

# Free Speech Above All



by Michael Curtis

No doubt, great powers do commit great crimes, but a great power is not always and necessarily in the wrong.

The cancel culture war has got out of control on many levels and must be checked. At an academic level, the professor of theology at Oxford University, an Anglican priest, Nigel Biggar was victimized for wanting to tell the whole story of British history. He had argued that there were bad, racist, bits of that history, but these did mean endemic or systemic racism. Since the slave trade was abolished in 1807 the British Empire may have been colonialist but was engaged in suppressing slavery.

Increasingly, literary figures have been targeted or become central figures in bigoted wokery. Only a few examples are needed to illustrate this.

Sir Philip Pullman, 75-year-old author of *His Dark Materials* resigned from his position as President of the Society of Authors because he had been the subject of a considerable row for defending the 57-year-old author Kate Clanchy whose work

was accused of racial and ableist stereotyping. Pullman realized he would not be free to express his personal opinions as long as he remained president.

In her book *Some Kids I taught and what they taught me*, Clanchy had included alleged racist tropes such as “chocolate colored skin” and almond shaped eyes, and her descriptions of children of color and of autistic children were widely condemned. Philip Pullman later commented that those who condemn a book without reading it will find a comfortable home in ISIS or the Taliban.

Pullman’s comment is appropriate for the self-appointed guardians of learning in at least one area of the U.S. The prize-winning graphic novel *MAUS*, a story of his parents’ experience in Nazi camps including Auschwitz in the Holocaust, by Art Spiegelman, now 74, was banned by a Tennessee school district, 10-0 , because it contains a few “curse” words and a nude image. In another school district in Virginia, and in other states, the dystopian novel, *The Handmaid’s Tale*, by Margaret Atwood, set in a future oppressive totalitarian state, was removed from classroom libraries banned after parents raised concerns about LGBTQ themes. A board member said he had not read the book, but only a review of it.

They are not alone. Author J.K. Rowling was criticized for defending women’s rights against transgender militants, and other writers and speakers have been vilified for expression of concern over erosion of women’s rights by the transgender activists. Among the authors whose books have been banned are Harper Lee, author of *To Kill a Mockingbird*, Toni Morrison author of *The Bluest Eye*. The writer Anne Tyler commented that misdeeds or crimes of writers should not lead to removal of their works. Controversially, she compared this to the case of Paul Gauguin who had sex and fathered children with underage girls: despite this, his paintings continue to be exhibited. Authors, she said, should receive the same treatment.

A powerful counter argument against cancel culture appeared in an Open Letter in Harper's on July 7, 2020, protesting against the tendency to subject norms of open debate and toleration of differences in favor of ideological conformity. The letter was, as one of the authors stated, "resistance to a poisonous judgmentalism that has demoted, shunned, and personally vilified anyone who opposes liberal opinion."

So called higher education is no different. Students at Yale Law school disrupted speakers at a March 10, 2022, panel on civil liberties, hosted by the Yale Federal society, and featured two women speakers, one progressive and one conservative. The students heckled and shouted, and the speakers had to be escorted by police for their safety.

Senior Judge Laurence Silberman of the Court of Appeals for the D.C. circuit commented on the disputation, saying that all federal judges should carefully consider whether any student who disrupts a panel discussion on free speech, should be disqualified for a potential clerkship. Even cancel culture has consequences.

But help is on the way. The Church Court of Jesus College, Cambridge, has refused the demand by the Master of the College, Sonita Alleyne, and members of the College to remove the memorial to 17<sup>th</sup> century benefactor Tobias Rustat, a generous donor to the college, over his links to the slave trade. Rustat was a courtier of King Charles II, and a major benefactor to Cambridge University. It is now evident that his investment in the transatlantic slave trade has been exaggerated because it was relatively small, and most of his wealth came from his work for the king. Indeed, he had lost money in the slave trade investment. Moreover, he made his donations with money made elsewhere than the slave trade. The critics wanted the memorial to Rustat, which is on the wall above the chapel altar, removed and put in a space elsewhere.

The case was heard by a judge specially appointed by the local bishop because the memorial is housed in a historic building and ecclesiastical environment, those opposed to removal argued that by the plan the college was assaulting carefully selected aspects of its past. The judge David Hogue called the slave trade "evil, utterly abhorrent and repugnant," but it is a distorted view to hold that British society is based on the legacy of the slave trade. The words in the Rustat monument are pertinent; "the greatest part of the estate he gathered... he disposed of it in his time in works of charity." The monument is a memorial to philanthropy, not to slavery.

Other voices are expressing their opinion that the time for cancel culture is over, The British minister of justice and deputy prime minister Dominic Raab warned on March 24, 2022, that the parameters of free speech and democratic debate are being narrowed, whittled away, whether by the privacy issue or by wokery and political correctness. Free speech should be given a different, dominant, status in the pecking order of rights. We must, he argued, strengthen free speech, the liberty that guards all of our other freedoms.

Raab proposed that free speech will in the UK be given legal supremacy, a triumph card, over other rights. In balancing rights, the great overriding importance and weight is attached to free speech.

The Human Rights act 1998 was passed to enable UK citizens to be able to rely on rights in the European Convention on human rights in cases before the domestic courts. It sets out a series of fundamental rights starting with the right to life, and continuing with freedom from slavery, and torture, the right to a fair trial, and freedom of thought, expression, belief, and religion. Article 9 of the act states that freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health, or morals, or for the

protection of the rights and freedom of others.

Some of the rationale for the British proposal stems from decision of the British Court of Appeal in December 2021 that gave judgement in favor of Meghan Markle, Duchess of Sussex on her claim against the *Daily Mail* paper for copyright infringement by publishing extracts of her 2018 handwritten letter to her father, in essence misuse of private information. The Court held that Meghan had a reasonable expectation of privacy in the contents of the letter which were personal, private, and not matters of legitimate public interest. The case will be appealed to the UK Supreme Court.

The precise British proposal is to replace the Human Rights act with a new Bill of Rights. Then premise is that in the balance between the right to free speech and the right to privacy or other rights, the overriding importance should be given to free speech. The new plan will allow UK courts to interpret European and international human rights law in a UK context.

The new Bill will protect media freedom, but free speech will have a triumph card status among the wide range of issues. The intention is that there would be only very limited restrictions on proposed restrictions of free speech, such as that promoting terrorism, inciting violence, or threatening children. All reasonable people should strive to end the narrow, misguided form of moral judgment that has led to a climate of falsification and self-censorship.