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DICTATING WORDS

The Culture-Control Left and the war against free speech

Marc Glendening
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Contents

About the author

Marc Glendening is Head of Cultural Affairs at the IEA. His Parallax Views series of YouTube discussions are focused on contemporary issues affecting cultural liberty. Before coming to the IEA, he worked for Policy Exchange focusing on freedom of speech related issues and the political implications of human rights law. In 2011 he co-founded the cross-party People's Pledge. This campaigned for a referendum on the question of EU membership and included politicians and others with contrary views on Brexit. Marc is a co-founder of the Sohemian Society which is dedicated to the history and liberal values of Soho.

Summary

- Liberal democracy today faces a very serious authoritarian challenge. Whereas reactionary conservatives previously wanted to restrict expression which, they asserted, offended public morals, efforts to impose censorship are now primarily directed at *political* communication.
- A wide-ranging and informal coalition of parties and groups - called here the 'Culture-Control Left' (CCL) - is driving the current campaign for ever more regulation of speech. This alliance stretches beyond the traditional confines of the left and now heavily influences big business, public sector bureaucracies (including the police) and some Conservative politicians.
- The logic at the heart of CCL thinking is the postmodernist-derived idea that language can constitute a form of coercive power: society is thought to be 'socially constructed' by dominant ideas. These sustain, it is claimed, existing hierarchies and marginalise a variety of identity groups.
- To sustain this irrational interpretation of language, the CCL has greatly extended the boundaries of what constitutes 'harm' to include many forms of speech. Hence the advent of the 'safe space'.
- 'Hate speech' is the key concept that the CCL deploys to justify 'cancelling' adherents to positions judged to be transgressive, and to impose greater state regulation of peaceful expression.
- The ill-defined nature of what constitutes hate speech represents a serious threat to our capacity to engage in open, democratic debate. It also undermines the principle that the law should be sufficiently clear for citizens to understand whether their behavior is lawful or not.

- Attempts to reverse the current authoritarian tide should not only be based on consequentialist arguments but also upon a restatement of freedom of speech as a *natural right*.
- The CCL and its allies should be recognised as a force for a primitive, pre-Enlightenment style of politics which seeks to use state power to severely curtail the parameters of debate. Those espousing politically liberal values should present themselves as residing at the other end of the ideological continuum.

Introduction

Britain's liberal political culture presently faces a threat greater than any it has encountered since our country emerged as a representative democracy in the early 20th century. While in the past there have been campaigns, usually led by religious conservatives, that have attempted to constrain free expression so as to forbid particular sorts of speech – for instance, speech held to be blasphemous or obscene – today the threat is qualitatively different.

The new threat takes the form of a wholesale and radical reinterpretation of the basis for freedom of expression in general. This has gained widespread social support and has rich ideological underpinnings (though not ones that are always fully transparent to the public). If the new threat were to be characterised by a single commitment, it would be this: that everyday language should be subject to an extensive degree of control in order to promote social equality. This aim and the manner in which it is pursued are inimical to liberal pluralism.

The present state of political life in Britain, particularly that of its left wing, testifies to the widespread effect of this recent ideological turn. Control over the sphere of communication has become an important objective for a broad swathe of the contemporary left. Many of the left's political initiatives proceed on the assumption that words are a source of significant social power. For there to be greater social justice, they reason, the expression of certain thoughts must be prohibited. According to this theory, the more censorship of politically incorrect viewpoints that takes place, the more liberated British society will become. The result of implementing this

programme has been notable instances of police overreaching,[1] as well as the emergence of subtler (but no less real for that fact) forms of cultural regulation where previously there was none, and discrimination by official bodies against those whom they appear to presume to be enjoying 'privilege'. For ease of expression, those who promote this anti-liberal agenda will be referred to throughout this essay as the 'Culture-Control Left' (hereafter, the 'CCL').

One danger inherent in the CCL's ideology is that the authority it claims to censor the speech of those it disapproves of has a natural tendency to simply foreclose legitimate political debate. What is more, it is easy to see how this in-built tendency might be cynically exploited in political life. But whether the motivation is cynical or not, the effect is invariably censorious and anti-liberal. By suppressing the views of one's opponents, the dice become loaded in politics: one's adversaries automatically handicapped, oneself possessed of an automatic advantage. An example – one of many that might be chosen – serves to illustrate this phenomenon. In 2020, Labour MP Nadia Whittome stated publicly that: '[w]e must not fetishise "debate" as though debate is itself an innocuous, neutral act. …*The very act of debate… is an effective rollback of assumed equality and a foot in the door for doubt and hatred.*'[2] [emphasis added]

Whittome's reasoning reveals a striking abandonment of liberal values: the mere act of challenging her views in the spirit of civil debate is not something she thinks is politically desirable.

Nor is Whittome alone. Her statement is merely a particularly forthright expression of the underlying assumptions of much of the CCL. This essay argues that the CCL is a sufficiently homogenous political phenomenon that it deserves to be considered a political movement, one that has been gaining influence in recent years. The fact that the unified nature of the CCL is not more evident is explained by the fact that its underlying ideology often remains only incompletely or inexplicitly formulated in the minds of those who adhere to it. It is therefore not always obvious that individual instances of censorship and speech control are all manifestations of the same underlying political phenomenon. The often inexplicit formulation of

1 Ewan Somerville, '"Keep males out of women-only spaces" sticker picture investigated as a hate crime', *The Telegraph,* 3 September 2023 (https://tinyurl.com/5n6de3uv).

2 Vic Parsons, 'Labour MP Nadia Whittome expertly explains why "fetishising debate" around trans rights rolls back equality and inflames hate', *Pink News*, 24 July 2020 (https://tinyurl.com/2a4u6nm3).

the CCL's ideology also explains why the movement has met with such rapid acceptance in large parts of society. Many cannot see the proverbial 'wood for the trees' in this context.

The unclarity of the CCL's ideology also serves a related, more sinister purpose in allowing its adherents to misleadingly represent themselves as defending liberal values even as they seek to undermine them. Representatives of the CCL typically engage in a classic double-think style of political practice: paying lip service to the ideal of free expression while being all too ready to suppress speech judged to be socially undesirable. The label that such undesirable speech is brought under is commonly 'hate speech'. In 2009 David Miliband, then the Home Secretary, prevented the Dutch politician Geert Wilders from entering Britain, where he planned to screen a film that contended that the Koran was a 'fascist' book. Miliband's reasoning was that although Britain was a country in which free speech was valued, 'there is no freedom to cry "Fire" in a crowded theatre; there is no freedom to stir up racial and religious hatred.'[3] Leaving aside Wilders's views, which many would quite reasonably find repellent, it is instructive that those who seek to restrict freedom of speech often still pay lip service to it.

One consequence of the CCL's characteristic sleight-of-hand trick is very noticeable: the peculiar inversion of conventional political terminology that has taken hold in recent years. While pursuing their own anti-liberal agenda, the CCL has successfully portrayed its opponents – often those who merely advocate for free expression and diversity of opinion – as reactionary and part of the 'forces of conservatism', regardless of whether these opponents in fact belong to the liberal right, traditional left, or centre of British politics. The CCL, for its part, presents its own position as 'liberal' or 'progressive'.[4] It has succeeded in this partly by convincingly positioning itself as the natural successor of movements that fought historic legal battles for the attainment of political equality on the basis of race, sex, sexuality and so forth. The result is that in the social imagination genuinely liberal and well-established attempts to secure legal equality have become rhetorically and intellectually confused with the anti-liberal politics of the CCL.

3 'UK sends home unwelcome Dutch lawmaker', *The Jerusalem Post*, 12 February 2009 (https://tinyurl.com/4me86xv7).

4 Even some commentators on the centre right, such as Rod Liddle and Sherelle Jacobs are prone to describing those on the new left as 'liberal' or even 'hyper liberal'.

The influence of the CCL's ideology thus constitutes a significant change in the character of British public life – one that ought to merit serious study even in the eyes of those broadly sympathetic to its aims and influence.

This essay focuses on 'hate speech'. The re-classification of certain kinds of speech as constituting this has been one of the principle means by which the CCL has eroded free speech rights over recent years. According to the CCL, hate speech must be detected and suppressed in the interest of promoting social justice. Those who defend (or in some cases merely exercise) a robust right to free speech are increasingly portrayed by the CCL as overt or closet purveyors of the politics of 'hate'. Kathleen Stock[5] and Germaine Greer[6] are two high-profile writers to have suffered this fate. The tendency to malign a commitment to free and open debate is suggestive of the deeper anti-Enlightenment and anti-rationalist inspiration of the politics of the CCL. Being accused of hate speech is the contemporary equivalent of being charged with blasphemy or seditious libel. The casual and all-purpose manner in which the label is used to discredit political positions indicates that its political function is simply to shut down debate and smear one's opponents with a veneer of presumed guilt, as is indicated by Nadia Whittome's above statement.

The first task of this essay will be to restore some conceptual clarity to the phenomena it discusses. First, the composition of the CCL will be described, as will their ideological inspiration and political agenda. The essay then presents evidence of the significant inroads into liberal rights that have been achieved by means of the CCL's deployment of the concept of hate speech. Last, principled arguments against hate speech legislation follow. All of this is offered in the hope that a greater awareness of the nature and scale of the contemporary threat to liberal values might inspire people to stand against it in opposition.

5 See https://tinyurl.com/vsuywa2r
6 See https://tinyurl.com/yckz5uwt

Who are the Culture-Control Left?

The CCL is best conceived of as a loosely associated political coalition. It finds adherents in all of Britain's established centre-left political parties. But it also includes individuals from outside the traditional left and indeed politics altogether: in public sector bureaucracy, NGOs, business, law enforcement, the arts, sport, religion and other sectors.

The ideological composition of CCL is well represented as a series of concentric circles, the innermost of which comprises those who espouse the ideology in its most militant form. In this hard inner core would be campaign groups such as Black Lives Matter, Extinction Rebellion and Antifa. They pursue the CCL's agenda through direct action. Next, there are those organisations and individuals that, while they do not take direct action themselves, endorse doing so. For example, Extinction Rebellion in 2020 blocked printing presses across Britain; they were attempting to prevent the distribution of newspapers whose coverage of climate change they disapproved of. Following this direct action, prominent left-wing politicians Diane Abbott and Dawn Butler publicly supported their intervention. Abbott even described the activists as 'protesters and activists in the tradition of the Suffragettes and the hunger marchers of the 1930s.'[7]

Of course, none of this is to suggest that there aren't important internal differences between the various parts of the CCL, as there are in all broad political movements. There is internal disagreement about the CCL's agenda and how rapidly it should be pursued, with those outside the 'inner

7 S. Sleigh, 'Sir Keir Starmer has not spoken to Dawn Butler and Diane Abbott over Extinction Rebellion support', *Evening Standard*, 14 September 2020 (https://tinyurl.com/yfvp7n6h).

core' often favouring more procedurally conservative, legalistic methods. There is disagreement over economic, foreign and constitutional policy, as well as specific issues such as transgender identity, about which some who would otherwise be full-fledged members of the CCL are sceptical on feminist grounds. Interestingly, while a broad spectrum of people from the centre and radical left have fallen into line with the CCL's agenda, classical social democrats and Marxists typically remain outside of it. This is because they remain committed to the political primacy of economic redistribution. This leads them to be sceptical of 'identity politics' (which makes non-economic characteristics politically fundamental) and leaves, in the case of social democrats, their commitment to free speech intact.[8]

The outer concentric circles of the imagined diagram contain the CCL's fellow travellers. These enable the CCL to implement its agenda in individual instances of its application but often fail to see how each instance is an expression of the same underlying ideology. Their political thinking is disconnected. This explains why they typically fail to attach much importance, one way or another, to what they regard as unrelated practices – 'taking the knee', 'equality, diversity and inclusion' policy, advocacy for transgender self-identification, or measures relating to hate speech – and so can be easily led to comply with them. Often, these fellow travellers have little understanding of how, say, the vague goal of 'anti-racism' is interpreted by the more radical elements in the CCL and wouldn't necessarily share the latter's view that racism is best understood as an all-pervasive structural phenomenon that requires a radical transformation of society to be corrected. Still, in lending their support to the CCL, this is the position they unwittingly promote.

The CCL has successfully presented its anti-liberal ambitions in soft focus. The consequence is that many tenets of its ideology have come to be regarded as 'common sense'[9]. One group whose support has been won with notable ease is that of senior figures in public and private sector bureaucracies. Part of the explanation is that the CCL's often amorphous ideological content fuses naturally with these elites' material interests. It

8 Some of the most prominent pro-free speech campaigners from the traditional left are associated with the Academy of Ideas led by Claire Fox and the closely associated Spiked-online website. The latter has organised the 'University Free Speech Rankings'. See https://tinyurl.com/4z64a6hf

9 The Italian communist leader and strategist, Antonio Gramsci, used the term 'common sense' in his Prison Notebooks to denote the way in which ideological ideas can become commonly accepted as in some way naturally ordained, beyond debate and not really political.

confers on them, as Joanna Williams has persuasively argued, the power to distribute rewards and punishments, as well as a reassuring sense of their own moral righteousness stemming from the conviction that they are on 'the right side of history' (Williams 2022: 58–60).

The current government's Online Safety Bill is a prime example of the manner in which the contemporary left's worldview has achieved the status of orthodoxy, even among those outside of its conventional ambit. At one stage of its drafting, the bill contained measures to criminalise the causing of 'serious emotional distress' and other measures referring to the prevention of psychological harm, all of which have their origin in the contemporary left's therapeutic idiom. This kind of policy-making represents a decisive break with the traditional liberal approach to personal freedom and the conception of 'harm'.

As has been suggested, the CCL have managed to make a virtue of their own lack of ideological coherence. This has enabled them to infiltrate large parts of British society, meeting with little resistance in the course of doing so. Far from lacking ideological underpinnings, however, the CCL should instead be understood as an extraordinary composite of two very different political traditions: a mixture of new left radical ideology and non-left, politically technocratic thought.

Radical left ideology holds that structures and relations of power are fundamental to political analysis. These are held to exist in a manner that is substantively independent of the formal legal and political institutions of society. They are also considered to be highly politically consequential; their function is to keep members of marginalised groups in a state of continued subordination. As a result, radical left ideology has a curious implication: it de-centres formal politics from its own account of political equality. Instead, radical left ideology focuses on sources of alleged injustice that stem from the broader culture. In particular, the theory places special emphasis on the ways in which individuals are 'recognised' or 'misrecognised' in virtue of their membership in politically salient groupings.[10] The language that is used to identify or describe people takes on outsized importance. In turn, subtle variation in linguistic usage is taken to reveal the ideas contained (perhaps even subconsciously) within the minds of those who make up the majority group.

10 For a critical analysis from a left-wing perspective of the reification of group-based identity see Fraser 2000.

The resulting outlook is one in which virtually all of human existence is conceived of as inherently political, a striving for control over the other. Group-based domination, however informal, is taken to be the essence of politics and can be read into any situation in which multiple people are interacting. This outlook has roots in much left-wing 20th-century political thought, most obviously captured by the 1970s feminist slogan that the 'personal is political'. Once this outlook has been generalised so that all group identities (rather than sex alone) are taken to be relevant, the resulting tendency is for social life to be analysed as a zero-sum contest for power between groups with mutually exclusive interests. Among other departures from Enlightenment-era thinking, this view abandons conventional assumptions connected with the idea of power: about its being empirically observable, related to physical coercion, and associated with the law and public officeholders and their formal capacity to sanction the use of force. What replaces the traditional concept of power is something more mysterious and ineffable: it is conceived of instead as a highly diversified series of forces associated with the collective dominance of those with characteristics typical of the majority.

Many on the modern left contend that those outside of the majority thereby enjoy the status of victims. Such victims are thought to be subject to an informal climate of aggression, discrimination and hatred. The former BBC *Newsnight* journalist Paul Mason provides an example of this outlook in his book, *How to Stop Fascism*. There, he claims that in working-class communities in the north of England 'hate is everywhere.' He suggests that 'over the past 10 years, a political culture has emerged in some working-class communities defined by xenophobia, white supremacy, anti-feminism and Islamophobia.'[11] The Cambridge academic Priyamvada Gopal provides another pertinent example. She has tweeted that 'white lives don't matter… Abolish whiteness'. This was in response to some Burnley Football Club fans who had flown a banner from a plane asserting the opposite. In a later defence of her tweet, Dr Gopal argued that the word 'whiteness' refers to an ideology that functions to sustain the superiority of the majority in the population.[12]

In order to substantiate the characterisation of Britain as a politically oppressive society – a finding that some may find is contrary to appearances

11 'Will Paul Mason miss his own protest?', *The Spectator*, 29 August 2019 (https://tinyurl.com/2khax33v).

12 Kevin Rawlinson, '"Abolish Whiteness" academic calls for Cambridge support', *The Guardian*, 25 June 2020 (https://tinyurl.com/2yhm3xbm).

– proponents of the CCL's ideology often make appeal to the idea that many of the hateful or discriminatory ideas they identify are held unconsciously. While some may well exhibit unconscious bias, invoking it in this way threatens to broaden the range of allegations of bias almost without limit.

This analysis of thought and action has become widely accepted as orthodoxy, even though its theoretic posits are highly dubious. For example, in early 2022 Brighton's joint Labour and Green Party local council paid for two 'diversity' training companies to carry out 'Racial Literacy 101' educational sessions with the city's teachers. Those who went on the courses were told that it was a fact that 'between the ages of 3 and 5, children learn to attach value to skin colour; white at the top of the hierarchy and black at the bottom.'[13]

By positing the widespread existence of such unacknowledged bias, the CCL is able to attribute pernicious prejudicial attitudes to those judged to be members of the majority group. One effect of this is that important moral distinctions are ignored or conflated: white people, for instance, who do not consciously practise racial discrimination can be classified as being in effect 'white supremacists'. The default state is to be tainted as prejudiced. Nor is avowed opposition to discriminatory practices sufficient to absolve one of alleged bias. At least among the most ardent exponents of CCL ideology, only an unequivocal declaration of active commitment to 'critical race theory'[14] is sufficient to do that.

It is worth noting that the analyses and agenda of the CCL have an unrelentingly negative quality. Its uniform negativity is reminiscent of 'critical theory', the principal legacy of the Frankfurt School of the interwar period. The Frankfurt School provided a new means for the intellectual left to engage and attack the 'bourgeois' status quo. Indeed, their style of attack gradually came to supplant the economic focus of the traditional left. This way, the modus operandi of the emerging new-left revolutionaries in the post-war era became to remorselessly trash every conventional aspect

13 George Carden, 'Brighton council under fire for teacher training on racism', *The Argus*, 8 February 2022 (https://tinyurl.com/4xanfx64).

14 Critical Race Theory asserts that racist discrimination in western societies is all-pervasive and embedded within all institutions. Racism should not be seen therefore, according to the theory's adherents, as the product of the prejudices and decisions of some individuals within a society. Rather it is socially constructed by an ideology that seeks to maintain 'white supremacy' and that is sustained by structures of political power.

of social life. This Frankfurt-style critique drew on developments in psychology, science, the study of sexuality, language, the arts, popular culture, family structure, in addition to economics, in order to motivate a general rejection of the prevailing culture in its totality.[15] Such global critiques contained the seed of the present outlook of the CCL: for both, even the most unexpected aspects of human life are potentially politically significant and might serve as the basis for a demand for corrective intervention to transform the troubling hierarchies discovered.

Alongside its arcane theory-building, the emergent new left encouraged a novel form of engaged political activism designed to bring about political change. As Marc Sidwell (2022) has argued, over time this has resulted in a blurring of the conventional boundary between political activism and academia. Academics increasingly came to conceive of themselves as sharing some of the responsibilities of activists.

Critical theory first became embedded in higher education in Britain when the Birmingham Centre for Contemporary Studies was established in 1964 by two leading figures of the new left, Richard Hoggart and Stuart Hall. The Marxist academic Douglas Kellner recalls the transition effected:

> The now classical period of British cultural studies from the early 1960s to the early 1980s initiall[y] adopted a Marxian approach to the study of culture, one especially influenced by Althusser and Gramsci … some of the work done by the Birmingham group replicated certain classical positions of the Frankfurt School, in their social theory and methodological models for doing cultural studies, as well as in their political perspectives and strategies.[16]

The Birmingham Centre provided the template for the many culture and media studies departments that later proliferated throughout British universities. Many explicitly combine academic activity with activism. For example, Goldsmiths, University of London Department of Media, Communications and Cultural Studies, houses the Media Reform Coalition. This is an overtly political campaign for greater state regulation of the media that works in close association with Hacked Off and other

15 The official name of the Frankfurt School was the Institute for Social Research. This was part of Goethe University, Frankfurt. Founded in 1923, it came to combine Marxist analysis with Freudian psychological and philosophically idealist approaches.

16 Douglas Kellner's Website (no date given) *Cultural Studies and Ethics*. Accessed: 5 October 2023 (https://tinyurl.com/6vy89utp)

pressure groups. The Media Reform Coalition states on its website that it 'works closely with other public and civil society organisations to run joint campaigns and build a vibrant movement for media reform.' Among its listed 'partners' are Hacked Off, Goldsmiths, the Joseph Rowntree Charitable Trust and the National Union of Journalists. Natalie Fenton, professor of media and communications at Goldsmiths, has been chair of the Media Reform Coalition and simultaneously a board member of Hacked Off.[17]

A prominent theme of the new left, which has been amplified by its entrenchment in academia, is that language is first and foremost a medium for the exercise of power. For liberals, however, language is viewed as a spontaneous natural phenomenon that is relatively autonomous of political control and allows for the free exchange of ideas and judgements. This way of conceiving language has become a default with many in left-leaning political parties and movements. The spirit of this view is sceptical. According to this view, language ceases to be primarily a medium via which humans communicate and learn objective truths; instead, what might appear to be facts are really part of a series of narratives, the function of which is to maintain and further the interests of privileged groups in society. What seems like a natural and apolitical phenomenon – language – is held by this theory to be a 'socially constructed' one used to re-enforce political oppression (Pluckrose and Lindsay 2020: 61–5). The obvious tension at the heart of this interpretation of the nature of language is that those who articulate it are, for reasons that are rarely explained, immune from the critique they advance.

Once one accepts this account of language, hostility towards the free exchange of ideas readily follows. It is not surprising, therefore, that among the representatives of the CCL, a consensus has emerged that language, and therefore free speech, should be constrained so as to achieve greater social equality.

The CCL attempt to constrain free speech by conferring on themselves the right to assign and deny speech rights. Much of this tendency is captured in the idiom of 'no-platforming' and in concerns over who should enjoy the 'privilege' of expressing their view. The prominent lawyer and activist Afua Hirsch expressed this vividly in an article for *Prospect* magazine, which was revealingly titled 'The fantasy of "free speech"'.

17 Media Reform Coalition (https://tinyurl.com/5ebptc2t)

In it, Hirsch argues that

> views are not, and never have been, expressed in a vacuum. Whether we get to hear them, and the way we process them when we do, inevitably depends on what we know about the person speaking …
>
> … in an ideal world, views from the privileged people who want to keep things the same would – like all other views – be presented in a marketplace of ideas, competing fairly with the perspectives that challenge it. This is how free speech is meant to work.
>
> But free speech doesn't work like that. The marketplace of ideas, like many other markets, has monopolies, rackets and biases. Long-established 'suppliers' of opinions with entrenched positions in the 'sector' enjoy huge advantages. Marketplaces, invariably, require merchants, arbiters and traders to work well. Why? Because the space in which they operate is rarely level.
>
> … Under such circumstances it's hard to take those who claim devotion to free speech seriously...[18]

The implication of Hirsch's argument is striking: until British society is judged to be culturally, as well as legally and politically, egalitarian by Hirsch herself, individuals whom she considers to be members of privileged groups ought to have their speech rights restricted. This is simply authoritarianism with a progressive gloss. In practice it might be used to justify banning any form of political or cultural expression that conflicts with the values of the CCL.

On such grounds the London School of Economics Students' Union justified banning the university rugby club because of the content of its recruiting leaflet and justified its decision to do so with the following statement:

> Women, BME students, LGBT+ students, disabled students, students of different religions – these groups all remain the ones where voices can be limited by a university environment that privileges the voice of those most advantaged in society over

18 Afua Hirsch, 'The fantasy of free speech', *Prospect* magazine, 18 February, 2018 (https://tinyurl.com/5n73u5by).

> everyone else… especially groups traditionally silenced by the white, patriarchal structures of our society.[19]

In addition to the CCL's reinterpretation of power and analysis of language there is a similarly elastic conception of 'harm'. The liberal tradition, as embodied by John Stuart Mill, conceives of harm as the result of other-regarding action that causes physical injury. Such other-regarding action can include speech, but only such speech that encourages the very *immediate* use of violence against specific individuals. Moreover, speech that simply expressed an opinion – no matter how unpopular – could never, according to this tradition, be justifiably suppressed by law or deemed 'harmful'.[20] Mill's position can best be summarised by the following passage from *On Liberty*: 'If all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person than he, if he had the power, would be justified in silencing mankind' (Mill 1978: 16).

The CCL has abandoned this traditionally liberal conception of harm. In particular, they have largely abandoned a distinction which until recently was a matter of consensus in most Anglo-sphere liberal democracies: that between harmful and merely offensive speech. Instead, the CCL equates harm with the result of challenging or insulting the identities of people within marginalised groups. In parallel fashion, the CCL also reinterprets the meaning of 'safety'. Hence, the Goldsmiths Students' Union elaborates its 'safe space' policy in the following way: 'systematic oppression excludes certain groups whilst providing others with unequal power. The safe space policy is designed to protect oppressed groups and enable their full participation in the student union.'[21] On this view, there is a mutually exclusive choice to be made between, on the one hand, allowing free speech for all and, on the other, guaranteeing the right to expression for those groups that are allegedly oppressed. A convincing or clear case is rarely made as to how the mere articulation of a viewpoint prevents the advancement of a contrary view.

The CCL aims to transfer power between social groups via the control of speech. Achieving this objective requires the imposition of what might be

19 Nona Buckley-Irvine, 'Free Speech, Not Hate Speech', *Huffington Post*, 1 March 2017 (https://tinyurl.com/5n6sjhkh).

20 Mill (1978: 53) argued that whilst those claiming corn dealers starved the poor should have a right to express this, this should not apply to such a statement made before a crowd gathered outside the home of a corn dealer.

21 Goldsmiths Students Union Safe Space policy (https://tinyurl.com/mpfvzs7z)

described as ‘citizenship handicaps’ on those deemed to count as ‘privileged’. These are the equivalent of the higher rates of taxation imposed on high earners which aim at greater economic equality via redistribution. When applied to speech, and particularly to political speech, however, the approach compromises the very basis on which participation on equal terms in a democracy is possible. Some perspectives will be forcibly suppressed, while others judged to be compatible with the CCL’s revisionary conception of social justice are allowed free rein.

The CCL’s tendency to accord different speech rights to individuals depending on their group status is complemented by the practice of actively discriminating against males and white people regarding the allocation of jobs and positions within institutions. Many bodies have introduced targets for the percentage of women, ethnic minorities, and so on, to be employed. The Royal Air Force recently became the subject of controversy for doing so.[22]

A significant development in the recent history of this movement was the much-publicised 2005 report published by the Parekh Commission, established by the Runnymede Trust. The report articulated a so-called ‘multiculturalist’ understanding of cultural injustice. It stated that ‘when equality ignores relevant differences and insists on uniformity of treatment, it leads to injustice and inequality… Equality must be defined in a culturally sensitive way and applied in a discriminating but not discriminatory manner’ (Parekh 2000: ix). It further asserted that ‘traditional liberal theory’ needed to be challenged as ‘the political culture and the public realm are not, and cannot be, neutral. Their values and practices can therefore discriminate against certain members of the community, marginalising them or failing to recognise them’ (Parekh 2000: 46) One revealing example offered by the Parekh report as an instance of free speech achieving a discriminatory outcome was the publication of *The Satanic Verses* (Parekh 2000: 46). The view expressed in the report implies that those claiming to represent the collective interest of entire groups should exercise a cultural veto, whereas others – presumably including writers like Salman Rushdie – should be condemned to enforced silence. It is plausible that engineering the outcomes desired by the report’s authors would require the state to proactively intervene in cultural and political life.

In fact, an identitarian approach to intervention by state agencies is increasingly common. One example is the 2014 Metropolitan Police’s

22 Deborah Haynes, ‘RAF “pauses job offers for white men” to meet “impossible” diversity targets’, Sky News, 16 August 2022 (https://tinyurl.com/zwn4at9f)

Online Hate Crime Hub document. This stated:

> Hate crimes can have a greater emotional impact on the victim than comparable non-hate crimes, and can cause increased levels of fear and anxiety that can also permeate through wider communities.
>
> *This is precisely why all victims should not be treated the same… The police service must:… deliver a service which recognises the different experiences, perceptions and needs of a diverse society* (p. 1). [emphasis added]

Likewise, in its *2020 Consultation on Hate Crime Laws*, the Law Commission for England and Wales presents uncritically the views of 'stakeholders' and 'experts' who reference the 'background of oppression' (2020: 70) and 'historical disadvantage' (2020: 194) experienced by minorities. It also claims (2020: 180–1) that

> many of those we spoke to in our initial meetings argued that the race-based hostility is more harmful [than hostility on the basis of allegiance to a sports team], as it targets a more fundamental component of the person's identity, and compounds the impact of other manifestations of discrimination and disadvantage that affect racial minorities.

Many of those contributing to the consultation and those cited by it are clearly influenced by critical race theory. To take just one example, the following quote taken from K. Craig-Henderson and L. R. Sloan's, 'After the hate: Helping psychologists help victims of racist hate crime' (2003), is presented without criticism in the report: 'when an anti-black racist hate crime occurs it brings all the dormant feelings of anger, fear and pain to the collective psychological forefront of the victim. *This is not the case when whites are the target of racist hate crime* (Law Commission 2020: 199). [emphasis added] Such claims are mere psychological speculation with no evidence presented for their truth.

The selective application of the idea of hate became embedded in the public sphere with the passage of the Crime and Disorder Act 1998. Sections 28–32 of the act state that crimes said to be motivated against persons because of their race or religion will receive aggravated sentences. The Act is thus an attempt to use law to undermine a conception of

individuals as unique and equal rights holders; it replaces this with the selective enshrining of group-based characteristics as especially deserving of respect and protection.

The state we are in

The application of the CCL's ideological paradigm – a postmodern reinterpretation of power, a view of language as the essential medium of oppression, and a commitment to applying and disapplying rights on the basis of group-based characteristics – has created a climate of speech prohibitionism. The present situation is one in which everyday interaction and communication are subject to ever greater political oversight.

One consequence of the attempt to control speech is the phenomenon of 'cancel culture'. This is the practice in which individuals who are deemed to hold values antithetical to those of the CCL are caused to lose employment, are censored by internet platforms, have publishing contracts rescinded, or are prevented from making public appearances, among myriad other possible sanctions. Whereas at one time the assumption was that individuals enjoyed the same potential capacity for cognitive and political agency, now the prevailing view stresses the 'vulnerability' of the groups identified as collective victims by the CCL. This is thought to justify cultural (in addition to legal) 'safeguarding'.

The adoption in public life of the university campus's notion of a 'safe space' is indicative of how many on the left are instinctively inclined to restrict free expression so as to permit solely positions they agree with. In an example from 2021, the comedian Roy 'Chubby' Brown was banned from performing at a theatre owned by Sheffield City Council. The local MP, Gill Furniss, supported the decision, saying: 'There is no place for any hate-filled performance in our diverse and welcoming city.'[23] There is of course scope for debate over the right of private companies to deny

23 Robert Cumber, '"No place for any hate-filled performance" – Sheffield MP backs decision to cancel Roy "Chubby" Brown show', The Star, 4 September 2021 (https://tinyurl.com/3cp9essf).

access to, and disassociate from, people they disagree with. However, it bears pointing out that Brown's fate is not one that would conceivably have befallen the left-wing, politically outspoken comedian, Frankie Boyle, had he been invited to appear at the venue.

The manner in which the police enforce the law has likewise become increasingly partial. It now encroaches on speech rights. For example, wolf-whistling has been recorded as a hate crime by Nottinghamshire Police.[24] Thames Valley Police have threatened to arrest people using Section 5 of the Public Order Act 1986 for displaying or distributing literature that reproduces the Oxford English Dictionary's definition of 'woman'.[25] Approximately 120,000 incidents have been entered on police databases, often to do with critical or abusive comments made about transgenderism.[26] Some, such as the Scottish feminist activist Marion Millar, have been tried for their political speech and for displaying the Suffragette symbol.[27] Other campaigners have been visited by the police and threatened with further legal action unless they desist.

In one infamous incident in 2019, a former Humberside policeman, Harry Miller, was confronted by police who told him they were 'checking on his thinking' after receiving a complaint about a gender-critical post of his on the internet. He was later arrested at the house of Darren Brady, who had likewise been visited and threatened with prosecution under the Communications Act. Brady's alleged offence was causing his victim to feel 'anxiety' by sharing an image originally tweeted by the actor Lawrence Fox: the image reconfigured the 'progress pride' symbol as a swastika. According to Miller, the police told Brady that if he paid a £60 fine and agreed to attend an educational course on transgenderism, he could avoid prosecution. Brady refused. The police then arrested him three weeks later.[28]

24 Nadia Khomami, 'Nottinghamshire police to count wolf-whistling in street as a hate crime', *The Guardian*, 13 July 2016 (https://tinyurl.com/3vt89wn2).
25 Jeevan Ravindan, 'Police call for witnesses over transphobic stickers', Cherwell, 18 October 2019 (https://tinyurl.com/2nfcexw4).
26 Noel Yaxley, 'Illiberal policing: it's time to abolish "non-crime hate incidents"', 4 May 2021 (https://tinyurl.com/fkhjeven).
27 Tom Gordon, 'Court delay for Scots feminist charged with "hate crime"', *The Herald*, 19 July 2021 (https://tinyurl.com/4husmx5f).
28 Harry Miller, 'The police are now the paramilitary wing of the trans lobby', Spiked-online, 10 August 2022 (https://tinyurl.com/2phscave).

The Metropolitan Police have stated:

> Someone using offensive language towards you or harassing you because of who you are, or who they think you are, is also a crime. The same goes for someone posting abusive or offensive messages about you online… it's not just offensive, it's an offence.[29]

Reiterating a similar message as part of a stunt that provoked public backlash in 2021, Merseyside Police deployed a poster van bearing the LGBT rainbow flag alongside the slogan 'being offensive is an offence'.[30] The use of the flag can reasonably be interpreted as indicating the kind of speech that would attract police attention. The problem is that being 'offensive' is not a crime, except in highly specific contexts: attempting to stir racial hatred, committing an aggravated speech-related offence under the Crime and Disorder Act 1998, or breaking the two main communications statutes with 'grossly offensive' messages or imagery. The police campaign was shortly after abandoned.

In Scotland, the police force has deployed a series of menacing posters and leaflets, the only plausible aim of which is to inhibit free speech. One states, 'Dear Bigots, you can't spread your religious hate here. End of sermon.' Another: 'Dear Homophobes we have a phobia of your behaviour. If you torment people because of who they love... you should be worried… Love lives in this country, not hate.'[31] These interventions assume that problem speech emanates exclusively from those judged to hold 'politically incorrect' views. There is for instance no attempt made by the Scottish police, or other public bodies, to discourage militant pro-transgender activists from insulting their political opponents.

Christian preachers have been arrested and charged for preaching in public, often on the basis of their critical remarks about homosexuality or Islam.[32] Public Space Protection Orders have been used to prevent 'pro-life' activists from congregating near abortion clinics. Birmingham City Council applied to the High Court in October 2019 to permanently ban Muslim parents and their supporters from protesting outside a school in

29 Metropolitan Police, No Place for Hate, video (https://tinyurl.com/mhupctm4)
30 'Merseyside Police apologise over incorrect "offensive" claim', BBC, 22 February 2021 (https://tinyurl.com/38h9xv8p).
31 The Newsroom, 'Controversial "Dear Bigots" campaign sparks backlash', *The Scotsman*, 15 March 2019 (https://tinyurl.com/a23zkm9f).
32 David Harrison, 'Christian preachers face arrest in Birmingham', *Daily Telegraph*, 31 May 2008 (https://tinyurl.com/49wh74hu).

opposition to their teaching lessons on LGBT issues; two of the protest's organisers were ordered not to co-ordinate the protests or hand out literature and to remain outside an exclusion zone.[33]

In the most troubling cases, the simple communication of a view provides the basis for prosecution. The case of Mark Norwood, a member of the British National Party, is a prime example. In 2002, he displayed a poster in the window of his house that depicted the Twin Towers in New York in flames alongside the words, 'Islam out of Britain – Protect the British People.' The judge who presided over his prosecution said that the poster constituted 'a public expression of attack on all Muslims in this country, urging all who might read it that followers of the Islamic religion here should be removed from it and warning that their presence here was a threat or danger to the British people.'[34]

Norwood appealed unsuccessfully to the European Court of Human Rights on the basis that the poster in fact made no mention of 'Muslims' at all. It did not urge their expulsion from Britain nor attacks on them; the poster denounced a religion, Islam, rather than a people. The defendant's state of mind was in this case immaterial, since Section 5 of the Public Order Act 1986, under which he was charged, does not require the prosecution to establish any hateful intention on the part of the alleged offender. His sentence was, however, increased under the terms of the Crime and Disorder Act 1998, under which he was found guilty of having demonstrated hostility towards a group of people with a protected characteristic.

What is clear in these cases is that the law is not enforced in a spirit that is neutral between different political viewpoints. Rather, it is applied in a highly selective way. Markus Meechan, also known as 'Count Dankula', is a Scottish comedian and libertarian activist who was prosecuted in 2016 after posting a video on YouTube featuring a pug giving a Nazi salute while watching footage from *The Triumph of the Will*. In introducing the clip, Meechan explains: 'My girlfriend is always ranting and raving about how cute and adorable her wee dog is so I thought I would turn him into the least cute thing I could think of, which is a Nazi.'[35]

33 'LGBT teaching row: Birmingham primary school protests permanently banned', BBC News website, 26 Nov 2019 (https://tinyurl.com/4rbshxfn).

34 Global Freedom of Expression, Norwood v. United Kingdom, Newsletter, Colombia University (https://tinyurl.com/4k8w8vps).

35 Stephen Stewart, 'Scots racist who taught girlfriend's pug Nazi salute brands Humza Yousaf "authoritarian fascist" in online rant over new hate crime law', Daily Record, 16 October 2020 (https://tinyurl.com/59w7xesw)

Meechan was convicted under Section 127 of the Communications Act, which prohibits the sending of 'grossly offensive', indecent, obscene or menacing messages. According to the statute, an offence is judged by 'reasonably enlightened, but not perfectionist, contemporary standards' and does not require the prosecution to establish *mens rea*. Meechan's defence was that he intended to communicate something humorous, but this was dismissed as irrelevant. On top of this conviction, he was found guilty of aggravated religious prejudice.

Meechan's case illustrates how the notion of offensiveness is combined with that of a protected characteristic to disproportionately target communication with a certain content. Consider, for instance, that had Meechan taught his dog instead to simulate the communist clenched fist salute, it is unlikely that he would have been prosecuted.

Caroline Farrow's experience is another case in point. Despite her receiving death threats and being subjected to other forms of harassment at the hands of pro-transgender activists, Farrow claims that Surrey Police failed to meaningfully help her. In stark contrast, Farrow herself was threatened with an interview under police caution when, in March 2019, she 'misgendered' the daughter of Mermaids's then CEO Susie Green. In the latter case, Green eventually dropped her complaint against Farrow, but only because she wanted to reduce the public attention being given to Farrow's political position (Williams 2022: 5–6).

Farrow's and Meechan's are, of course, only two cases, but they exemplify a more general trend that aims to stifle the expression of particular political viewpoints. It no longer needs to be the case that an actual incitement to violence or discrimination is at issue. Rather, there has been a concerning rise in the number of people being interviewed, charged or included on NCHI registers by the police merely for stating their political beliefs.

It is important to see that this new, more interventionist approach to law enforcement is pursued in a partial and inconsistent way. The police have notably refused to bring prosecutions against individuals in cases that are closely analogous to those described above, save for the fact that they involve racist statements directed at white people.

For instance, transgender model Munroe Bergdorf, who was appointed to the Labour Party's LGBT advisory board in 2018, said on social media that 'white people as a group are brought up racist… most of ya'll don't

even realise or refuse to acknowledge that your existence, privilege and success as a race is built on the backs, blood and death of people of colour.'[36] Bergdorf is also quoted as saying that all white people are guilty of 'racial violence' and constitute 'the most violent and oppressive force of nature on Earth.' (Facebook removed these posts because they were judged to violate their hate speech policy.) In another example, police refused to pursue a case against Bahar Mustafa, the welfare and diversity officer of Goldsmiths University's Students' Union, who posted the phrase 'KillAllWhiteMen' on Twitter and referred to another student as 'white trash'. In the past, Mustafa has organised events promoting diversity that excluded men and white students.[37]

In a similar incident, the Cambridge academic Priyamvada Gopal tweeted, 'Now we have the opportunity to carry out a resolute offensive against the whites, break their resistance, eliminate them as a class and replace their livelihoods with the livelihoods of people of colour and LGBTQ.'[38] Dr Gopal has also urged discrimination against Hindus. In response to moves in India to make the naturalisation of Muslims harder, she tweeted, 'I would like to invite Western countries to block naturalization for Hindus. Snatch their precious little H-1Bs. Sickos.'[39] No police action was taken against Dr Gopal, and Cambridge University published a supportive statement in defence of her right to free speech in response to a petition calling for her to be sacked.[40]. For the university to defend an academic's right to free speech is all very well, but, as in the case of law enforcement, they do not apply their own principles in a consistent way. This much is made clear by the fact that shortly before defending Dr Gopal, Cambridge University had withdrawn an offer of a visiting fellowship extended to the Canadian academic (and free speech advocate) Jordan Peterson. The university's justification was that Cambridge was 'an inclusive environment and we expect our staff and visitors to uphold our principles. There is no place here for anyone who cannot.'[41]

36 Greg Heffer, 'Labour appoint model Munroe Bergdorf who claimed "all white people" are racist', Sky News, 27 February 2018 (https://tinyurl.com/5n6r26m3).
37 'Bahar Mustafa case: charges against diversity officer dropped', BBC News website, 3 November 2015 (https://tinyurl.com/4upewf76).
38 'Sack Cambridge University Professor Priyamvada Gopal', Change.org (https://tinyurl.com/mrx7yshp)
39 @priyamvadagopal, 9 December 2019 (https://tinyurl.com/yc5b5492)
40 Sophie Huskisson, 'Cambridge condemns abuse against academics, after petition to fire Dr Gopal launched', Varsity, 7 October 2023 (https://tinyurl.com/yptuwdnv).
41 Sarah Marsh, 'Cambridge University rescinds Jordan Peterson invitation', *The Guardian*, 20 March 2019 (https://tinyurl.com/2h9j9nzv).

It is important to see that the CCL both articulates a position that is deeply hostile to free speech and resolutely refuses to apply it in a consistent manner. It should be of concern to liberals and those who believe in equality under the law – as well as equality under more informal systems of rules, such as those operative in universities – to see similar cases treated so differently. The actions of the police and other public bodies in the cases described above share an underlying commitment to the assumptions of critical race theory. In particular, what appears to explain their inconsistent treatment of equivalent cases is the view that racial discrimination is a practice peculiar to white people: that only 'white supremacists' can truly be racist in the sense relevant to the law. When someone who is not white makes what seem like racist remarks, the theory reinterprets them as a form of cultural resistance. Here, we see what is usually the covert racism of the CCL clearly exposed.

The role ‘hate speech’ plays for the CCL

Hate speech has become an increasingly important organising concept for the CCL. Now in currency throughout mainstream political life, the term has become an increasingly useful label for the CCL to deploy in framing their grievances. Prohibitions on hate speech have been successfully presented to the public as a natural extension of the minimal constraints on free speech that exist in any liberal democracy. This has enabled the CCL to pursue its project of curtailing free speech while laundering its objectives under the guise of eradicating social evil and promoting tolerance, diversity and civility in political life.

Perhaps unsurprisingly, the broad strategic usefulness of the term ‘hate speech’ depends to a large extent on the vagueness of the account given of it. Its meaning has shifted over time. The nature of this shift has been suggested by some of the examples already discussed in this paper. Myriad CCL initiatives are now pursued under the guise of combatting ‘hate speech’: initiatives that aim proactively to dictate approved linguistic usage, again in regard exclusively to favoured social groups; initiatives to ban ‘offensive’ speech; and, perhaps most strikingly of all, initiatives whose only plausible aim is the curtailment of speech on the basis of its political content alone.

The historical explanation of how hate speech came to play such a decisive role in advancing the CCL’s political agenda is again best revealed by reference to the relevant legal statutes, as well as their shifting interpretation by law enforcement.

In 1965 the introduction of Section 6 of the Race Relations Act outlawed incitement to racial hatred in Britain. It is tempting to view this as the

opening ploy in the subsequent struggle to undermine the established classical liberal understanding of the relation between the state and the agency of the individual. The post-war era provided a congenial political atmosphere for such a movement to gain a foothold. Across Europe, the response to the experience of fascism and national socialism helped to create a new political tone, one that was more pessimistic about the ability of a society to self-regulate in such a way as to prevent political extremism from taking hold. Particularly important as regards the limit of legally permissible political speech was the assumption that the persecution of the Jews under the Nazis had been achieved by the effective use of anti-Semitic propaganda.

In British political life, in which fascism had never been a well-developed political force, the primary fear was not a racially motivated holocaust but a wariness about the possibility of internecine conflict between the indigenous British population and recently arrived immigrants from the West Indies and Commonwealth. The Notting Hill race riots of the late 1950s and 1960s seemed to foretell, on a local but nonetheless politically potent scale, the future possibility of politically charged public disorder in Britain. The resulting anxieties were felt at the level of the national political parties. In 1964, for instance, the Conservative Party fielded a candidate who ran an overtly racist electoral campaign in Smethwick.

It was in this quite unusual context that the Race Relations Act 1965 was passed. At the time of its passage, there was no suggestion that the statute should be used in a manner preferential to one racial group rather than another; this has only become the case in subsequent years. In fact, among the first to be prosecuted under the new law was a West Indian man; later, followed members of the Black Liberation Movement (Twomey 1994). A crucial change was, however, introduced in Section 70 of the Race Relations Act 1976; this eliminated any requirement of proof of guilty intent on the part of those prosecuted under the act for incitement of racial hatred.

The later Public Order Act 1986 (Sections 18–22) should be seen as marking the transition from the first to the second wave of anti-hate speech legislation in Britain. This statute made it an offence to stir up racial hatred through the use of ‘threatening, abusive and insulting’ words or communication. Over the course of Tony Blair’s years in office, further provisions were added to prohibit the stirring up of hatred on the basis of religion and sexual orientation (in these cases, however, the prosecution was required to demonstrate that specifically threatening rather than

merely abusive or insulting words had been used). In 2014, the Act was amended so as to remove reference to 'insulting' language; Sir Keir Starmer, then the director of Public Prosecutions, noted at that time, however, that this alteration would be of little practical consequence, seeing as reference to 'abusive' language was retained.[42] Under the law, individuals could be convicted if their threatening or abusive words were shown to cause 'harassment, alarm or *distress*.' [emphasis added] The latter provision is also subject to the Crime and Disorder Act 1998, which introduced aggravated sentences for those thought to have been motivated by 'hostility' towards people with protected characteristics.

As is clear from this brief recapitulation of the legal history, the tendency over the past several decades has been for legislation to encroach to an ever greater degree on individual speech rights. The originally circumscribed aims of the 1965 Act have been abandoned. The traditional liberal distinction that Mill helped to establish between harmful speech and speech that is merely offensive has been gradually undermined. In fact, that Millean distinction has been so thoroughly destabilised in the popular imagination that today many conceive of the giving of offence as itself constituting a form of harm. It is very doubtful, however, that conflating harm and offence in this way is compatible with a robust approach to individual speech rights. The reason is the one expressed by Lord Justice Sedley when, in reference to a case involving a religious preacher, he said:

> Freedom only to speak inoffensively is not worth having. … Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence.[43]

The distinction between harm and offence was once so widely accepted that it could be treated as part of the common ground of liberal political life. In their effort to undermine this important distinction, the CCL had to convince people that the transmission of offence via language was, in some relevant sense, akin to already prohibited acts of physical violence. They did this by emphasising the psychological effect of offensive speech. In order to make it plausible that psychological harm was as bad as physical harm, the CCL found they had to introduce a suitably amorphous conception of harm.

42 Reform Section 5: Feel Free to Insult Me (https://tinyurl.com/5n95wn2r).
43 John Ezard, 'Preacher wins freedom of speech', *The Guardian*, 24 July 1999 (https://tinyurl.com/pctn4tnx).

Such a conception was readily found in the theory being developed among the new left in the post-war period. As has already been shown, thinkers on the new left were inclined to overgeneralise any number of political concepts beyond their proper conceptual boundaries: oppression was to be understood not as an economic phenomenon but as a cultural and social one too; likewise, harm, it was maintained, should be understood as a psychic phenomenon rather than a primarily physical one. The growth in the popularity of this line of thought broadly tracks the encroachment of the law into individual speech rights in Britain. Today, when the law stands in judgement on an individual speech act, the supposed psychosocial effect of the speech act on the alleged victim is taken just as seriously as the literal content of the utterance.

There is an obvious barrier to the wholesale adoption of this general legal approach to the regulation of speech. It is simply impractical to prohibit speech across the board on the basis of psychological speculation about its actual or probable effects on others. For one thing, it is very difficult to see how such an unwieldy system could be legally administered effectively. In this respect, practical barriers and the imperatives of the politics of identity achieve a kind of harmony: it is only members of designated victim categories that are judged to be vulnerable to being harmed by speech. The CCL has developed an account of victimhood defined in terms of the possession of particular racial, sexual, religious and other characteristics. The possession of such characteristics is judged, for reasons that are seldom very clear, to make individuals uniquely vulnerable to the kind of psychic harm that the CCL deems it the business of the law to prevent.

The CCL's distinctive account of victimhood is related to another trend, which some have described as the 'therapeutic turn' in left-wing politics. Dennis Hayes, the trade union activist and commentator, has observed that such therapeutic politics places undue emphasis on the likelihood that unfettered free speech will traumatise or emotionally damage its 'victims' (Hayes 2021: 200–23). The growing prominence of a therapeutic idiom in mainstream political life has made it a great deal easier for the CCL to erode individual speech rights by increasing the political salience of vocabulary connected to its reinterpreted conception of psychological harm.

The higher education sector has been particularly pivotal in popularising the therapeutic turn. The widespread practice of universities creating 'safe spaces' – spaces in which students are offered protection from hearing offensive or oppositional views – has arguably bled into the wider political

culture. This is perhaps nowhere clearer than in the present government's Online Safety Bill. At one time, the Bill proposed to criminalise messages that would cause 'serious distress' to a likely audience.[44]

Just as disturbing as the formal statutory encroachment on speech, however, is the recent shift in the way existing legislation is interpreted and enforced. As has been emphasised at several points, it has become common for state authorities to regulate the expression of political views merely on the ground that their content is deemed objectionable. Interfering with public speech on this basis is nothing less than imposing constraints on the content of views that it is permissible to express in society – a glaringly anti-liberal measure.

It is striking, however, that many in authority seem to have accepted this anti-liberal consequence in a quite casual manner. For instance, the Law Commission (2020: 194) for England and Wales states that

> hate crime laws also serve an important *symbolic* function in tackling bigotry, prejudice and inequality, and affirming the identity and personhood of those who are subjected to it… this links with a broader equality movement in contemporary society, which seeks to redress traditional sources of discrimination. [emphasis added]

The Law Commission's *2020 Consultation Paper on Hate Crime* is another document that reveals the growing inclination of legal authorities to monitor the ideological content of public speech. In it, the Commission examined the question of whether the Equality Act's civil law protection for those holding 'beliefs' (including religious beliefs) should instead be incorporated into criminal law. In answering the question, it distinguishes between different types of philosophical outlook. There are those said to be 'worthy of respect in a democratic society and not incompatible with human dignity or in conflict with the fundamental rights of others' and those not deserving of protection, which are said to be 'objectionable political philosophies'. These latter include racist and homophobic views, as well as (quoting the decision of the Employment Tribunal in *Forstater v CGD Europe and others* [2019]) '"absolutist" views of sex' (Law Commission 2020: 340). However, in the final report published in 2021 the Commission had to somewhat amend its position. While making clear that 'objectionable political philosophies' are excluded from protection, '"absolutist" views of sex' are

44 Online Safety Bill (as introduced March 2022) Section 150 (https://tinyurl.com/3mfcnnxm).

no longer among these. ‘In the recent case of *Forstater v CGD Europe*, the Employment Appeal Tribunal ruled that “gender critical” beliefs (that is, broadly, a belief that sex is binary and immutable and that a person cannot change their sex) were “worthy of respect in a democratic society”’ and are therefore protected (Law Commission 2021a: 291). Despite this small victory, the overall implication of the Commission’s 2020 paper and the final report in 2021 remains an ominous one: in them they sought to outline a state-endorsed list of beliefs that it is legitimate to express, and further intimate that adherence to such elevated viewpoints might form the basis for a new protected characteristic.

The Law Commission’s (2020: 177) desire that an ideologically discriminatory approach be enshrined in law is made explicit in its statement that

> a strong case has been made to us for a change to the law, so that the current ‘motivation’ limb does not require evidence at the high threshold of ‘hostility’…we suggest that a reform to the motivation limb of the hostility test – to allow for both hostility and *prejudice*… [emphasis in original]

As Joanna Williams (2022: 64) notes this *‘could potentially result in the prosecution of hate crimes in circumstances where the perpetrator neither holds nor demonstrates any particular animosity towards the* [protected] *characteristic’*. [emphasis added] On the legal treatment the Commission proposes, merely holding views deemed to be ‘prejudiced’, even if not hostile, is sufficient for putting a crime into the ‘hate crime’ category and therefore subjecting the perpetrator to harsher punishment.

The attempt to distinguish unlawful speech merely by reference to its ideological content constitutes a significant departure from liberal norms – so much so, in fact, that it is worth examining its historical antecedents.

The exclusive focus on the content of speech is an approach that was popularised by north American feminism in the late 20th century. Figures such as Catharine MacKinnon and Andrea Dworkin advanced feminist critiques of pornography according to which pornographic material featuring women was intrinsically hate-filled, independent of whatever actual

motivations lay behind its creation.[45] Another application of this account takes the form of the judgement that the act of wolf-whistling at a woman is inherently hateful, regardless of whatever motivation lies behind any particular instance of the action. Overall, this approach yields the somewhat counter-intuitive conclusion that the hatefulness of an action is entirely independent of how that action was in fact motivated.

Ironically, these days many feminists are smeared by transgender activists as progenitors of hate speech themselves. Leading LGBT charities such as Stonewall and Mermaids claim that challenging the claim that some biological males are women suffices to violate the rights of the person whose cross-sex self-identification is being called into question. Stonewall, for its part, defines transphobia as 'the fear or dislike of someone based on the fact they are trans, including denying their gender identity or refusing *to accept it*'. [emphasis added][46] This claim is mirrored in the Crown Prosecution Service's (CPS) view that 'homophobic and transphobic bullying and hate crime attack people's right to feel safe and confident about their sexual orientation and their gender identity.'[47] The suggestion seems to be that 'misgendering' a cross-sex identified person by referring to their biological sex rather than self-identified gender provides grounds for police investigation.

The Law Commission has also advocated for the introduction of new criminal offences under the Online Safety Bill.[48] In doing so, the Commission argues that 'doxing' (the practice of publishing information about the identity of an individual, including their address, workplace or biological sex) and 'outing' (the publicising of information about an individual's sexual orientation or gender identity without their agreement) are activities that constitute 'online abuse' (Law Commission 2021b: 236). The gender-critical advocacy group Sex Matters (2021: 10) has pointed out in its own submission to the Commission that

45 In 1983 MacKinnon and Dworkin drafted a local law for the Minneapolis Council that would facilitate the taking of civil action against pornographers on the basis that pornography was accused of resulting in discrimination against women generally. It was defined as 'the graphic sexually explicit subordination of women through pictures or words that also includes women dehumanized as sexual objects, things, or commodities…'.

46 See Stonewall's website: 'what is homophobic, biphobic and transphobic bullying' (https://tinyurl.com/2t3c6w8b)

47 'CPS launch hate crime schools pack', True Vision: Stop Hate Crime (https://tinyurl.com/2p89r4hn)

48 Law Commission (2021) Reform of the Communications Offences (https://tinyurl.com/y88wxwew)

> the wording of the proposal strongly suggests this law would be used to bring prosecutions, and to generate guidance suggesting that referring to a person's sex, or their previous or even legal name (even when both are known and in the public domain in other contexts) is a form of abuse subject to criminal prosecution.

To give a further example, the Scottish Hate Crime and Public Order Act also appears to actively encourage politically partial prosecutions. It differs from the UK-wide Public Order Act 1986 in extending the scope of 'abusive behaviour' to include the act of stirring up hatred on the basis of religion and sexual orientation. The UK-wide law refers only to 'threatening' actions in relation to those characteristics. The Scottish law has an even greater tendency to constrain the liberty of individuals to express their political views about homosexuality, gay marriage, transgender rights, and the beliefs and practices of other religions. This development should be of additional concern to supporters of free speech because the Act now empowers the Scottish state to potentially prosecute individuals for what is communicated in private as well as in public.[49]

Moreover, whatever one's views on these matters, the legal framework used to regulate them is obviously damaging to the rule of law. It becomes a matter of pure guesswork as to how the police, the CPS and law courts might decide to interpret vague terms such as 'abusive behaviour'. A law that lends itself to highly variable and inconsistent interpretation is not a good law. One cannot tell if one is complying with it or not. In unwitting illustration of this problem, some Scottish politicians went as far as to speculate that the writer J. K. Rowling could be prosecuted under the new statute on the basis of her professed gender-critical views, even while representatives of the Scottish government publicly said this was unlikely.[50]

To take up the case of religion, consider the attempt by an All-Party Parliamentary Group in 2019 to establish a legal definition of Islamophobia. Were such a change enacted, it too would constitute an important step in the direction of prohibiting speech on the basis of its ideological content alone. In the case of religion, the CCL's tactic is to elide criticisms of religious doctrine with criticism of religious people themselves. Instituting

49 Tom Gordon, 'MSPs back criminalising hate speech at the dinner table', *The Herald,* 9 February 2021 (https://tinyurl.com/zyexzz4k).

50 Adele Merson, 'JK Rowling "could end up in the dock" if new hate crime laws are passed, critics warn', *The Press and Journal*, 19 July 2020 (https://tinyurl.com/yckuutpn).

a legal definition of Islamophobia would doubtless make it easier to uncharitably interpret objections to Islam as objections to Muslims themselves. (It is, however, worth noting that the full legal implications of any new law have not been explicitly laid out.)[51] Such attempts to protect religious believers are far from liberal in their spirit. They are reminiscent of the now-repealed blasphemy law, as it was once applied in the service of Christianity.[52] The rolling back of such constraints was a liberal achievement; the CCL now seeks to reimpose them.

51 'Defining Islamophobia: comprehensive report amplifies what it is, what it isn't and why it matters', Muslim Council of Britain website, 3 March 2021 (https://tinyurl.com/ma5hjz5v).

52 'Open letter: APPG Islamophobia definition threatens civil liberties' (https://tinyurl.com/3mmz5yc5).

How to take on the CCL

This paper has drawn attention to the importance of anti-hate speech legislation in accelerating the CCL's attempt to erode free speech rights in Britain. Hate speech legislation is used as a guise to regulate the content of the political viewpoints it is legally permissible to express. If such a profound change to the legal culture of the UK has gone little challenged, it is in part because the concepts in play have been strategically ill-defined and vague. Once the CCL's authoritarian agenda is seen for what it is, the need to challenge it becomes evident.

A natural right to express our beliefs

Since the 19th century the case for free speech and diversity of opinion has traditionally been cast in utilitarian terms. In the spirit of John Stuart Mill, it is argued that norms of free speech promote scientific advancement, the acquisition of knowledge, and help society avoid political dysfunction. These are all instrumental justifications: they conceive of speech rights as valuable in virtue of their tendency to secure some independent goal. This approach remains as sound today as it was in Mill's day. But under today's conditions of growing anti-liberal political zeal, free speech rights must be placed on a sturdier, less contingent, conceptual footing. This paper argues that free speech should be thought of as something to which humans enjoy a natural right.

The task facing defenders of free speech today is similar to that which has confronted liberals of all ages when their values have come under threat. In these circumstances, a defence has often been mounted in terms of the very nature of what it is to be human. When church or state authorities have attempted to prevent individuals from expressing troubling opinions, their opponents have traditionally defended the liberal order by

appealing to fundamental and exclusively human capacities and their important connection to free speech.

Some who advocated for a 'natural right' to free speech argued that it was conferred by God; others in the liberal tradition, such as Thomas Paine and later thinkers such as Murray Rothbard, diverged on this point. What most of the advocates of a fundamental speech right have had in common, however, is a belief in the unique importance of independent thought and individual agency. These important human qualities transcend political life. They are not conferred on us by any government or social system. Rather, they are properties of human beings in their natural state and consequently constitute the basis for a natural, rather than political, right. It is not within the gift of any political body to deprive an individual of any natural right, because it is not within its gift to confer it in the first place.

A natural rights approach makes the individual the basic unit of political analysis. Humans are seen as equal in autonomy and the capacity to exercise reason. This forces one to reject any notion that those who wield political power have the right to treat anyone as a means to achieving their ends; rather, it is the power of social bodies to interfere with individual agency that ought to be thoroughly constrained. This picture is, in its essential features, a highly egalitarian one. It has its roots in John Locke's *Of Property*, in which he asserts that 'every Man has a Property in his own Person: This no Body has a Right to but himself.'[53] Even in later centuries, it was typical to think of property as including not only justly acquired physical objects but also one's mental capacities and freedom of action. Locke's assertion that individuals enjoy a moral right to self-ownership is one that can still be made use of today.

The ideology of the CCL presents a very different background picture from that of classical liberalism. The CCL's background ideology maintains that individuals enter the world already encumbered in a network of power relations and an identity that is in large part socially constituted. This theory contends that to be liberated from this position requires self-conscious political intervention. The environment and the people in it, including their rights, are objects to be socially reengineered. On this view, nature imposes no constraint on what it is morally permissible for the state to do to the individuals over whom it exercises its coercive power.

53 John Locke, Second Treatise on Civil Government 1689, Of Property, Section 27 (https://tinyurl.com/yeywjv82).

The incompatibility of anti-hate speech law and liberal democracy

Attempts to constrain free speech on the basis of its political content are inimical to liberalism. Free speech, which is a manifestation of human beings' rational faculty and potential for autonomy in thought and action, accordingly sets a moral limit on the scope of the state's ability to politically interfere with individuals. Attempts to intervene in this way are a form of unjustifiable political interference that undermines the moral legitimacy of the state. Elaborating a position along these lines, the legal scholar and philosopher Ronald Dworkin (in Weinstein 2017: 258) argues that:

> it is illegitimate for governments to impose a collective or official decision on dissenting individuals, using the coercive powers of the state, unless that decision has been taken in a manner that represents each individual's status as a free and equal member of the community.

Interference of this sort, he writes (ibid: 259), 'spoils the only democratic justification we have for insisting that everyone obeys these laws, even those who hate and resent them.'

How should we reconcile the fact that individuals have a natural right to liberty with the fact that a representative government can sometimes legitimately use force to coerce its citizens? Dworkin suggests an answer. Citizens should be bound by the outcomes of procedurally legitimate collective decision-making, but in return a distinctive kind of obligation binds the state. To be specific, the state must not restrict citizens' rights to liberty of expression. In some respects, this view is a refinement of Lockean social contract theory. Its governing insight is that the state cannot restrict in individuals those capacities of reason and expression that are necessary to participate in political life on the pain of rendering itself illegitimate. On this view, it is clear that no political movement that attempts to use the power of the state to restrict the range of political views that individuals can permissibly express – as the CCL does – can be legitimate. Aiming at a state of affairs that compromises legitimacy is not politically healthy. In fact, rather ironically, it makes more likely the kind of internecine strife, alienation and disenfranchisement that the CCL purports to be combatting.

The contrast between the liberal view just outlined and the ideology of the CCL should be clear. While liberals treat the individual as an important moral and political unit, the CCL makes groups primary. It is not surprising

that this difference should lead to a more tribal, atavistic and sometimes ruthless treatment of the individual on the part of the CCL. Cancel culture and 'no platforming' within education are simply more advanced manifestations of assumptions that are now also finding expression at the level of national politics and legislation. A wary liberal should fear that they are a sign of what is to come. For instance, it is plausible to worry that the casual condemnation and exclusion of individuals on the basis of their supposedly 'hateful' views – their alleged association with patriarchy, white supremacy, climate-change denial, transgressive politics, or biological realism about sex – might also make it easier to relegate them to the status of an internal enemy class. Such an attitude in turn makes it easier psychologically to fundamentally compromise their rights.

Why the rule of law cannot accommodate anti-hate speech law

The rule of law requires that individuals be in a position to understand the content of the law. People must be in a position to know whether a given action either violates or complies with the law. This is more than merely a moral point about what is reasonable: the content of the law must be legible and knowable if it is to be an effective device for guiding action. The Law Commission (2020: 467) itself asserts that

> it is important that the criminal law is clear so that citizens are aware whether their behaviour is lawful. This is especially so with an offence such as stirring up racial hatred which can be committed without intent, and which interferes with a fundamental right.

Anti-hate speech laws, as they stand, clearly do not satisfy this condition.

The norms of the rule of law also include the legitimate expectation, and right, on the part of all people to equal treatment under the law. Laws must not, for example, be enforced on a partisan basis. However, as has been argued, the influence of CCL ideology on the way the law is interpreted and enforced means that this condition is not met either.

This is not just an accidental feature of the way CCL ideology has been embodied in law. Rather, the problem is with the very idea of hate speech. In a legitimate liberal society, the state must not attempt to regulate the expression of the thoughts and emotions of its citizens. That provides one principled argument against the use of hate speech legislation in general. On a pragmatic level, there is also very little evidence that hate speech

legislation has succeeded even on its own terms. That is, there is little evidence that, even in those cases that are successfully prosecuted, a genuine instance of hatefully motivated action is at issue. It seems doubtful that hate speech legislation has meaningfully reduced the incidence of hatefully motivated actions, nor is there any verifiable means of telling whether it has. Related phenomena with which hate speech legislation is concerned – such as the stirring up of hatred in third parties – are also, as a practical matter, very difficult to identify with any certainty. The law ought to operate on a sounder footing than this.

It is revealing that the problems intrinsic to establishing whether a hateful motivation is in play in cases of alleged wrongdoing are apparent even to those authorities charged with enforcing hate speech laws. Guidance issued to local forces in 2020 by the College of Policing about hate crimes states that

> police officers and staff should respond positively to allegations, signs and perceptions of hostility and hate crime… In the absence of a precise legal definition of hostility, consideration should be given to ordinary dictionary definitions, which will include ill-will, ill-feeling, spite, contempt, prejudice, *unfriendliness*, antagonism, resentment, and dislike. [emphasis added][54]

Such ill-defined, unwieldy and vague criteria are simply incompatible with a robust commitment to the rule of law, as outlined above. Having laws such as these, together with such approximate guidance for their enforcement, puts people in the position of having to second-guess how their actions will be interpreted by authorities. To put the point another way, such laws confer enormous freedom on the authorities of the state to use their power in an arbitrary, inconsistent and unaccountable way.

Another example of an impracticably ill-defined construction, this time at the level of a proposed national statue, was the provision in the original version of the Online Safety Bill for the prosecution of speech, which is risks causing 'psychological harm amounting to at least serious distress' to a likely audience.[55] While this provision was subsequently removed, it illustrates a disturbing tendency on the part of some within the legal world

54 College of Policing, Major investigation and public protection: Responding to hate, Hate Crime Guidance (https://tinyurl.com/jp4mcr34).

55 Online Safety Bill (as introduced March 2022) Section 150 (https://tinyurl.com/3mfcnnxm).

to see individuals pursued for speech on the basis of legislation worded in such a vague way. Had this offence remained, juries and judges would have been invited to determine which words and images might have resulted in 'serious distress': '"Serious", in this case, does not mean "more than trivial"; it means a big, sizeable harm' (Law Commission 2021c: 9). It is not clear how such things could be measured with any degree of reliability. The situation is further complicated by the fact that there could be prosecutions in cases with no actual victims. The law after all referred merely to a 'likely audience' rather than requiring evidence of actual harm to a real person or persons.[56] This would have allowed victims to be purely hypothetical – dreamt-up sufferers of 'serious distress' as imagined by the authorities.

When examining this proposed law, the Law Commission urged the abandonment of Section 127 (1) of the Communications Act 2003 and the Malicious Communications Act 1988 which define prohibited speech in terms of 'gross offensiveness' or 'indecency' (Law Commission 2021b: 224–5). Instead, the Commission favoured a move to a model of predicting what emotional distress might befall certain 'likely audiences'. Further, under the proposed Online Safety Bill, the victim (or hypothetical victim) is not limited to being an individual with some protected characteristic already established under law (Law Commission 2021c: 9). Thus, the new law would require that those embarking upon a communicative act be able to accurately guess how members of audiences likely to view or hear it might react emotionally.

All of this would add up to a legal enshrinement of victim culture. In examining the proposed law, the Commission affirmed the basic assumptions of identity politics as promoted by the CCL. The Commission urged the government to reject the idea of incorporating a 'reasonable person' test into the statute because this would import unacceptably 'universal standards' to the judgement of whether a communication was likely to be harmful. Instead, it argued, the proposed law should establish different criteria for what counts as 'harm' for different identity groups, presumably based on the vague intuition of third parties about their varying levels of psychological frailty (Law Commission 2021b: 39). This would have left those attempting to comply with the law – that is, all citizens – in an impossible situation.

56 Ibid.

It might be argued that the Bill as originally drafted was not so serious a threat to free expression because it created a requirement for the Crown to prove intent on the part of the accused in causing harm.[57] This is in fact no help at all because the redefined understanding of 'harm' was so elastic as to always allow for some construal of the situation in which it has been intentionally caused. The problem, to be clear, is not that an alleged perpetrator may fail to share the CCL-style assumptions that underpin the law, but rather that even if they attempt to simulate belief in them, it may still be impossible for them to tell which actions are prohibited by the law because there is no determinate answer in any given case.

Other major statutes in this area of law have simply sidestepped any requirement to establish guilty intent on the part of the accused. The Race Relations Act 1965, its 1976 update and the Public Order Act 1986 all include 'strict liability' offences according to which intention does not have to be proved. Such measures constitute a sharp departure from the 1967 Criminal Justice Act. This law raised the standard for conviction by requiring the prosecution to prove that stirring up racial hatred was intentional on the part of the accused. (It was no longer enough, as had previously been the case, to demonstrate that the purpose of the accused person could be inferred from the 'natural and probable consequences' of their actions.)

The Law Commission defends the aptness of strict liability measures in these cases:

> There are good reasons to displace the assumption of *mens rea*. First, if an assumption that the law required intent to stir up hatred was read into the offence, the 'likely to' limb would not cover anything that was not already unlawful under the first [intention establishing] limb…. Several provisions within the [Public Order Act 1986] creating defences for those who had no intention to stir up hatred show that intent to stir up hatred was not intended to be a necessary part of the offence.

Moreover, the Commission says that holding people strictly liable for the words means that 'they are put on notice to be careful not to say anything which is likely to stir up hatred' (Law Commission 2020: 470). That is, the intention seems to be to exert a chilling effect on public speech.

57 Ibid., Section 150 (1) (b) (ii).

The Scottish Government gave a similar defence of its decision to create a lower threshold for prosecution by couching the law in terms of offences 'likely to' cause their effects. The Scottish Government argued that failing to lower the threshold in this way would be 'prohibitively restrictive in practice as in real-life cases it may often be very difficult to prove beyond reasonable doubt what the accused's intent was.'[58]

The police's freedom to reach ad hoc and discriminatory judgements has been further increased by the introduction of Non-Crime Hate Incidents. The College of Policing defines these incidents as 'any non-crime incident which is perceived by the victim or any other person to be motivated by hostility or prejudice.' National rules for police reporting state that such incidents must be recorded 'regardless of whether or not those making the complaint are the victim and irrespective of whether or not there is any evidence to identify the hate crime incident.'[59] NCHIs are recorded by separate police forces, and Chief Constables can reveal a NCHI record to a third party as part of a Disclosure and Barring Service request for information. This power was created by the Association of Chief Police Officers without legal basis or scrutiny from parliament.

The rollout of hate speech laws raises the question of whether any context should be assumed to enjoy implicit immunity from them. Natural suggestions might be artistic contexts, theatre or entertainment. Further, to arbitrarily confer an exemption from the law on some institutions and practices seems unacceptably ad hoc. A similar objection could be levelled at proposed alterations to the Online Safety Bill to the effect that state 'recognised news publishers' should be exempt from provisions relating to causing psychological harm. Other similar proposals were that certain news agencies should be given special protection by Ofcom from censorship on big internet platforms; ordinary citizens would get no such special treatment under the law.

58 Hate Crime and Public Order (Scotland) Bill, Policy Memorandum (2020), pp. 38–9 (https://tinyurl.com/yxbdac28).

59 Christopher Hope, 'Amber Rudd's Conservative party speech recorded by police as "non crime hate incident" after academic's complaint', The Daily Telegraph, 12 January 2017 https://www.telegraph.co.uk/news/2017/01/12/amber-rudds-conservative-party-speech-treated-hate-incident/

A careful examination of hate speech law reveals more concerns about it. It is a political movement whose purposes are relatively opaque and whose basic aims cannot be easily read off its declarations. The CCL's vague attachment to 'liberal' values is, so far as it exists in any given case, little more than a superficial disguise. In particular, it should now be clear that hate speech laws act as a covert means of censoring transgressive political speech. And whatever one thinks about the CCL's agenda, it should at the very least be taken as a warning sign that its representatives do not argue their case in explicit and transparent terms.

Contemporary anti-hate speech measures are partisan devices to banish opposition positions from the public square. The guise of combatting 'hate' merely provides propagandistic cover. 'Hate' serves as a usefully loaded catch-all term; it is not something of which an average member of the public would readily declare themselves in favour. However, proponents of hate speech legislation are not interested in an analysis of hate, by their own admission. It is revealing, for instance, that Jeremy Waldron, the foremost theorist of hate speech and a campaigner for laws designed to erase it, has written that he has 'little or no interest in the topic of hatred as such' and doesn't want to get bogged down 'in a futile attempt to define "hatred"' (Waldron 2012: 36–7). All that is of importance to representatives of the CCL is that in practice they are able to control the boundary separating permissible from impermissible political speech. That they often do so while positioning themselves as 'liberals' is simply an exercise in both having one's cake and eating it.

The unwillingness of proponents of hate speech to offer a clear account of central terms such as 'hate' and 'harm' causes considerable problems for those enforcing the law as well as those attempting to follow it. As the above-quoted guidance issued by the College of Policing reveals, law enforcement does not have an easily operationalised account of hateful action to hand. The unclarity of the law means that it falls to complainants, police, the CPS, judges, magistrates and juries to devise their own haphazard interpretations of these central terms.

According to a definition agreed in 2007 between the Crown Prosecution Service, the police and the Prison Service, a hate crime is defined as 'any criminal offence which is perceived, by the victim or any other person, to be motivated by hostility or prejudice towards someone based on a personal

characteristic'.[60] The personal characteristic, however, must relate to one of the five 'monitored strands' of hate crime relating to race, religion or belief, disability, sexual orientation or transgender identity as established in the Crime and Disorder Act 1998 and the Criminal Justice Act 2003, Sections 145 and 146. Hate crime includes speech interpreted as stirring up racial hatred, verbal abuse, harassment and the making of threats when related to the various protected characteristics. The Metropolitan Police have stated in this regard:

> 'Someone using offensive language towards you or harassing you because of who you are, or who they think you are, is also a crime. The same is goes for someone posting abusive or offensive messages about you online.'[61]

The onus is thus now on the police to commence their investigations with the assumption that persons claiming that they have been in some way the victims of crime motivated by one of the five types of prejudice mentioned are correct in their interpretation of why the alleged offence took place. This is arguably a quite different psychological starting point from commencing an investigation on the basis of a completely neutral mindset concerning not only whether any crime has, in fact, been committed in the first place but also as to the motivation of the perpetrator.

Hate speech laws have been allowed to systematically distort some of the most basic features of the UK's liberal political and legal culture and the conventions by which its laws are policed and enforced. Recognising that it has done so is an important step towards stopping the trend in its tracks. A return to first principles – in particular, a liberal conception of individuals as possessed of equal moral status and natural rights before the law – should help to reorient our political thinking. Once we have a clearer view of the CCL's agenda, many of the virtues it claims for itself come to seem like their reverse: instead of respecting people, it demeans them by treating them as fragile victims; instead of helping to create a more egalitarian and fairer polity, it undermines the very conditions that make political life legitimate in the first place.

60 Home Office, Hate Crime, England & Wales 2018–19, p. 2 (https://tinyurl.com/59u2bprj).

61 See the video and description found on Met Police's Facebook page (https://tinyurl.com/2p98n9yw)

Conclusion

This paper has argued that an important factor that explains the CCL's recent political successes has been the obscurity of their political agenda. To a greater degree than political movements of the past, they lack a unified self-conception. In remoter parts of academia the CCL's ideology may find more explicit articulation, but in frontline politics, activist circles and most importantly in the public square, it remains obscure and siloed in appearance.

The CCL's political agenda has achieved acceptance as a result of legal, political and conceptual creep. Its legislative successes have been piecemeal and surreptitious. This has allowed its advocates to underplay the degree of change that has taken place. This is true not only on the legal and institutional level but also in cultural life, where proponents of CCL ideology regularly claim that the extent of cancel culture and other types of censorship is being exaggerated.

Such disingenuous claims have, admittedly, become more difficult to make in recent years. Incidents of censorship and speech prohibition are reported with near daily frequency; academics like Kathleen Stock have been driven out of their positions for pursuing lines of academic study relevant to their expertise; campaigns to remove or deface statues have proliferated; and demands that students and employees undergo unconscious bias training have continued. The increasingly public prominence of initiatives inspired by the CCL – for example, the embrace of the Black Lives Matters movement and slogan by the Premier League – has helped to increase public awareness about the nature of the political agenda being foisted on them.

As a result, a space is opening for an opposing philosophical and cultural movement, one capable of understanding and challenging the CCL's threat to free speech. One important objective of such opposition must be to

disunite the CCL's broad range of alliances by showing that the more extreme elements in its inner core are not promoting truly progressive values. The CCL must be shown for what they are: a movement that compromises longstanding individual rights, norms and conventions that are essential to a liberal way of life. They reject pluralism. They see censorship as a tool to transfer power between social groups. They threaten any open society.

Written in the uncertain atmosphere of the 1940s, F.A. Hayek's *The Road to Serfdom* warned the British people about the potential of totalitarian government to emerge by piecemeal means. This was the kind of totalitarian rule that had gripped Germany, allowing the state to achieve unprecedented levels of top-down control over the national economy and compromising basic individual rights along the way. The argument of this essay shares some of Hayek's concerns: the gradual encroachment of the state into civil society poses a genuine threat, however harmless it may originally seem. The CCL's disregard for the individual, together with their ideology based upon an anti-humanist understanding of power, poses a threat to liberty that it is prudent to take seriously.

In his polemic, Hayek challenged the Marxian view, widespread at the time, that fascism was a logical extension of capitalism. Hayek argued that free market liberalism ought, instead, to be seen as the opposite of centralised economic planning and top-down collectivism. In the context of this essay, the adoption of a foundationally liberal approach likewise presents an alternative ideal to those of the CCL. Contrary to the manner in which things are typically presented, liberals stand at one end of the political spectrum, with authoritarians of the left and right standing at the other. The CCL's misleading self-characterisation as the alternative to right-wing authoritarianism must be contested.

Opponents of the CCL must achieve something akin to a gestalt shift in the public imagination. This involves exposing the CCL for what they are: a form of authoritarian politics. But it also involves making a positive case for free speech and the importance of liberal conventions like the rule of law. This paper has proposed that an individual's right to free expression should be advanced in terms of the possession of a natural right. This should supplement the consequentialist arguments typically made in favour of free speech. A clear philosophical line needs to be drawn in the sand in light of the gravity of the situation confronting us and the nature of the forces driving speech prohibition.

But alongside philosophical change, there is a concrete institutional battle to be won. The damage that has been done by the CCL at the legal and institutional levels must be undone. This will be a considerable challenge, given the degree of penetration the CCL has achieved into the public life of Britain. But history has shown that a seemingly impregnable political consensus can be overthrown. Whole authoritarian regimes and movements have eventually gone into decline.

Opponents of the CCL must make a special effort to identify and reform specific laws and practices that are incompatible with a truly liberal political order. In particular, advocates for free speech must now create an inventory of specific pieces of legislation that should be amended or abolished. The governing objective should be to have only those laws in place that criminally prosecute speech that directly and immediately threatens or incites violence, or speech that is intrinsically connected to criminal acts such as fraud, robbery and murder.

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The Institute of Economic Affairs
2 Lord North Street
London SW1P 3LB
Tel 020 7799 8900
email iea@iea.org.uk