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FREE SPEECH UNION

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Professor Stephen J Toope
University of Cambridge
The Old Schools
Trinity Lane
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7th July 2020

By email to: VCO.Enquiries@admin.cam.ac.uk

Dear Professor Toope,

I am writing to you in my capacity as General Secretary of the Free Speech Union in the hope of obtaining some clarification about what you and the University of Cambridge regard as the limits that should be placed on academic free speech. The reason for my letter is that the University appears to be applying different standards when it comes to what behaviour or language is acceptable depending on the race or ethnicity of the academic in question.

On 22nd June, Dr Priyamvada Gopal, a Fellow of Churchill College, a reader in the English Faculty and an employee of the University, said on Twitter that “White Lives Don’t Matter”. Shortly afterwards, she liked a tweet saying, “the whites... are a disease that needs to be cleansed from the earth”. Many people on Twitter and elsewhere took the view that these tweets were racist and that, as a consequence, Dr Gopal ought to lose her fellowship of Churchill and her position at Cambridge. However, the University – quite rightly, in my view – came to her defence. On 24th June it [tweeted](#):



I was pleased to see the University robustly defending the right of one of its academics to express her lawful opinions which others might find disagreeable, not least because its colleges and faculties have not always done so.

For instance, last year the Divinity Faculty rescinded its offer of a Visiting Fellowship to Dr Jordan Peterson after a photograph came to light of Dr Peterson standing next to a fan wearing a “proud Islamophobe” T-shirt. At the time, a University spokesman said about that decision:

[Cambridge] is an inclusive environment and we expect all our staff and visitors to uphold our principles. There is no place here for anyone who cannot.

You also issued a [statement](#) on 25th March 2020 in which you defended the Divinity Faculty’s decision to rescind Dr Peterson’s Visiting Fellowship:

I have been asked for my views. I would simply refer to a statement I issued almost exactly 10 years ago as Vice-Chancellor of the University of British Columbia:

As a university community, we place a paramount value on the free and lawful expression of ideas and viewpoints. As scholars, we believe that discussion across boundaries and across pre-conceptions is a necessary condition for the resolution of even the most intractable conflicts. At the same time, we are a community that values respect for all others, even those with whom we disagree fundamentally.

For a university, anything that detracts from the free expression of ideas is just not acceptable. Robust debate can scarcely occur, for example, when some members of the community are made to feel personally attacked, not for their ideas but for their very identity.

This remains my sincere and unwavering belief, as I have made clear in a number of speeches since returning to Cambridge nearly two years ago. I am confident that this is a belief shared by most members of our university community. Some difficult decisions will always be necessary to ensure that our universities remain places of robust, often challenging and even uncomfortable dialogue, while balancing academic freedom with respect for members of our community.

The implication of that statement is that Cambridge’s commitment to protecting academic free speech is not simply conditional on the behaviour or language of the academic in question being “lawful”. In addition, it must not make any members of the University community “feel personally attacked” “for their very identity”. You initially describe the University’s commitment to freedom of expression as “paramount” and say “anything that detracts from the free expression of ideas is just not acceptable”. But you then go on to qualify that commitment, saying that free speech must be “balanced” against other considerations, which you describe with the catch-all term “respect”. A similar argument was made by Mr Matthew Bullock, then the Master of St Edmund’s College, to justify the termination of Dr Noah Carl’s fellowship last year.

But what are those considerations? What differentiates “robust debate” from disrespectful behaviour or language? In the statement above, you start out by appealing to “lawfulness” as the standard that ideas and viewpoints have to meet in order to be protected, but then add some further conditions.

As far as I am aware, neither you nor the University have ever clearly set out all those conditions, but you broached this question again in your [address to the University](#) on 1st October 2019:

Even as we discuss the changing shape of the future university, our commitment to fundamental principles is unwavering.

Absolutely central among them is the principle of freedom of speech, which has been invoked frequently over the past year.

Cambridge is the natural home for all those who want to challenge ideas, and are prepared to have their ideas challenged.

And even if ideas make us uncomfortable, it is our duty to ensure their free and lawful expression.

But let me be clear: we cannot allow the imperative of free speech to become a cover for hateful or unlawful behaviour or language.

In that statement, you imply that there are two conditions a Cambridge academic's behaviour or language must meet if it is to be on the right side of the line: it must not be "unlawful" and it must not be "hateful". But you have never spelt out what you mean by "hateful", which is unfortunate because there is considerable disagreement about what language or behaviour falls under that heading.

For instance, one of the Free Speech Union's members, Posie Parker, started a petition on Change.org earlier this year calling for the Oxford English Dictionary not to change its definition of "woman" from "adult female human being". Change.org removed the petition, telling Ms Parker that the definition of "woman" she was trying to preserve constituted "hate speech". Many people also accused the author J K Rowling of using "hateful" language when she objected to the substitution of "people who menstruate" for the word "women". Would describing a woman as an "adult female human being" be an example of "hateful" behaviour or language that would not be protected by the University?

I assume not, but the risk of failing to spell out what you mean by "hateful" is that this lack of clarity will be exploited by those on one side of a debate to silence those on the other side. For instance, a Cambridge professor who is also a gender-critical feminist could be no-platformed at a Cambridge event on the grounds that her views about whether trans-women should be able to participate in women-only sports are "hateful" and not deserving of the University's protection.

In the hope of understanding what the limits are on academic free speech at Cambridge I looked on the University's website. I note that it has set out what it believes are its "Public Equality Duties" under the Equality Act 2010 in a section on its website labelled "[Public Equality Duties and Protected Characteristics](#)":

The Equality Act 2010 broadens the Public Equality Duties to cover all protected groups (except Marriage and Civil Partnership). Section 149 requires public bodies like the University to:

1. Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act.
2. Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
3. Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The website then goes on to summarise the way "[harassment](#)" is defined in the Equality Act 2010:

Harassment is defined in three ways by the Equality Act 2010:

1. Unwanted conduct that has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the complainant, or violating the complainant's dignity (this applies to all the protected characteristics apart from pregnancy and maternity, and marriage and civil partnership).
2. Unwanted conduct of a sexual nature (sexual harassment).
3. Treating a person less favourably than another person because they have either submitted to, or did not submit to, sexual harassment or harassment related to sex or gender reassignment.

There is no definitive list of behaviour which could be defined as harassment, but examples could include physical violence or intimidation, public humiliation, personal insults, persecution, racist/homophobic insults, stalking and shouting. More subtle forms of harassment could be excluding someone, excessive monitoring of work or failure to safeguard confidentiality.

In deciding what harassment is, it is the perceptions of the recipient of the behaviour that are important. Harassment can have been deemed to have occurred even if the intention was not present, but the recipient believed they were being harassed.

This definition of “harassment” may be what you had in mind when you used the word “hateful” and appealed to the principle of “respect”. The emphasis on the “perception” of the complainant seems to involve the same concept to which you appealed when you said that behaviour and language that might make some members of the community “feel personally attacked” “for their very identity” goes beyond what is deserving of protection under the “fundamental principle” of free speech. In both cases, the deciding factor is whether a person “feels” themselves to be under attack in a way that’s related to “their very identity” by an academic’s behaviour or language. You appear to believe, and the University appears to be saying, that if they do, then that behaviour or language is not deserving of protection.

It is important to be clear that this limit on what is acceptable speech goes beyond what is required of the University under its Public Equality Duties. The way this is set out on the University website is misleading since it does not differentiate between what is required of the University under the law and where the University has decided to go beyond that requirement, but makes it seem as if it is summarising the University’s legal duties throughout. In fact, when interpreting the Public Equality Duties the courts do not base their determination of what conduct meets the threshold of “harassment” on the subjective view of the complainant alone, but rather on whether such a view is “reasonable” under the circumstances.

This is made clear in the [guidance](#) on freedom of expression published by the Equality and Human Rights Commission for Higher Education Providers in England and Wales. In the section on the Equality Act, it says:

Whether or not behaviour is harassment is not just based on the view of the person making the complaint. The courts consider whether it was reasonable for the behaviour to have that effect, as well as the circumstances.

In summary, your position and the position of the University is that for behaviour or language to be protected by the principle of academic free speech it is insufficient for it merely to be “lawful”; in addition, it has to meet a variety of other conditions, some of which have been set out and defined by you and the University, but some of which have not. At least, that appeared to be the position until two weeks ago.

When Dr Gopal said “White Lives Don’t Matter” and liked a tweet describing “whites” as a “disease that needs to be cleansed from the earth” I feared that Churchill College, the English Faculty and the University would quickly take steps to disassociate themselves from her. After all, such language certainly falls short of the “respect” principle that you invoked when justifying the cancellation of Dr Peterson’s Fellowship. You have never defined exactly what you mean by “hateful”, but many people would regard Dr Gopal’s sentiments as “hateful” in that they appear to express hatred for a group based solely on its race or ethnicity. And Dr Gopal’s behaviour and language clearly run afoul of the subjective definition of what constitutes harassment since some members of the University community will surely have felt intimidated by seeing a respected member of the University saying that white people’s lives do not matter, particularly when she was promoted to a full professorship shortly afterwards. To use your language, Professor Toope, some “members of the community” were surely “made to feel personally attacked... for their very identity” by Dr Gopal, which was the standard you appealed to when defending the Divinity Faculty’s decision. I do not believe that what she said was unlawful; and, to be clear, the fact that it met the University’s definition of “harassment” does not mean it met the legal definition, since the University imposes a lower threshold than the courts; but it certainly comes closer to the kind of racist behaviour or language that is prohibited by law in England and Wales than anything said or done by Dr Peterson.

Consequently, I was pleased when the University expressed its support for Dr Gopal, appealing to a new, much clearer standard; namely, that provided the language or behaviour in question is “lawful”, the academic who has said or done something that others find objectionable is fully protected as far as the University is concerned. This was a welcome departure from the University’s earlier, more equivocal support for academic free speech. The additional conditions that had been appealed to in the past to justify not extending free speech protections to Dr Peterson – that the speech or behaviour not be “hateful”, etc. – were clearly not being applied in Dr Gopal’s case. The position of the University – and, by implication, the English Faculty and Churchill College – was unambiguous: provided the speech or behaviour is “lawful”, then the academic in question should not be penalised for it. Not only is that an admirably clear standard, but it is consistent with the University’s legal duty to protect academic free speech under the Education (N^o 2) Act 1986 and its obligations to protect freedom of expression under Article 10 of the European Convention on Human Rights, neither of which are “trumped” by the Equality Act 2010 as properly understood.

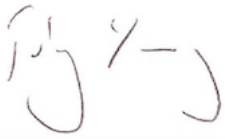
However, a week later the University and its colleges appeared to change their position again, reverting to the broader, more nebulous standard they had been applied in the case of Dr Peterson. I am thinking of the fate that befell Dr David Starkey, an Honorary Fellow of Fitzwilliam College, after he used what many people described as “racist” language in an [interview](#) with Mr Darren Grimes on 30th June. Nothing Dr Starkey said in that interview was unlawful and it came less close to violating the “principles” you have alluded to, or the University’s subjective definition of “harassment”, than what Dr Gopal said a week earlier. Yet the University made no effort to defend Dr Starkey’s right to express his own lawful opinions, as it had done in Dr Gopal’s case, or to convey how much it deplored the “abuse and personal attacks” on Dr Starkey. Furthermore, the Master of Fitzwilliam College, Baroness Sally Morgan, strongly implied in her public [statement](#) about the affair that if Dr Starkey did not resign his Honorary Fellowship it would be taken away from him at a forthcoming meeting of the College’s Governing Body, saying that “we have zero tolerance of racism” and describing Dr Starkey’s comments in the interview as “indefensible”. Again, this suggests a different standard was being applied to Dr Starkey by the University and college authorities than was applied to Dr Gopal: it was one rule for her, and another for him. I am now, once again, at a loss as to what constitutes acceptable speech as far as the University, its faculties and its colleges are concerned and I am sure many Cambridge academics and students feel the same way.

This confusion has arisen because you and the University have not set out carefully and clearly those conditions that an academic’s (or student’s) behaviour or language must meet to be worthy of protection under the “fundamental principle” of freedom of speech; and insofar as you have set them out, you have not applied them consistently. As things stand, it looks as if one standard is being applied by the University and its faculties and colleges to BME academics: that provided their language or behaviour is not unlawful, they will not be penalised for it; and another to white academics: that in addition to not being unlawful, their language or behaviour must meet a host of other conditions, some of which have been set out, some of which have not. I am sure this must be a misunderstanding, but the appearance of a double standard is surely harmful to the University’s reputation. In addition, the lack of a clear definition of *where the line is* makes it difficult for academics (and students) to remain on the right side of it and leaves those with unorthodox views and opinions vulnerable to attack from activists willing to exploit the blurriness of that line.

My suggestion is that you stick to the clear principle elucidated in the University’s excellent statement in defence of Dr Gopal and embed this in the University’s policies and procedures; namely, that provided an academic’s behaviour or language is not unlawful, then their right to free speech will be upheld by the University, its faculties and colleges and they will not be penalised for it.

I would be grateful for a reply at your earliest convenience.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Toby Young'.

Toby Young

General Secretary

The Free Speech Union

toby@freespeechunion.org

cc Baroness Sally Morgan, Master, Fitzwilliam College
 The Rt Hon Michelle Donelan, Universities Minister
 Sir Michael Barber, Chair, Office for Students
 Ms Nicola Dandridge, CEO, Office for Students
 Mr Iain Mansfield, Department for Education