done to them, because they are not learning how to engage in consultation and their liberty and equality as citizens may be infringed (Laborde 2017:119). This may be especially true of Muslims, as seen with British Muslim NHS doctors too (Atewologun 2019).

## Students in Danger: Melting or Exploding?

As discussed earlier in this chapter, students are often accused of being either snowflakes who melt at any contact with controversy, or proto terrorists who foment radicalization. In October 2017, when setting out the tasks to be completed by the new Office for Students, Jo Johnson, then Minister for Higher Education, challenged the snowflakes and demanded more free speech on campus:

I know there is good practice out there, and am proud that some of our university leaders and academics have publicly defended free speech. But there are still examples of censorship where groups have sought to stifle those who do not agree with them. (Department for Education 2017)

This assertion calls for liberal, even libertarian approaches to free speech and contains some truth: of course there are, and have been since the 1960s, student groups on campus that seek to promote or suppress debate on topics that range from the Kurdish struggles for independence, or the plight of Palestinians, to identity issues around gender. Our qualitative data demonstrate staff and students' sensitivity about how difficult these decisions are and the often-covert nature of decisions they are forced to make, highly subjectively, about what they can and cannot safely discuss. Principles of fairness and equity are being challenged by hermeneutics of suspicion and this damages the core of the university's mission. This disqualifies the securitization prevalent on campus because this form of securitization relies too much on suspicion: hermeneutics, (originally analysis of religious texts, now applied to understanding action as if it is a form of text), is an excellent way of understanding each other, but not when further endorsed by suspicion, which assumes that we know more about you than you know or tell about yourself, and that what we know about you makes you dangerous. Hermeneutics allows powerful analysis of human motivations and agency, and suspicion is healthy and useful for doubting the motives of others but taken together they are toxic and create a negative approach to human relationships. We adopt Ricoeur's approach: the term 'hermeneutics of suspicion' is often misused. He developed it, deconstructed it and soon abandoned it—he felt the two terms should not be combined as their application will lead to a more negative interpretation of human behaviour than is justifiable. He preferred a hermeneutics of recovery that allows us to be more compassionate as a result of personal guilt, loss and disappointment (Scott-Baumann 2009, 153–69, Scott-Baumann 2013). We also propose that both (hermeneutics and suspicion) are excellent thought processes when, proportionately and not excessively, applied to the self: we must accept that we each as individuals, are at the centre of our understanding and must therefore be prepared to question ourselves and, on occasion, accept fault, as we show in our team struggles with reflexivity in Chapter 2.

Yet we see in the current securitization of civil society a prime example of the hermeneutics of suspicion, and it is even being used in a pseudo-religious manner, as if the old theological hermeneutical interpretations can be used to justify surveillance: actions are interpreted hermeneutically as if they have hidden religious meaning. A Muslim girl starts wearing black; a Muslim boy grows a beard, and these actions are subjected to suspicion based upon the belief that the usually lay or secular watcher knows more than the one they are watching about their target's true and devious religious motivation.

The state policy enforces a securitized environment to guard against terrorism: this has been endorsed by Jo Johnson and other Ministers of Higher Education and leads to the opposite of what ministers insist upon, i.e. free speech. Yet, the campus does not appear at risk. Securitization encourages a guarded liberalism tending towards no platforming of Islamic topics and Muslim speakers. This creates a simulated topography of war, whereby the geography of the campus is mapped out by the use of security measures such as limited access allowed to certain speakers on certain topics and performed with the use of guards, surveillance cameras and swipe card entry. This approach is endorsed in reports from some groups with links to the centres of political power such as the Henry Jackson Society and Quilliam. The Henry Jackson Society's January 2019 Report (*Extreme Speakers and Events: In the 2017/18 Academic Year*), claims that 'Extremist hate preachers, pro-jihad activists, and avowed anti-Semites have 'near-unfettered' access to students' (see Fox 2019). This misleading use of information feeds the public perception that campuses are dangerous. We see this reflected in our fieldwork: in a research interview, a member of staff spoke of a recent development in which staff and student cards became necessary in order to enter teaching rooms. This staff member is not convinced that the measure is in fact about securitization, but explains how the current climate of surveillance nevertheless engenders fear about access and safety:

So I was just thinking well, 'why would they do that?'—Because of course, everyone is going to forget their cards and it's just going to be chaos. I'll forget my card and won't be able to get into my own classroom and then I thought, 'oh wait, it's probably about surveillance' and I think that's because we've got into the habit of thinking that we are just being coerced into spying on our students' and... I just find it abominable. I will not do it, I think it completely destroys the bond between me and my students. (White female staff of no religion)

These impulses, whether correctly attributable to government agency or not, are having a chilling effect on those campuses where there are Muslims and where certain topics are of interest to student groups. This can be perceived in terms of general debate and visiting speaker debates that are 'squashed' as a result of specific or even non-specific concerns based on unquantifiable risk:

We've sometimes had telephone calls in from the police, as well as from the university policy makers saying: 'we've heard that so and so is coming to speak at a university venue. Do you know anything about it?' Well, the answer will probably be 'no'. 'What do you think about it?' And, at that point, it's down to the difficult judgement that everybody has to make, you say, 'well, you know, how do you rate freedom of speech as against potentially inflammatory remarks?'

(White male EU doctoral student who identifies as both Jewish and Muslim)

There is already a history in which supporting the Palestinian people is framed as a sign of radical politics in the UK and of radicalization amongst Muslims. Securitization intensifies these fault lines in societal practices but is, in fact, indicative of deeper cultural and political problems which are now played out at universities in an unprecedented way because of these new mechanisms. Connecting universities to Muslim colleges will help, but is currently rare (UK Government 2018). Sheldon (2016) explains campus tensions in terms of the religious and the secular being difficult to disentangle and takes seriously the controversial nature of these debates. Several of our respondents made a related point; such debates are often very difficult to run *because* they are deemed controversial by those with authority:

I know that it's made certain people question events. So, for example, we ran a session on Palestine, the year before last. And, I can remember great difficulty organizing that event, because it was somebody from an NGO, that they were working with both sides in the Middle East, they weren't just an advocacy group for the right of Palestinians, and their homeland. But it was very difficult trying to get that organized because people were concerned about what impact that might have had on campus. Would there be any protests? What arrangements would be made for security? And, I thought, gosh, this is the kind of thing where you should have these conversations on campus. That was quite a difficult one to make happen. (British Pakistani Sunni Muslim female)

In the context of free speech, and with regard to the Prevent Duty Guidance, it is of course reasonable and necessary that universities need to carefully monitor events including outside speakers, decide what to do on a case-by-case basis, and keep proper records. Universities agree that they have in the past and should continue in future to record their consideration of the risks and their explanation of why they have decided that a particular event should or should not proceed. However, under the Counter Terrorism and Security Act 2015 (CTSA), they would be in breach of their duty to ensure freedom of speech if they were to adopt any strict rules and apply them to every situation without specific consideration of individual speakers and topics, as Scott-Baumann and Tomlinson have shown (see Scott-Baumann and Tomlinson 2016). The 1986 Education Act (2) cited in the CTSA expects that 'particular' regard be paid by universities to protect free

speech. This is stronger than ‘due’ regard in legal parlance. The guidance itself does not carry mandatory weight, but the obligation upon universities to consider whether radicalization is likely and can be inhibited, is statutory. However, erstwhile pressure from HEFCE and now from HEFCE’s replacement the Office for Students (OfS), necessitates that universities comply with the guidance, even though it is, as its name shows, only guidance (Scott-Baumann and Tomlinson 2016; Scott-Baumann 2017).

The Prevent Duty Guidance also affects invitations of visiting speakers, curbed by paragraph 11 of the Guidance which instructs higher education institutions to refuse visiting speakers if they cannot fully mitigate risk. After we had finished our research, in June 2019, the Court of Appeal ruled that paragraph 11 of the Prevent Duty Guidance is unlawful (see *Butt, R v The Secretary of State for the Home Department* [2019] EWCA Civ 256 2019). The Court of Appeal in this judicial review found that the Secretary of State had breached his duty to promulgate guidance that was sufficiently balanced and accurate to inform the decision-maker in a relevant higher education body (RHEB) of their competing obligations both to ensure free speech and to prevent people being drawn into terrorism, and to assist them to a proper conclusion. The guidance must now be redrafted by the government in the light of this judgment; the redrafted guidance will need to be approved by Parliament. This presents an opportunity for universities to put forward their views on the redrafting of the paragraph and to highlight their experiences of the problems and failings arising from this over-restrictive and unhelpful guidance. At the time of writing there is no indication of universities making use of this challenge, but it is necessary to be hopeful, or there is little to plan for.

Our evidence suggests that Muslims bear the brunt of this securitization policy. The symbols of beard and hijab, skin colour and djellaba, may be viewed with suspicion. It is also clear that students are frustrated by security issues and free speech issues becoming entangled, and that their opinions are not sought and are often misrepresented or ignored. Thus universities are performing in institutionally racist ways (Equality and Human Rights Commission 2019). If the government will not modify its approach, then improving free speech with the support of the higher education sector is the only approach available. This will allow staff and students to become consciously aware of the damage being done and the possibility of remedying such institution-wide discrimination through open debate and planning.

### **A Pedagogy of Hope**

We have shown that there are two main versions of free speech circulating, and each has its extreme form: the liberal version of free speech, tending to an extreme form (libertarian), and the guarded liberal version of liberalism, tending to an extreme form (no platforming). Rigid adherence to any one of the four will

reduce our capacity to act appropriately according to content, context and target audience in a free speech debate. The extreme versions obscure the location of power as analysed by Foucault: each of such discourses establishes power blocs whereby we foreclose on flexibility if we insist on following specific rules about free speech as recommended by ministers and by right-wing pressure groups. We see this with Spiked Online's libertarian approach and Henry Jackson Society's no-platforming demands. This discourages the sort of conversation that students tacitly identify as necessary in their survey answers in our research: they seem prepared to endorse both free speech and no platforming, both liberal and guarded liberal approaches in certain circumstances. We recommend that these can be offered singly and in combination, depending on context, the subject matter and the participants. We see this in the conversations captured by our qualitative analysis, which models sociable verbal interaction as negotiated and face to face in the same breathed space.

We sketch out here some of the face to face conversational spaces that exist on and off campus for young people of different cultural and religious identities and consider how to enhance, through activities and speech processes, the grounded pluralism that exists in the campus interaction order and is worthy of further development. Staff support should be available. Spaces include student groups working together e.g. if several Muslim societies exist, can they communicate and make explicit the areas where there is no negotiating and the areas where they can make concessions? Learning the rules of rhetoric can be liberating: some students find it manipulative, but at least it shows us how we are manipulated by others. Preparation can be made on campus for going off campus, lobbying government, attending select committees, giving evidence in parliament, etc. Preparing to speak on national radio can be done by speaking on the university's own radio. Talking together, as we noted in the focus groups and interviews, makes it more likely that, by face to face encounters, a certain elasticity may be effected in the process of trying to make oneself understood (Scott-Baumann 2018). The higher education sector knows how to use such approaches. Yet the digital world has opened the walls of the campus to infinity and can damage human relationships when used to exclude the human presence from itself and others: we see this with the 2018 Warwick and Exeter cases where campus relationships among students were reportedly ruined by online so-called 'rape chat' (Jaswal and Aoraha 2018). Boyd believed in 2014 and Haddon in 2015 that young people were managing their online experiences (see Boyd 2014; Haddon 2015), yet more recently, as a reflection of developments since our research, Hirsch gives examples that show relentless racist and sexist shaming are more prevalent given the widespread and growing use of algorithms to manipulate our online behaviour (see Hirsch 2018, 105–6). Training in digital etiquette and ethics is necessary. The prevalence of hate speech requires the revival of strong positive models of behaviour and pedagogy that encourage, facilitate, and regularize relatively free, constructive face to face conversations on campus.

The discrepancy between the national discourse about Islam and the experience of students on campus shows the need to get the voices engaged with the bigger narrative. All humans bear an ethical responsibility as language users and some staff saw that students could be helped to make a contribution to national debate. Our research suggests that often a hermeneutics of suspicion, and the use of extreme language in public discourse and online, are hampering the possibility of developing proportionate narratives about difficult issues, yet some academics are clearly aware that students should have more chances to speak in the world:

I would defend the students for debating ideas first. Because, that's, to me, what's lacking, not UKIP, Farage has plenty of outlets. So, it's like, if you say, here's the debate, Nigel Farage speak on ITV, okay, I don't care, can students speak on ITV? I want a group of students, who have radical opinions about Brexit, to speak on ITV, until the cows come home.

(male White postdoctoral Christian staff)

Freedom to express one's identity, explore one's understanding of the world and develop academic freedom are central to this debate about plurality that must surely be dialogic, even plurivocal.

Ethics, behaving well towards others, surely involves language and personal struggle because we must accept that 'consciousness is not a given but a task' that necessitates constant conflicts of interpretations (Ricoeur 1970, 462). Our motivations and actions are the core of our perceptual as well as our intellectual experience and they determine how we respond to others and how they respond to us. In our interviews and focus groups we usually witnessed proportionate, measured and well-observed judgments about a wide range of issues. In such settings, staff and students often followed a Habermasian model of communicative rationality, seeking to understand and be understood, even to negotiate between and amongst respective 'truths'. Let's take an example of a participant observation that shows how the speech models in this chapter (liberal leading to libertarian and guarded liberal leading to no-platforming), can be combined depending on the situation: a student society invited an extremist speaker with a reputation for inciting fights at his talks; this invitation represents a libertarian stance and could have been responded to by the university with no-platforming. Instead, the university acquiesced to this libertarian approach, but as a precaution alerted a senior staff member, who ensured the presence of security personnel and attended the event, welcoming the speaker on behalf of the university and making notes during the talk. It transpired that the student society had instructed the speaker to talk about his family's refugee history through several generations, not about the explicitly political message for which he was known. The speaker kept to this brief mostly, with just a few controversial statements, thus following a guarded liberal model (he 'self-censored'). Questions from the audience were not censored by the chair

and actually revolved around the subject matter he'd been asked to speak about. This situation represents a compromise and a hybrid model of different 'free speech' positions. Thanks to this flexibility and the presence of security and senior staff and the tactical action by the students in giving him a clear non-political brief, the evening went well. The Jewish students valued the opportunity to host the Israeli speaker. These communicative responses seem important when dealing with controversial matters, as they facilitate varied processual attempts to express the intractable nature of difficult existential issues. In order to work productively with this narrative, at a time when democracy is challenged and needs their help, students and staff must be free to grasp, challenge and change the power and agency of which the student spoke at the start of this chapter. This requires the use of techniques that have always been available to us, such as seminar discussions and shura debates, yet they are less accessible now and must become frequently used again. Staff support should be available in case it is needed.

In the shadow of the Covid-19 pandemic the government is making bailouts conditional upon a university's free speech policies. This suggests support for universities dedicated to upholding the law and supporting all voices on campus as long as they are legal. However Gavin Williamson, Secretary of State for Education, asserts that Students' Unions will be required to focus on 'serving the needs of the wider student population rather than subsidising niche activism and campaigns' (Williamson 2020). In addition it is becoming ever clearer that the testimonial injustice of not being allowed to voice a valid opinion is happening to Muslims off campus as well as on campus: this was shown some years ago in the medical profession (West et al 2015) and we see it now starkly with Muslim NHS, staff (Shahid and Scott-Baumann 2020). Our enquiry into freedom of speech is crucial for understanding the management of ideas about Islam and Muslims and the modern world on university campuses in preparation for a better life, as a doctoral student mused about university life:

I don't think that this is a place that can solve all the problems but I do think that a whole bunch of young people who are going to come here and stay here for maybe three years, minimum, will have their chance to be exposed to a narrative that they literally have never been exposed to before.