

# Willed Ignorance: Reflections on academic free speech, occasioned by the David Miller case

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**Abstract:** The David Miller case raises the question, does liberal free speech doctrine require academics to defend the antisemitic conspiracy-talk of a sociology professor? The article opens with a discussion of Louise Glück's poem 'A Myth of Innocence', and then proceeds towards an answer to this question, pausing to address details of the Miller case itself when the general argument requires it to do so.

**Keywords:** Freedom of speech; academic freedom; antisemitism; conspiracy theory.

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## 1. Introduction

### A. Louise Glück's poem 'A Myth of Innocence'<sup>1</sup>

I begin somewhat obliquely with Louise Glück's poem, 'A Myth of Innocence.' It relates the story of Persephone, a god's daughter, abducted, raped and then wed by another god. Somewhat after these events, she returns to the place of her abduction. 'Then she says, *I offered myself, I wanted / to escape my body*. Even, sometimes, *I willed this*.' The poet intervenes to correct her: 'But ignorance / cannot will knowledge. Ignorance / wills something imagined, which it believes exists.' Simply: She can't suppose that she wanted something of which she knew nothing. Persephone is not responsible for what happened to her. She mustn't blame herself.

\* A version of this article was first delivered as a lecture in the UCL Faculty of Laws, on 24 November 2021, and I have retained something of the tone and language of that event. It was introduced by Paul Mitchell and chaired by Rowan Williams; my thanks to both of them. I am even more in Prof. Mitchell's debt in his capacity as editor of *Current Legal Problems*. My thanks also to Jack Olsburgh of Oriel College, Oxford, for indispensable research assistance. I am also grateful to the two anonymous peer reviewers of the article - their comments improved its content, while their endorsement enabled its publication.

<sup>1</sup> <https://poets.org/poem/myth-innocence>; *Poems 1962-2020* (Penguin 2021) 532-3.

The poet counters the received notion of ignorance as pure contentlessness (Locke's 'white paper')<sup>2</sup> with a notion of ignorance as *will*. It protects Persephone from the truth of what happened; in its own counterfeit creativity, it devises a replacing lie. This surprises us. Common sense supposes that it is curiosity that leads to knowledge; ignorance, in its passive receptivity, is a dumping-ground for misconceptions, false beliefs, superstitions. But the poet again counters: Ignorance *itself* is active, inventive, but producing *pseudo*-knowledge. It's not, then, that Persephone's explanation falls short of the truth; it is actively combative of the truth.

The poem encourages us to think beyond Persephone; to think, that is, of a will to ignorance not unique to a young traumatised woman, but instead available to us all, a general feature of minds in their transactions with the external world. I will return to the poem.

### B. *David Miller, a former sociology professor at Bristol University*

I was prompted to write this article by the Miller Affair, and in particular by the support given to Miller himself by so many academics, including from my own university, UCL. That felt to me a special disgrace.

Here is the background. David Miller, at the relevant time a Bristol University sociology professor, is a promoter of conspiracy theories, principally ones with an antisemitic character. The 'Zionist movement and the Israeli government . . . are the enemy of the left and world peace. And they must be directly targeted.'<sup>3</sup> 'Britain is in the grip of an assault on its public sphere by the state of Israel and its advocates.'<sup>4</sup> Britain's Israel Lobby has 'penetrated public institutions.'<sup>5</sup> The Labour party is 'a *mere detail* of the Israelis' attempt to impose their will all over the world.<sup>6</sup> An instance of Jewish youth work with Muslims was

<sup>2</sup> *An Essay Concerning Human Understanding* (P Nidditch ed, OUP 1975) 104 (II.I §1).

<sup>3</sup> Video titled: 'Campaign for Free Speech! with Norman Finkelstein, Tariq Ali, Jackie Walker and others' (29/07/2020), <https://www.youtube.com/watch?v=MSjIMHNkEWg&t=2s>

<sup>4</sup> 'We must resist Israel's war on British universities' *Electronic Intifada* (2021), <https://electronicintifada.net/content/we-must-resist-israels-war-british-universities/32391>.

<sup>5</sup> Miller, <https://electronicintifada.net/content/we-must-resist-israels-war-british-universities/32391>.

<sup>6</sup> Video titled: 'David Miller addressing the Feb 13 conference "Building the Campaign for Free Speech"' (17/02/2021), <https://www.youtube.com/watch?v=box7unWvr7E&t=2s>

sponsored by Israel and designed to ‘normalise Zionism in the Muslim community;’<sup>7</sup> and so on.

In February this year, Miller went further. In the context of his earlier call for the ‘targeting’ of the ‘Zionist movement,’ he named the Bristol JSoc and the UJS as ‘members of the Zionist movement.’<sup>8</sup> A few days later, he added: ‘The UJS’ lobbying for Israel is a threat to the safety of Arab and Muslim students as well as of Jewish students and indeed of all critics of Israel.’ ‘Jewish students on British campuses’ were ‘being used as political pawns’ by Israel.<sup>9</sup> They are also the products of ‘elite private schools’ who have a ‘fanatical devotion to the ideology of Zionism.’<sup>10</sup> ‘The UJS,’ he said, ‘is an Israel lobby group.’<sup>11</sup> His University employers initiated a disciplinary inquiry, which concluded with his dismissal in October 2021. Miller lost his appeal against dismissal in March 2022; he then announced that he would be suing the university for unfair dismissal. His supporters, who insist that he is innocent of any misconduct, claim his dismissal is a further demonstration of the power of the Israel Lobby; they celebrate each reverse as a vindication. The conspiracy theorist has become the object of a new conspiracy theory.<sup>12</sup>

<sup>7</sup> ‘East London Mosque unknowingly held this project of making chicken soup with Jewish and Muslim communities coming together’. Video titled: ‘What’s left of Labour?’ <https://www.youtube.com/watch?v=GS1jC7paNbs&tr=3263s>.

<sup>8</sup> Video titled: ‘David Miller addressing the Feb 13 2021 conference’ (n 6).

<sup>9</sup> L Harpin, ‘Now “end of Zionism” academic says Bristol JSoc is “Israel’s pawn”’ *Jewish Chronicle*, 18 February 2021.

<sup>10</sup> D Rich, ‘Guess who Prof Miller blames for his sacking?’ *Jewish Chronicle*, 5 November 2021.

<sup>11</sup> <https://twitter.com/realBenBloch/status/1362432493593505796>.

<sup>12</sup> See ‘David Miller touches on the role the UJS played in his sacking from the University of Bristol,’ [https://www.youtube.com/watch?v=q986VPa\\_M64](https://www.youtube.com/watch?v=q986VPa_M64). A ‘Support David Miller’ press release: ‘[The rejection of Miller’s appeal against dismissal demonstrates that] the University of Bristol’s disciplinary processes have been compromised by assets of a hostile foreign state. The State of Israel and its assets in the UK seek to eliminate all critics of Zionism from UK university campuses. [...] The Appeal Panel’s capitulation to pressure from Zionist lobby groups – including the State of Israel’s UK lawyers – is an alarming act of subversion and political interference.’ The press release quotes Miller: ‘I’ve been targeted by a pernicious witch-hunt, led by known assets of the State of Israel in the UK and funded by the dirty money of pro-Israel oligarchs. This is an attempt at entryism and political intimidation. The University of Bristol has willed under this new wave of McCarthyism. The University treated this appeal as a mere formality, with a pre-determined outcome. I’ll be challenging the University’s perverse decision at an Employment Tribunal, to help stop our fundamental rights of free expression and academic freedom being further corroded at the behest of a hostile and illegitimate foreign regime.’ Statement on Appeal ([supportmiller.org](http://supportmiller.org)). Miller’s allusion to ‘McCarthyism’ reminds us that Joe McCarthy promoted the conspiracy-theory that assets of a hostile foreign state were engaged in acts of subversion and political

When the scandal first broke, it was said on his behalf that his work is of a high academic standard; that he is an anti-racist; that anyone who says otherwise is acting in bad faith. Supporters praised him ‘for exposing the role that powerful actors and well-resourced, co-ordinated networks play in manipulating and stage-managing public debates, including on racism’ – that is, Jews. Critics of Miller responded, challenging these arguments. These positions of supporters and critics are set out in open letters, available on the Internet.<sup>13</sup> The supporters had a back-up argument: even if the content of his work is open to objection, they said, taking a liberal position, he is entitled to the benefit of academic free speech. The critics (and I am one of them) did not pay much attention to this further argument. My purpose here is to explore just this aspect of the Affair, but at a high level of generality. We do not need to get too close to the specifics of Miller’s work. In itself, it raises nothing of interest. His antizionist conspiracy theories are continuous with antecedent antisemitic conspiracy theories,<sup>14</sup> his publications and his video incitements are of a piece.<sup>15</sup>

So: *Are* there academic free speech arguments available for use by an antisemitic conspiracy-talking sociology professor?

To get to the answer, I ask *first*, What is the liberal free speech doctrine (‘the Liberal Doctrine’), and how does it address academic speech? (As will become clear, I regard the Liberal Doctrine’s account of academic free speech to be the only credible such account around). I then ask, *second*, What is the Doctrine’s present condition, with particular attention to university-related topics? Only then, *third*, do I pose my conspiracy question. I am most interested in using the Miller Affair as the occasion to investigate these *opening* questions. The answer to the third question is, after all, not very hard to reach. I will end with a consideration of the recent case concerning Kathleen Stock,

interference. See Seymour Martin Lipset and Earl Raab, *The Politics of Unreason: Right-Wing Extremism in America 1790-1970* (Heinemann 1971) 219.

<sup>13</sup> <https://supportmiller.org/educators-and-researchers/>; <https://recentstatementsbyprofdauidmillerconcerningbristoluniversity.wordpress.com/>

<sup>14</sup> On the continuity of antisemitic conspiracy narratives, see K Braut Simonsen, ‘Antisemitism and conspiracism’ in M Butter and B Knight (eds), *Routledge Handbook of Conspiracy Theories* (Routledge 2021) 359; on 19<sup>th</sup> century antisemitic conspiracy pamphleteering, see S Levis Sullam, ‘Osman Bey’s *The Conquest of the World by Jews* (1873): A Liberal Antisemitism,’ in A Green and S Levis Sullam (eds), *Jews, Liberalism, Antisemitism* (Palgrave Macmillan 2021), 47-68.

<sup>15</sup> For closer readings, see D Hirsh, ‘The Meaning of David Miller’ [www.fathomjournal.org](http://www.fathomjournal.org), March 2021; K Kahn-Harris, ‘Into the flatlands with Professor David Miller’ [www.jewthink.org](http://www.jewthink.org), 22 February 2021; D Rich, ‘Why “academic freedom” is no defence of the Bristol University professor David Miller’ *New Statesman*, 23 March 2021.

the former Sussex University philosophy professor,<sup>16</sup> and explain why, in my view, free speech considerations, properly understood, require us in a general sort of way to support her, while standing against Miller in denying his conspiracist writing and speech-making an academic free speech defence). Throughout, I write in defence of the Liberal Doctrine, which is embattled, indispensable, and in need of restoration.

## 2. Q1: *What is the Liberal Doctrine?*

The Liberal Doctrine structures and sustains the diverse discourses constitutive of liberal democracies: political, religious, legal, academic, scientific, commercial, administrative ('the constitutive discourses'). In this respect, it has two critical qualities.

First, it is *systematic*, and therefore attentive to the *differentia specifica* of each discourse.<sup>17</sup> It relates religious free speech to liberty of conscience and freedom of association; it relates political free speech to press freedom and electoral matters; it relates legal free speech (in this context, rules about legal processes - how cases should be pleaded, what can be said in court, and by whom, etc.), to a foundational liberal value, the rule of law. It does not muddle discourses - academic free speech, say, with political free speech. The principle of differentiation affirms liberalism's humanistic respect for the diversely creative linguistic engagements of human beings with each other. To each discourse, then, its own freedom.

Second, it is *emancipatory*. As liberalism's signature doctrine, it stands against prejudice, superstition - indeed, everything that is given and stale. Emancipation thus has a strong combative edge. One emancipates oneself from constraining forces. In the circumstances of its origins, and in the conception of a society that it supports, the Liberal Doctrine *combats* what I will term 'counter-discourses' - discourses,

<sup>16</sup> For the background on this case, see Janice Turner, 'Professor Kathleen Stock and the toxic gender debate,' *The Times*, 19 November 2021. ('[Stock's] views on the gender debate turned her into a hate figure at Sussex University. After three years of death threats and online abuse, the polarising academic resigned three weeks ago'). See also Helen Joyce, *Trans* (Oneworld Publications 2021) 254-6.

<sup>17</sup> See J Rawls, *Political Liberalism* (Columbia UP 2005) 331-340 ('§8 A Fully Adequate Scheme of Basic Liberties; §9 How Liberties Fit into One Coherent Scheme'); '... freedom of political speech and press which falls under the basic liberty of freedom of thought ...' (340).

ways of thinking and speaking, that in their irrationality are damaging to liberal societies and / or to the members of those societies.

Let me separate out these two qualities, recasting them as principles: ‘the System Principle’, ‘the Emancipation Principle’. The System Principle addresses the constitutive discourses, identifying their institutions and actors, and the rules that govern their utterance; the Emancipation Principle operates to counter all other discourses, or pretender discourses (e.g., the Pseudosciences). The Liberal Doctrine both defends freedom of speech (the System Principle) and promotes free speaking (the Emancipation Principle). This can be expressed as an equation: ‘System Principle + Emancipation Principle = Liberal Doctrine of Free Speech.’

### A. *The System Principle*

The System Principle has three moments. (‘Moment’ in the Kantian sense: an aspect or dimension that can be analysed in relation to a complex phenomenon).<sup>18</sup> In respect of the aggregate of discourses in society, it: disaggregates them, i.e., separates them out functionally; populates them with their own, distinct institutions and actors; and regulates them, preferring when possible self-regulation over external regulation.

#### (i) *Moment 1: Disaggregating*

In liberal thinking it is *only* at a very abstract level – only at the starting-point of an inquiry, or as a slogan – that ‘undifferentiated speech’ or ‘speech in general’ is invoked. A disaggregating ‘move’ is made very quickly thereafter.<sup>19</sup> It is an *active* disaggregating: it does not copy, it dictates (a Kantian insight).<sup>20</sup> The move is made in each discourse in that family of discourses (scientific method, political economy, jurisprudence, etc.) that together constitute the liberal democratic order in its distinctive mode of existence. It is also responsive to those processes of functional differentiation that modernity itself introduces.

<sup>18</sup> ‘Kant uses the term in a technical sense. It has nothing to do with temporal succession and signifies a fundamental aspect or dimension that can be analysed in relation to a complex phenomenon. The term is related to the Latin momentum and originally derives from physics and mechanics.’ See I Kant, *Critique of Judgement* (J Creed Meredith tr, N Walker ed, OUP 2007) 357-8.

<sup>19</sup> See in relation to Rawls, for example, C Macleod, ‘Freedom of Speech’ in J Mandle and DA Reidy (eds), *The Cambridge Rawls Lexicon* (CUP 2015) 300-303.

<sup>20</sup> Y Yovel, *Kant’s Philosophical Revolution* (Princeton UP 2018) 2.

Niklas Luhmann writes in this context of a process involving increasing system differentiation and pluralisation and a heterogeneity in sub-systems. That is, distinct forms of differentiation, which also differ in the way they establish internal boundaries between subsystems and internal environments. Modernisation and liberalism are partners, Luhmann proposes.<sup>21</sup> The disaggregation works itself out, in its own actions, in a liberal manner. That is to say: it is a disaggregation by differentiation, not segmentation or stratification. The discourses have their own distinctive content; they are not mere segments. Though they share certain formal properties, and comprise the set of discourses of a liberal society, they are not organised hierarchically – they are not stratified.<sup>22</sup>

The disaggregation is never perfect and never final; discourses are subject to an unending taking apart, revising, even reconstituting. The distinction, made familiar by Enlightenment thinking, and explicated by Ernst Cassirer, between the ‘spirit of systems’ (*esprit de système*) and the ‘systematic spirit’ (*esprit systématique*) is critical. The former is rejected: its object, a systematic doctrinal structure, an affair of axioms and deductions, static and complete – *finished*. The latter is embraced: a mobile, free-moving, exploratory operation, an affair of investigations and inquiries, the structure always remaining provisional, open to modification. Enlightenment thinking again and again breaks through rigid barriers of system. It does not rest content until it has analysed all things into their simplest components; only then, and following this work of dissolution, begins the work of reconstruction.<sup>23</sup> The boundaries of these discourses, their number and even their continued existence; the implications for certain speech acts that (arguably, at least)

<sup>21</sup> Increasing functional differentiation, including the differentiation of economy, education, and science, led to a renewed emphasis on the normative ideal of equality in the 18<sup>th</sup> century. Further, this transformation of European society, from stratified to functionally differentiated, coincided with that period of religious wars, economic fluctuations, imperial expansion and scientific advances. *The Differentiation of Society* (Columbia UP 1982) 231–4, 237, 248–9.

<sup>22</sup> On these distinctions, see Luhmann, *ibid* 233–6.

<sup>23</sup> *The Philosophy of the Enlightenment* (Princeton, NJ, 1979) vii, ix, 13–14. Hobbes sets the precedent: ‘... a thing is best known from its constituents. As in an automatic clock or other fairly complex device, one cannot get to know the function of each part and wheel unless one takes it apart, and examines separately the material, shape and motion of the parts, so investigating the right of a commonwealth and the duties of its citizens, there is a need, not indeed to take the Commonwealth apart, but to view it as taken apart ...’. T Hobbes, *On the Citizen* (R Tuck and M Silverthorne trs and eds, CUP 1997) 10.

‘belong’ to more than one discourse – all these are thus persistently contested questions.

Discourses under attack, but under-recognised by the Liberal Doctrine, may have to take refuge with a recognised discourse (e.g., instances of art speech, when threatened, typically claim the rights of political speech). The legal conceptualisation of discourses is always an historically-conditioned process; some discourses enjoy stronger legal identity than others; the alignment of a discourse’s strength of legal identity with the extent of its protection is never simple. Academic speech has not quite yet secured a fully distinct identity in the UK, where the situation is somewhat dynamic at present.<sup>24</sup>

It is insensitivity to the System Principle (i.e., to the distinct free speech properties of distinct discourses), that permits people to talk in a general way about their ‘right to free speech’; a proper grasp of the Principle would avert such talk, which would be a good thing.

### (ii) *Moment 2: Populating*

‘Free speech’ always has an institutional dimension.<sup>25</sup> Each discourse, in the Liberal Doctrine, has its acknowledged actors and institutions.

- *Actors* Elected officials, central and local government officials, journalists, citizens (political speech); manufacturers and retailers, employees and consumers (commercial speech); clerics and congregants (religious speech); professors, university administrators and students (academic speech); etc. Every actor’s identity will have an institutional aspect, which both contributes to self-understanding and constrains action.
- *Institutions* Deliberative, legislative assemblies, government ministries, newspapers, libraries (political speech); corporations and trades unions, factories, stores and offices (commercial speech); churches, mosques, temples and synagogues (religious speech);

<sup>24</sup> I am grateful to James Murray of Taylor Vinters for guidance here. There is a developing body of European Court of Human Rights case law: *Sorguç v. Turkey* (no. 17089/03); *Aksu v. Turkey* (nos. 4149/04 and 41029/04); *Erdoğan v. Turkey* (nos. 346/04 and 39779/04). Note also the various international instruments, for example, the ILO/UNESCO Recommendation concerning the Status of Teachers (1966) and the UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel (1997). As for the United States, ‘professors have seen the legal status of their academic freedom as important, whereas the [Supreme] court’s justices have viewed it as marginal, if they have considered it at all.’ JR Thelin, ‘Waiting for their day in court,’ in JC Hermanowicz (ed), *Challenges to Academic Freedom* (Johns Hopkins UP 2021) 80.

<sup>25</sup> P Hurwitz, *First Amendment Institutions* (Harvard UP 2013).

universities, learned societies, university presses, libraries, professional bodies and associations (academic speech); etc. By ‘institutions’ I include ‘settings’ – the Catholic sacrament of confession takes place in a confessional, psychoanalytic free association takes place in a consulting room; etc.<sup>26</sup>

Some institutions figure in more than one discourse, and then difficulties can arise (and be litigated). These actors and institutions operate in their own ways, and are subject to their own distinct constraints; they also interact with each other in multiple ways, both intra- and inter-discursively, and in doing so, influence their own operations and constraints.

### (iii) *Moment 3: Regulating*

While every discourse is regulated, no two discourses are regulated in the same way. Lisa Herzog makes the relevant points in her book on Adam Smith and Hegel. Both thinkers, she writes, conceptualised a society in which different social spheres function according to different principles. Smith’s famous quotation about the self-interest of ‘the butcher, the brewer, or the baker’ is preceded, she points out, by the argument that men in ‘civilised society’ need to cooperate with a much greater number of people than they can win as friends. This indicates that different forms of behaviour – logics of agency, as one might call them – are appropriate in different spheres. The great challenge for a differentiated society along the lines that Smith and Hegel describe is how to draw – and to secure – the boundaries between the spheres. People must know which logic of agency is appropriate for which sphere, and act on this knowledge. The danger to which such a society is exposed is that these boundaries get blurred; for example, that one logic of agency comes to dominate all spheres.<sup>27</sup>

Within each ‘logic of agency’, each discourse, then, there is a regulatory moment, one that establishes a bounded zone of protected speech. This moment is commonly (but somewhat misleadingly) understood in the language of ‘standards.’ Commercial actors, say, have to meet certain ‘standards’ – in their advertising copy, or their workplace dealings (to take two commercial speech sub-discourses). That is to say, they have to conform to certain regulatory principles.

<sup>26</sup> J Derrida, ‘The University without condition’ in P Kamuf (ed), *Without Alibi* (Stanford UP 2002) 205.

<sup>27</sup> L Herzog, *Inventing the Market* (OUP 2013) 133-4.

Each discursive regime is a mix of the self-policed and externally regulated. No discourse can be relied upon to be wholly self-policing (commercial and political discourses, least of all); academic discourse is better at it; religious discourses tend to be oppressively good (in the sense of effective) at policing adherents. However, the self-policing aspect has a significance beyond the mere moment of regulation. It discloses something fundamental to the liberal understanding of the constitutive discourses, and that is, that each discourse finds in itself the law of its own exercise. (For example, as Thorstein Veblen demonstrated over a century ago, the intrusion of business principles in universities goes to weaken and retard the pursuit of learning, and therefore to defeat the ends for which a university is maintained).<sup>28</sup> Each discourse has its own distinct, qualified autonomy; each is legislative (that is, it legislates over objects subject to it). These too are Kantian insights.<sup>29</sup>

### B. *The Emancipation Principle*

It is commonly thought that liberalism approaches free speech questions by means of limits and balances. It *limits* certain discourses; it *balances* speech interests against other interests. This is true enough, in a summary kind of way, but it is not the whole story. Liberalism also approaches free speech questions in *fighting* mode.

Liberalism has enemies. It derives from active political desires. It is *for* liberty; *against* tyrannies. Liberty is aggressive, Emerson declared, in his great New York speech against the 1851 Fugitive Slave law, 'liberty is the crusade of all brave and conscientious men.'<sup>30</sup> (Testimonies to similar effect are everywhere in Liberal letters – Thomas Paine wrote of the 'thirst for Liberty,'<sup>31</sup> Henry James of his horror at the thought of living 'under theological government,'<sup>32</sup> etc.) Liberalism is not unconditionally, unqualifiedly inclusive.<sup>33</sup> It does not only take pleasure in contention, it holds social antagonisms to be critical to the emergence

<sup>28</sup> *The Higher Learning in America* [1916] (Richard T. Teichgraber III ed, Johns Hopkins 2015) 192.

<sup>29</sup> G Deleuze, *Kant's Critical Philosophy* (Continuum 2008) 3, 8.

<sup>30</sup> 'The Fugitive Slave law, a lecture read in the tabernacle, New York City, on 7 March 1854,' in *The Essential Writings of Ralph Waldo Emerson* (Brooks Atkinson ed, Modern Library Paperbacks 2000) 479.

<sup>31</sup> 'Reasons for wishing to preserve Louis Capet' (1793), in *Selected Writings of Thomas Paine* (I Shapiro and JE Calvert eds, Yale UP 2014) 370.

<sup>32</sup> *Portraits of Places* (CUP 2009) 69.

<sup>33</sup> C Larmore, *What is Political Philosophy?* (Princeton UP 2020) 166.

and sustaining of a law-governed social order (yet another Kantian insight).<sup>34</sup> It is also (of course) engaged in contests with illiberals. Think in this connection of Locke's *Two Treatises of Government* (1689) – it is only in the second treatise that he lays out ‘the true original, extent, and end of civil government;’ the first treatise is an attack on the illiberal Robert Filmer's *Patriarcha* (1680). While liberalism holds peace to be a value, it is not itself peaceful. It is reconciled to the permanence of conflict; indeed, this permanence is liberalism's foundational insight.<sup>35</sup> It holds its own principles and practices superior to illiberal ones.

There is a great energy of contest in the first, foundational formulations of freedom of speech. We all perhaps think of Milton in such a context: ‘let [Truth] and Falsehood *grapple*.’<sup>36</sup> But I want to consider Kant, and specifically, his great essay ‘What is Enlightenment?’ (1784). Let me pick out some sentences that bear on my argument. Enlightenment is man's release from his self-incurred tutelage. Tutelage is man's inability to make use of his understanding without direction from another. Self-incurred is this tutelage when its cause lies not in lack of reason but in lack of resolution and courage to use it without direction from another. *Sapere aude!* ‘Have courage to use your own reason!’ – that is the motto of enlightenment. It is so easy not to be of age. If I have a book which understands for me, a pastor who has a conscience for me, a physician who decides my diet, and so forth, I need not trouble myself. I need not think, if I can only pay – others will easily undertake the irksome work for me. For any single individual to work himself out of the life under tutelage which has become almost his nature is very difficult. For this enlightenment, however, nothing is required but freedom – the freedom to make public use of one's reason at every point. And then, right at the end of the essay, the critical formulation: We have a ‘vocation for free thinking.’

This last statement is somewhat gnomic, so it's not surprising that it has been taken to be a call for free speech in the conventional sense.<sup>37</sup> Kant made his point more clearly two years later, in a short piece

<sup>34</sup> See ‘Idea for a Universal History with a Cosmopolitan Purpose’ (1784), Fourth Proposition, in I Kant, *Political Writings* (HS Reiss ed, CUP 1991) 44. This is Kant's theory of our ‘unsocial sociability.’ ‘Nature should be thanked for fostering social incompatibility, enviously competitive vanity, and insatiable desires for possession or even power’ (45).

<sup>35</sup> Larmore, *Political Philosophy* (n 33) 119.

<sup>36</sup> *Areopagitica* (1644), in J Milton, *Selected Prose* (CA Patrides ed, Penguin 1974) 242.

<sup>37</sup> See, for example, J Schmidt, ‘Introduction,’ in J Schmidt (ed), *What is Enlightenment?* (U of California P 1996) 29.

‘What does it mean to orient oneself in thinking?’ (1786). There, he drew out three aspects of ‘freedom of thought’: (a) its *communal* aspect – freedom of thought must include the freedom to communicate our thoughts in public; (b) its *uncoerced* aspect – thought is not free if some among us are able to set themselves up as the guardians of others in (say) religious matters; (c) its *autonomous* aspect – freedom of thought signifies the subjection of reason to *no laws other than those which reason imposes on itself*. We might suppose that a society in which speech is not banned, or subject to moral reprobation is free – that freedom of speech in a full sense is enjoyed in such a society. But no, not at all, Kant says. If the speech itself is ‘lawless’ – by which he means violating reason’s own laws – then ‘*freedom in the true sense of the word is thrown away*.’<sup>38</sup>

He developed this *third* aspect in his *Critique of Judgment* (1790). Among the maxims he urges upon us, this is the first: ‘to think for oneself.’ This, he writes, is the ‘maxim of unprejudiced thought’ and of ‘a never-passive reason.’ ‘To be given to such passivity, and consequently to heteronomy of reason, is called prejudice; and the greatest of all prejudices is superstition. Emancipation from superstition is called enlightenment.’<sup>39</sup>

These are early, decisive formulations of the Emancipation Principle.

What does it mean to have one’s own voice? What, that is, does it mean to use the first person pronoun authentically? Kant is *not* making the argument for freedom of thought, in the sense of people having the right to think what they want; he is challenging us to reflect on what true ‘free thought’ (and therefore ‘free speech’) might be.<sup>40</sup> Free-thinking is hard: it is impeded by confessional, political, familial authorities; ‘tutelage’ is habit-forming; we live in a culture of ignorance, false belief, superstition; reasoning itself tends to generate error (a still further Kantian insight);<sup>41</sup> we have to contend with our own will

<sup>38</sup> Kant, *Political Writings* (n 34) 247-8.

<sup>39</sup> I Kant, *Critique of Judgment* (J Creed Meredith tr, N Walker ed, OUP 2007) 124 (§ 40).

<sup>40</sup> TB Strong, *Politics Without Vision* (U of Chicago Press 2012) 21-31.

<sup>41</sup> This is Kant’s doctrine of the transcendental paralogism. ‘A logical paralogism consists in the falsity of a syllogism due to its form, whatever its content might otherwise be. A transcendental paralogism, however, has a transcendental ground for inferring falsely due to its form. Thus *a fallacy of this kind will have its ground in the nature of human reason* and will bring with it an unavoidable although not insoluble, illusion’ (italics added). *Critique of Pure Reason* (P Guyer and AW Wood trs and eds, CUP 1998) 411 (A 341 / B 399).

to ignorance. Most people who call for freedom of speech do not themselves speak freely. Indeed, it is often precisely *when* they call for freedom of speech that they are *not* themselves speaking freely – not in this strong, emancipatory sense. They recycle clichés; they appropriate slogans opportunistically; they are not inward with the demands that free speech makes upon them. They are mere ‘parrots of other men’s thinking’ (Emerson)<sup>42</sup> – more often, of other men’s *non*-thinking.

There are several post-Enlightenment versions of the Emancipation Principle, with iterations and elaborations of each version.<sup>43</sup> Kant’s is the first version; I take Freud’s to be a further one. As a therapeutic undertaking, psychoanalysis’s objective is to liberate speech; as a speculative undertaking, its objective is to investigate, among the play of conflicting drives, a will to knowledge and a counter-will to ignorance.<sup>44</sup> Freud’s ‘fundamental rule’ and ‘overcoming resistances’, and Kant’s ‘public use of one’s reason’ and ‘working oneself out of life under tutelage is hard’, are two versions of the project of speaking our mind.<sup>45</sup> The interesting academic work on the ‘dark side of reason’<sup>46</sup> – the study of the mechanisms of confirmation bias, motivated reasoning, ‘wishful thinking,’ and so on – is boundaried by the terms of this later, psychoanalytic version of the Emancipation Principle.

(And when the history of these versions and iterations comes to be written, consideration will have to be given to that great, post-Enlightenment energy invested in testing the *limits* of the Emancipation Principle, evident both in philosophical challenges to Kantian values, and in the literary avant-garde’s subversions of form and genre. In Nietzsche this testing is an avowed undertaking. ‘The

<sup>42</sup> ‘The American Scholar’ (1837), in *The Portable Emerson* (JS Cramer ed, Penguin 2014), 57.

<sup>43</sup> Matthew Arnold’s ‘stream of fresh and free thought upon our stock notions and habits, which we now follow staunchly but mechanically’ is one such iteration. M Arnold, *Culture and Anarchy* (S Lipman ed, Yale UP 1994) 5. Bertrand Russell’s ‘free intellect’ (‘without hopes and fears, without the trammels of customary beliefs and traditional prejudices’) is another. B Russell, *The Problems of Philosophy* (Oxford 1998) 93.

<sup>44</sup> Critical here are Freud’s thinking about ‘thinking’ (see S Freud, ‘Formulations on the two principles of mental functioning’, in *The Standard Edition of the Complete Psychological Works of Sigmund Freud* (J Strachey tr and ed, Hogarth Press 1958) vol 12, 218, at 221), Melanie Klein’s concept ‘epistemophilia’ (see, e.g., ‘Early stages of the Oedipus complex’ in *Love, Guilt and Reparation* (Vintage 1998) 188–193) and WR Bion’s concept ‘ $\beta$  elements’ (see, e.g., *Learning from Experience* (Routledge 1984) *passim*). Bion’s thinking has an acknowledged, partial provenance in Kant.

<sup>45</sup> S Freud, ‘On beginning the treatment’ *Standard Edition* (n 44) vol 12, 123 at 134–6; J Lear, *Freud* (2<sup>nd</sup> edn, Routledge 2015) 4, 9, 185, 211 (‘encouraging the free flow of self-conscious activity in an individual’), 214.

<sup>46</sup> H Mercier and D Sperber, *The Enigma of Reason* (Penguin Books 2017) ch 13.

will to truth,' he writes, 'is still going to tempt us to many a hazardous enterprise; that celebrated veracity of which all philosophers have hitherto spoken with reverence: what questions this will to truth has already set before us! [. . .] What really is it in us that wants 'the truth?' We did indeed pause for a long time before the question of the origin of this will – until finally we came to a complete halt before an even more fundamental question. We asked after the *value* of this will. Granted we want truth: Why not rather untruth? And uncertainty? Even ignorance?')<sup>47</sup>

The Emancipation Principle is conditioned by both optimism and militancy – which we find in Thomas Jefferson, for example. The optimism strikes what will become a familiar note among liberals: 'If there be any among us who would wish to dissolve this Union . . . let them stand undisturbed as monuments of the safety with which error . . . may be tolerated where reason is . . . free to combat it.' But alongside this optimism stands militancy too: 'I have sworn upon the altar of God,' he writes, 'eternal hostility against every form of tyranny over the mind of man.'<sup>48</sup> In this declaration of enmity, Jefferson identifies himself as a *free thinker*.

It was catastrophic for liberal free speech thinking when this energy of enmity dissipated, as it did across the following two centuries, and the thinking dwindled to tortured deliberations on the limits of free speech in general, and 'lines' that must not be crossed.<sup>49</sup> Liberals ceased to be combatants, and instead sought to become referees. The enmity did subsist, however. Its presence can be felt in the 'low value speech' / 'high value speech' distinction, a New Deal-era conceptual innovation, and the 'hate speech' concept, of post-World War II

<sup>47</sup> F Nietzsche, *Beyond Good and Evil* (RJ Hollingdale tr, Penguin 1973) 15.

<sup>48</sup> T Jefferson, *The Life and Selected Writings of Thomas Jefferson* (A Koch and W Peden eds, Random House 2004) 46, 254, 289, 299, 317, 497, 511, 519-20, 527-8, and 651. The optimism waned: 'Nothing can now be believed which is seen in a newspaper. Truth itself becomes suspicious by being put into that polluted vehicle [. . .] The man who never looks into a newspaper is better informed than he who reads them' (ibid 532).

<sup>49</sup> 'When college and university professors research and teach conspiracy theories, the public is pushed to the limit in terms of what it will or will not tolerate. Indeed, professors that publicly hold conspiracy beliefs force the central question of political tolerance: What is the line between spirited debate and intellectual inquiry that allows for communities to flourish, on the one hand, and the expression of viewpoints that undermine that community's integrity altogether, on the other? The line is inherently blurry. . . ' SM Smallpage, 'Conspiracy thinking, tolerance, and democracy' in JE Uscinski (ed), *Conspiracy Theories & the People Who Believe Them* (OUP 2019) 187.

provenance.<sup>50</sup> And in the last years of the 20<sup>th</sup> century, there were some signs that liberals were (at least) contemplating some reversion to their former role – and liberal thinking about academic free speech led the way.<sup>51</sup>

### C. *The Liberal Academic Free Speech Doctrine*

Now – let me apply these two principles, the System and the Emancipation, to academic free speech. Ask the question: What is the liberal *academic* free speech doctrine?

Liberalism is deeply engaged with academic discourse. Among its first formulations were academic formulations; among its first trials were university confrontations between radical philosophers and entrenched faculty interests.<sup>52</sup> From generation to generation, professors have formulated and reformulated liberalism, and principles of liberal free speech. The university brings to liberalism its own enriching heritage. Its values are liberal values: autonomy; priority of inquiry over authority; loyalty to the truth over attachment to received ideas; ready coexistence with other public institutions. The work of the university comprises communications by and between thinking individuals, exercising their faculty of responsive reasoning. At various moments in liberalism's history, universities have made signal contributions - in 19<sup>th</sup> century England, for example, the 'university liberals' were critical to the formation of a specifically Anglo-liberal self-

<sup>50</sup> For 'hate speech' as 'low-value speech', see JM Shuman, 'The theory of low-value speech' (1995) 48 *SMU L. Rev.* 297 at 324-329; for a history of the distinction between low- and high-value speech, see G Lakier, 'The invention of low-value speech' (2015) 128 *Harvard Law Review* 2166.

<sup>51</sup> '[A liberal society] needs a particular kind of culture – a culture of independence – in which to flourish. *Its enemy is the opposite culture* – the culture of conformity, of Khomeini's Iran, Torquemada's Spain, and Joe McCarthy's America – in which truth is collected not person by person, in acts of independent conviction, but is embedded in monolithic traditions or the fiat of priesthood or junta or majority vote, and dissent from that truth is treason. That totalitarian epistemology – searingly identified in the finally successful campaign of Orwell's dictator to make his victim believe, through torture, that  $2 + 2 = 5$  – is tyranny's most frightening feature' (italics added). R Dworkin, 'A new interpretation of academic freedom' in L Menand (ed), *The Future of Academic Freedom* (U of Chicago Press 1996) 189.

<sup>52</sup> J Israel, *Democratic Enlightenment* (OUP 2011) 178-9, 303. 310-14. Faced with the choice between retraction and condemnation, the German philosopher Carl Friedrich Bardt (1740-92) resigned from his university chair: 'I would rather beg with my wife and child in the streets than give the priests and theologians such a triumph!' (ibid 311).

understanding.<sup>53</sup> Communication of all with all is the living core of university life, as it is of life in a liberal democracy. Academic discourse is one of the discourses constitutive of the liberal democratic political form;<sup>54</sup> it enlivens democratic government and liberal institutions;<sup>55</sup> it contributes a distinct liberal politics, ‘academic liberalism,’ and a distinct type, the ‘academic liberal.’<sup>56</sup>

And there is even more to say. The university, Hannah Arendt correctly affirmed, is a ‘refuge of truth.’ It is among a limited class of ‘free speech institutions’ in which ‘contrary to all political rules, truth and truthfulness have always constituted the highest criteria of speech and endeavour.’ The ‘chances for truth to prevail in public are greatly improved by the mere existence of such places and by the organisation of independent, *supposedly* disinterested scholars associated with them.’ The adverb is Arendt’s concession to reality.<sup>57</sup> She was making her own contribution to that series of contributions made by major thinkers of modern times, who had applied themselves to elucidating the specific character of the scholar, of the university, and of academic discourse – Kant, Emerson, Newman, Nietzsche, Dewey, Dworkin, Rorty, Heidegger, Derrida (the full list is extraordinarily complete).

An understanding of academic speech, and of an education system, as constitutive elements in a liberal political order leads not, however, to the assimilation of academic speech to political speech, but instead to a patient exploration of academic speech’s distinct mode of existence.

In respect of academic discourse, the System Principle:

- *Affirms* its distinctiveness, against all tendencies to muddle it with other undertakings – most consequentially, against the tendency of courts, in university cases, to overlook the fact ‘that universities are fundamentally different from business corporations,

<sup>53</sup> See ‘The fashioning of Liberal Values in the Universities and the Professions,’ chapter 2 in WC Lubenow, *Liberal Intellectuals and Public Culture in Modern Britain, 1815-1914* (Boydell Press 2010).

<sup>54</sup> R Dworkin, ‘A new interpretation of academic freedom’ (n 51) 187, 189. (‘Part of the point of education, in a liberal society, is learning the importance and depth of an allegiance to personal rather than collective truth. Academic freedom is also important symbolically, because in a free academy the example and virtues of ethical individualism are so patently on display’).

<sup>55</sup> R Rorty, ‘Does academic freedom have philosophical presuppositions?’ and CR Sunstein, ‘Academic freedom and law: Liberalism, speech codes, and related problems,’ both in L Menand (ed), *The Future of Academic Freedom* (U of Chicago P 1996) 27, 94.

<sup>56</sup> See C Harvie, *The Lights of Liberalism: University Liberals and the Challenge of Democracy, 1860-86* (Allen Lane 1976) *passim*.

<sup>57</sup> ‘Truth and Politics’ in *Between Past and Future* (Penguin 2006) 255-6.

government agencies, or churches,' and that they therefore 'require legal provisions tailored to their own goals and problems.'<sup>58</sup> The courts do not cut finely enough.<sup>59</sup> One witnesses the authentic liberal disaggregating move in Robert C. Post: 'We now tend to conceptualise academic freedom on the model of individual First Amendment rights possessed by all citizens in a free society. The difficulty is that this reconceptualisation of academic freedom can neither explain the basic structure of faculty obligations and responsibilities within the universities, nor provide an especially trenchant defence of the distinctive freedoms necessary for the scholarly profession.'<sup>60</sup>

- *Disaggregates* it, in a double move of splitting and combining, generating narrower and narrower specialisms, on the one hand, and creative (until standard) inter- and multi-disciplinary initiatives, on the other. Satire takes an interest here, devising absurdities, gigantic (*Key to All Mythologies*), and trifling (the domestic industries of Brabant during the Middle Ages), wayward products of this disaggregating activity.<sup>61</sup> This double move is only misleadingly referred to as an application of the principle of the division of labour.<sup>62</sup> It is not the only disaggregating move. Academic discourse is also disaggregated by reference to audience – peers, students, and the public at large. When the academic is not merely abusing the authority of a professorial status, addressing distinct audiences involves disaggregation at no deeper level than that of *version* or *account*. (While academics typically present distinct versions or accounts of their research to suit their audience, this does not – should not – compromise it, in its essential character). The principal disaggregating move, however, is in the constituting of academic discourse as a distinct discourse, and academic free speech claims as distinct claims – that is separating the discourse

<sup>58</sup> JP Byrne, 'Academic Freedom: A "Special Concern of the First Amendment"' (1989) 99 *Yale LJ* 254.

<sup>59</sup> Hurwitz, *First Amendment* (n 25) 55.

<sup>60</sup> RC Post, 'The Structure of Academic Freedom' in B Doumani (ed), *Academic Freedom after September 11* (Zone Books 2006) 62. '[Universities] are an institution of their own, with their own norms, practices and traditions. Public discourse will best be served in the long run by treating universities as self-regulating autonomous enterprises, not public forums.' Hurwitz, *First Amendment* (n 25) 113.

<sup>61</sup> The references are to George Eliot's Mr Casaubon in *Middlemarch* (1871-2), and Henrik Ibsen's George Tesman in *Hedda Gabler* (1891).

<sup>62</sup> L Menand, *The Marketplace of Ideas* (Norton 2010) 97.

and the claim from other discourses and other free speech claims.<sup>63</sup>

- *Regulates* it, by reference to criteria both more *exacting* and more *permissive* than in other discourses. *More exacting* – It has standards; it has no concern with diversity as such;<sup>64</sup> it is severe in its judgments. Among its requirements: objectivity, rigour, integrity.<sup>65</sup> The Principle has an accrediting function. *More permissive* – It stands for an ideal of unboundaried inquiry.<sup>66</sup> Contrary to common understandings of academic freedom, then, ‘dumb courses’ devised and taught by academics are *not* protected by the liberal academic free speech doctrine.<sup>67</sup> The control given to faculty members (as disciplinary experts) over the academic speech of colleagues extends to the proscribing of such courses.<sup>68</sup> The regulation is self-regulation; the only state or other external intervention it will entertain is in support of self-regulation or to hold the university to its own standards. If they violate the discursive norms of their disciplines, academics should ‘get into trouble’ with their university faculties – not with the police.

The Principle is typically mobilised in defence of a certain sense of the university as alone and embattled, ‘the last enclave in our society for a detached, honest, and critical assessment of society, as a setting for the scholarly imagination in all areas.’<sup>69</sup> But it is a mistake to limit the definition of academic discourse to discourse within university institutions. A *double* mistake – first, much of what passes for academic speech in universities is not worthy of the name; second, intellectual circles flourishing on the margins of the academy, or fully outside of it,

<sup>63</sup> M Moody-Adams, ‘Is there a ‘safe space’ for academic freedom?’ in J Lackey (ed), *Academic Freedom* (OUP 2018) 37 fn 3.

<sup>64</sup> ‘If a given world-outlook fails to produce scholars of the first rank, this outlook has no claim to scientific status.’ K Jaspers, *The Idea of the University* (Peter Owen 1960) 82.

<sup>65</sup> A Bestor, ‘In defence of intellectual integrity,’ in S Hook, P Kurtz and M Todorovich (eds), *The Idea of a Modern University* (Prometheus Books 1974) 72.

<sup>66</sup> ‘Certainly, the very name of University is inconsistent with restrictions of any kind ...’ JH Newman, *The Idea of a University* (FM Turner ed, Yale UP 1996) 25.

<sup>67</sup> See JR Searle, ‘The role of the faculty,’ in Hook et al (n 65) 150, who defends the common understanding. Cf. ‘The proviso of remaining within the bounds of scholarly standards is sometimes overlooked ...’ A Guttman, *Democratic Education* (Princeton UP 1987) 175.

<sup>68</sup> RM Simpson and A Srinivasan, ‘No platforming,’ in J Lackey (ed), *Academic Freedom* (OUP 2018) 195.

<sup>69</sup> R Nisbet, ‘The betrayal of the citadel,’ in Hook et al (n 65) 79.

have generated new thinking of an originality and standard that has kept university faculties busy for decades (the Vienna Circle, for example).<sup>70</sup> The university itself has been well described as a schizoid place in which scholars experience bewildering bureaucracy *and* the call to intellectual work.<sup>71</sup>

How then is the principle to be applied to 'No Platforming' controversies? Let us name 'campus speech' all addresses on matters of public interest given at universities by invited third-parties. The question arises: Is 'campus speech' subject to the norms and objects of academic speech? The correct application of the System Principle allows only one answer: 'Yes.' Speech regulation by reference to academic speech's norms and objects is central to the university's mode of existence, the shared enterprise of free inquiry.<sup>72</sup> When campus speech does not meet those norms and objects it may properly be excluded.

And what of the Emancipation Principle? We find an instinct for it in many places in current defences of the academy. Louis Menand, for example, writes in expressly Kantian language of wanting to be 'in a fight', doing 'battle with the forces of the market and with heteronomy.'<sup>73</sup> But consider academic speech's *first* antagonist, theology in its dogmatic formulations ('the born enemy of experience, the science of the supernatural,' etc.).<sup>74</sup> In his *Conflict of the Faculties* (1798) Kant took a stand against what he described as the 'invasions [into the university] of obscurantism.'<sup>75</sup> In the English translation, these invaders are said to be 'incompetent in scientific matters.' 'Scientific matters' is the translation of '*wissenschaftlichen*', but 'incompetent' is a translation of the German word '*Idioten*' (which requires no translation).<sup>76</sup>

This is the true voice of the Emancipation Principle - operating in a university context, and thereby doing the necessary work of reconciling the duty to think for oneself with the duty to learn (and so, by

<sup>70</sup> MH Hacohen, *Karl Popper: The Formative Years 1909-1945* (CUP 2000) 186-7.

<sup>71</sup> M Morris, *Jewish Intellectuals and the University* (Palgrave Macmillan 2006) 4.

<sup>72</sup> U Baer, *What Snowflakes Get Right* (OUP 2019) 26, 164. The characterisation has to be restated in every generation: 'A university is a quite special kind of community. It concerns itself with the disciplined pursuit of truth by rational and rigorous methods that presuppose a basic knowledge of certain subject matters.' R Hoffman, 'The irrelevance of relevance,' in Hook et al (n 65) 110.

<sup>73</sup> Menand, *Marketplace* (n 62) 124.

<sup>74</sup> E Cassirer, *The Philosophy of the Enlightenment* (Princeton UP 1979) 70 (quoting D'Holbach *System of Nature* (1770)).

<sup>75</sup> I Kant, *The Conflict of the Faculties* (MJ Gregor tr and ed, U of Nebraska P 1979) 21.

<sup>76</sup> *Ibid* 114, 115. See I Kant, *Der Streit der Fakultäten* (Boer Verlag 2019) 22.

implication, to respect the expertise of one's teachers).<sup>77</sup> Academic liberals squared their accounts with ecclesiastical authority, and with theology, a long time ago; they no longer need to make themselves 'conspicuous as defenders of reason against clerical dogma.'<sup>78</sup> Kant's formulation now demands of us that we identify *today's* idiots, directing the destructive energies of our academic speech against *their* obscurantism, and in doing so, adapt the Voltairean slogan, 'No adversary is below our notice.'<sup>79</sup> I have in mind the Pseudosciences, both social and natural: creationism, astrology, parapsychology, alchemy, Holocaust Revisionism, conspiracism, etc.. Distinguishing science from pseudoscience is what academics term 'the demarcation problem' – and though there are complicated arguments about what count as demarcation criteria, everyone agrees that the Pseudosciences are not to be muddled with bad science (sloppy protocols, falsified results, plagiarism, errors of transcription, etc.). Demarcationists, stalwarts of the Emancipation Principle, do liberalism's work in excluding from science's precincts the unfree speech of the Pseudosciences. They commit themselves in their own domain to Jefferson's 'eternal hostility against every form of tyranny over the mind of man.' In honour of Jefferson, let me call the Pseudosciences, and other counter-emancipation discourses, 'tyrannical speech.'

<sup>77</sup> 'Kant's injunction is most naturally interpreted individually. He calls on us to emerge from immaturity, which he characterises as the inability to use one's own understanding without the guidance of others. He thus calls on us to use our own understanding. I too advocate we use our own understanding. On my picture, though, there is no conflict between such use and apt deference. We should not use our understanding without the guidance of others; instead, a primary function of our understanding is in orienting us well towards such guidance. Kant called on us to change our epistemic strategies, to rely more on our individual judgement and less on the judgements of others. In so far as I have advice for each of us, as individuals, it is to rely on others more and better (and of course, in so far as we are able, to engineer the epistemic environment to support such reliance). We err in overemphasising individualism, not in deferring too much. Does that entail abandoning the legacy of the Enlightenment? Not necessarily.' Neil Levy, *Bad Beliefs* (OUP 2022) 152-3.

<sup>78</sup> C Harvie *The Lights of Liberalism* (n 56) 21-22, and see 34-5 ('theology had been dethroned'). It was fully a 'dethroning,' without consequent coronation. Mill's Comtean ambition for 'philosophers' to acquire that 'moral and intellectual ascendancy, once exercised by priests' never translated into liberal politics – not even academic liberal politics. See JS Mill, *Autobiography* (Penguin Books 1989) 162-3. The 'squaring of accounts' was an arduous business, and on occasion demanded patient, resolute political campaigning – for example, the campaign to abolish the religious Tests, which restricted the posts and emoluments offered by Oxford and Cambridge to their Anglican graduates, took nine years before its successful conclusion in 1871. See Harvie, *ibid* 74: 'To the younger academic liberals "leagued to open the universities to all, irrespective of religion," the Tests struggle was a major preoccupation.'

<sup>79</sup> J Israel, *Democratic Enlightenment* (n 52) 210.

And what, last, of the relation between academic free speech and political free speech? The two are often elided – most commonly, in antagonism towards reprobated instances of academic activity,<sup>80</sup> but sometimes, out of academic bravado.<sup>81</sup> These elisions, current and recent, were made possible by the failure of earlier theorists of free speech, who, while writing airily about free speech in general, tended to limit themselves in practice to political speech. (Mill is the worst culprit, because ch. II of *On Liberty* (1859) remains so influential a defence of free speech).<sup>82</sup> Academic speech can of course be *incorporated into* political speech. But while academic speech can have political speech implications, the two are distinct and not to be muddled with each other. While political free speech stands for the proposition that we are adults constitutionally empowered to speak for ourselves, and it is not for the state to seek to disempower us,<sup>83</sup> academic free speech imposes a positive obligation on academics to work to *disempower* the pseudo-scientists or equivalents (Kant's idiots) in their disciplines, in the name of academic integrity. Academic speech, by definition, is committed to 'free thinking' in the strong Kantian sense, and is therefore resolutely hostile to everything that is pseudo-thought, to *un*-thought, in all its various (beguiling, vicious) iterations: the merely contrarian, the idly provocative, the unreflectively dissenting, the racist,

<sup>80</sup> See J Weiner, *Historians in Trouble* (The New Press 2005) *passim*.

<sup>81</sup> '[The] exercise of academic freedom is intrinsically a political expression ...' T Docherty, *Political English* (Bloomsbury Academic 2019) 199.

<sup>82</sup> Most writers on academic free speech merely read across the ch 2 arguments into academic contexts. See, e.g., J Lackey, 'Academic freedom,' MP Lynch, 'Academic freedom and the politics of truth,' and RM Simpson and A Srinivasan, 'No platforming,' in J Lackey (ed), *Academic Freedom* (OUP 2018) 3-4, 30, 188-9; JC Hermanowicz, 'Introduction' in JC Hermanowicz (ed), *Challenges to Academic Freedom* (Johns Hopkins UP 2021) 7; RA Smolla, *The Constitution Goes to College* (New York UP 2011) 97-8, 187; NG Finkelstein, 'Civility and academic life,' in EJ Carvalho and DB Downing (eds), *Academic Freedom in the Post-9/11 Era* (Palgrave Macmillan 2010), 117, 122 (in self-defence). Some go further, and propose that some of Mill's arguments work better in an academic context: R Dworkin, 'A new interpretation of academic freedom' (n 51) 185. For Eric Barendt (a) 'Mill's argument from truth' has 'greater resonance ... in university seminars' than in 'general public debate,' though (b) 'a university history teacher is not free to deny the Holocaust in class or in writing' because that would be 'incompatible with the standards of the academic profession' to which he belongs: *Academic Freedom and the Law* (Hart 2010) 19 and 58-9. Mill of course defended the 'question[ing]' of 'even the Newtonian philosophy,' because 'mankind could not [otherwise] feel as complete assurance of its truth as they now do.' *On Liberty* (Gertrude Himmelfarb ed, Penguin 1974) 81. But if, as Rector of St. Andrews University, his views had been solicited on the appointment of a flat-earther to the School of Geography, he would probably have been against it.

<sup>83</sup> RC Post, 'Structure' (n 60) 62.

the antisemitic. That is to say, among other things, it is resolutely hostile to everyday political speech.

#### D. *The Liberal Doctrine is both pro-speech and anti-speech*

It follows that the commonplace, there is no version of the Liberal Doctrine that permits *all* speech, must give way to a sharper point: the Liberal Doctrine is, actively, both a *pro-speech* and an *anti-speech* doctrine.

As anti-speech, liberalism is quite comfortable with coercion in respect of speech, both to protect, and to limit, it; moreover, both the System Principle and the Emancipation Principle are *actively* against certain instances of speech, certain counter-discourses. The Doctrine is in part a theory of the *disqualification* of discourse. As an example of early liberal anti-speech activism, consider the public positions taken by the Italian civil law professor Carlantonio Pilati da Tasulo (1733-1801). Theology's role in education must be curbed, he urged. Italy's youth should discard the countless texts composed by monks. Active steps should be taken to discredit in particular the many books about saints and holy hermits. Colleges had to be drastically reformed and seminaries brought under state control. Toleration was valued as a device to restrain theological zeal: diversity of religions produces indifference to theological distinctions. A prize should be awarded for the person who lectured most powerfully against hypocrites, zealots, and the falsely pious. And so on.<sup>84</sup>

Liberalism's pro-speech aspect has always been dominant, however. Liberalism is realistic about censorship - restrictions tend to be ineffective.<sup>85</sup> Further, excluded speech in one discourse may find a home in another discourse: if something is not permitted in scientific speech, say, it may find a place in religious speech. And in any event, the Emancipation Principle does not always demand censorship: it makes available a diversity of responses, including strongly adverse judgments, that nonetheless concede space to the condemned speech. Censure does not always require suppression, which will always be a last – and therefore rarely reached – resort.

I attribute this dominance of the pro-speech aspect to five factors.

<sup>84</sup> J Israel, *Democratic Enlightenment* (n 52) 351-4.

<sup>85</sup> 'Trying to control everything by laws will encourage vices rather than correcting them. Things which cannot be prevented must necessarily be allowed, even though they are often harmful.' Spinoza, *Theological-Political Treatise* (J Israel ed, CUP 2007) 234 (§ 20.10).

First, because of the *anthropological* priority given to speech itself in the writings of the first liberals. In Book III, chapter I, of Locke's *Essay Concerning Human Understanding* (1690), say: 'God, having designed man to be a sociable creature, not only made him with an inclination and a need to have fellowship with other men, but also equipped him with language, which was to be the great instrument and common tie of society. So nature shaped man's organs so that he could make articulate sounds, which we call "words."<sup>86</sup> Later generations of liberals affirmed this priority, placing speech at the service of distinct human 'propensities,' 'dispositions,' and 'inclinations' – see Adam Smith, for example, both in *The Wealth of Nations* (1776) and in *Lectures on Jurisprudence* (delivered in the early 1760s).<sup>87</sup>

Second, because of the centrality given to freedom of speech in liberal political thinking and liberal democratic practice. Spinoza's formulation remains authoritative: 'the state's purpose is to allow people to enjoy the free use of reason'.<sup>88</sup> A recent survey of constitution-making confirms the primacy given to rights of press freedom and free

<sup>86</sup> *An Essay Concerning Human Understanding* (Roger Woolhouse ed, Penguin 2004) 361.

<sup>87</sup> '[The division of labour] is not originally the effect of any human wisdom, which foresees and intends that general opulence to which it gives occasion. It is the necessary, though very slow and gradual consequence of a certain propensity in human nature which has in view no such extensive utility; the propensity to truck, barter, and exchange one thing for another. Whether this propensity be one of those original principles in human nature of which no further accounts can be given; or whether, as seems more probable, it be *the necessary consequences of the facilities of reason and speech*, it belongs not to our present subject to enquire' (italics added). *The Wealth of Nations Books I-III* (Penguin 1999) 117-118. 'If we should enquire into the principle in the human mind on which this disposition of trucking is founded, it is clearly the natural inclination every one has to persuade.' *Lectures on Jurisprudence* (Liberty Fund 1982) 336.

<sup>88</sup> 'It is ... the purpose of the state to ... allow [people's] minds and bodies to develop in their own ways in security and enjoy the free use of reason, and not to participate in conflicts based on hatred, anger or deceit or in malicious disputes with each other. Therefore the true purpose of the state is in fact freedom.' *Theological-Political Treatise* (J Israel ed, CUP 2007) 252 (§ 20.4). Etienne Balibar glosses Spinoza: 'Democracy is thus a demand immanent in every State. ... [L]ife in society is a communicative activity. ... [T]he essential element in his conception of democracy is freedom of communication. ... Spinoza's philosophy is. ... a philosophy of *communication* – or even better, of *modes of communication* – in which the theory of knowledge and the theory of sociability are closely intertwined. ... the means by which the institutions of the state can be guaranteed is freedom of opinion and expression of opinion. Whenever these freedoms are abolished, the result is revolt and civil war.' *Spinoza and Politics* (P Snowden tr, Verso 2008) 33, 98, 101, 114.

speech.<sup>89</sup> Leo Strauss was not courting controversy when he proposed: It is liberal democracy's defining feature that speech is free.<sup>90</sup>

Third, because liberalism has a conception of reasonable disagreement which allows us, holding fast to our distinct and conflicting political and confessional loyalties, nonetheless to engage with each other in those countless collective endeavours, transactions and resolutions that give stability and momentum to a liberal democracy. Its generosity is polity-establishing, not church- or party-regulating. Reasonable disagreement is most generous in political speech, which operates as a kind of safety-net in liberal democracy's disaggregated system of discourses.

Fourth, because of the position of honour accorded free speech in the amended Constitution of the United States, given the immense importance of the American experiment in self-government to the vitality of the liberal democratic undertaking as a whole. (If the experiment fails, the larger undertaking must founder - or so it seemed to many of us, during the presidential period 2017 to 2021). To which consideration we may add both the many statements affirming the Emancipation Principle in American letters, especially in the 18<sup>th</sup> and 19<sup>th</sup> centuries (Let Emerson stand for them all: 'we will walk on our own feet; we will work with our own hands; we will speak our own mind'),<sup>91</sup> and the contributions made to the jurisprudence and political theory of free speech by American lawyers and philosophers, especially in the 20<sup>th</sup> and 21<sup>st</sup> centuries (too numerous to list here).

Last, because liberalism is a humanism. It has an elevated understanding of human agency, in ethical, spiritual, and political registers. It contends for a conception of society as something fabricated by human beings, for their own benefit, in full consciousness both of its purpose and of the enemies of that purpose.

This quality of the Liberal Doctrine, that it is both pro- and anti-speech, holds special promise for the principled resolution of speech controversies. In university-provenance versions of liberalism, and above all, in the John Rawls version that goes under the name 'Political Liberalism,' resolution has been reached by the (mostly, tacit)

<sup>89</sup> Of the rights granted in constitutions adopted between 1776 and 1850, it is freedom of the press that most frequently appears (560); the next most frequent is freedom of religion (534); freedom of speech, as a general right, is granted in 196 constitutions. L Colley, *The Gun, the Ship & the Pen* (London, 2021) 127.

<sup>90</sup> L Strauss, 'Plan of a Book Tentatively Entitled *Philosophy and the Law: Historical Essays*' in *Jewish Philosophy and the Crisis of Modernity* (SUNY Press 1997) 470. See also MH Hacohen, *Karl Popper: The Formative Years 1909-1945* (CUP 2000) 3-5 for a review of the centrality of 'free public debate' as a 'familiar liberal motif.'

<sup>91</sup> 'The American Scholar' (1837) (n 42) 73.

application of the concepts ‘the duty of civility’, ‘overlapping consensus’, ‘public reason’ and ‘toleration’.<sup>92</sup> But if the Liberal Doctrine is fully to realise this promise of principled resolution, it must incorporate in its work of resolution the Emancipation Principle. By encouraging the ready recognition of tyrannical speech acts and tyrannical discourses, it inhibits slackly permissive instincts. Liberals in truth need put up with much less than is commonly thought (including by them).

### 3. Q2: *What is the present condition of the Liberal Doctrine?*

The Liberal Doctrine continues to be articulated in all the major discursive forms: in treatises; in manifestos and pamphlets, public speeches and open letters; in constitutional provisions, laws, and court decisions; and in literary forms.

All the instances of these discursive forms are conditioned by the circumstances of their composition; all are engaged with the events of their time. They are all interventions,<sup>93</sup> in part because authorship itself is a form of agency<sup>94</sup> (*scribere est agere*, the legal maxim),<sup>95</sup> and in part because free speech, in its character and content, has always had to be *argued for*,<sup>96</sup> and has *never been settled*. These texts of occasion are generated in the political, religious, gender struggles of groups with each other, and with the state and other authorities. There is also a performative aspect to each of these forms. Philosophical accounts of the Liberal Doctrine themselves make a claim to freedom, for example. Legal judgments must accommodate dissenting opinions. And so on.

<sup>92</sup> See the entries under these names in Mandel and Reidy (eds), *Rawls Lexicon* (n 19).

<sup>93</sup> Quentin Skinner explains, ‘I approach Hobbes’s political theory not simply as a general system of ideas but also as a polemical intervention in the ideological conflicts of his time.’ He continues: ‘My governing assumption is that even the most abstract works of philosophy are never above the battle; they are always part of the battle itself.’ *Hobbes and Republican Liberty* (CUP 2008) xv. Popper regarded his *The Open Society and Its Enemies* (1945) as a contribution to the war effort: MH Hacothen, *Karl Popper* (n 90) 383.

<sup>94</sup> J Dunn, ‘The History of Political Thought’ in J Dunn, *The History of Political Theory and other essays* (CUP 1996) 23.

<sup>95</sup> A maxim with unhappy associations in liberal historiography. See DL Patterson, Jr, ‘Chief Justice Jeffreys and the Law of Treason’ *Political Science Quarterly*, Vol 20, No 3 (Sep 1905) 503.

<sup>96</sup> See J van Eijnatten, ‘In Praise of Moderate Enlightenment: A Taxonomy of Early Modern Arguments in Favor of Freedom of Expression’ in E Powers (ed), *Freedom of Speech* (Bucknell UP 2011) 19–44, which brings out this point very well.

Precisely because the Liberal Doctrine is alive, it is also a received understanding in public discourse. It constitutes our common intellectual heritage. Where it sits with each of us, the degree to which we have made this heritage our own, admits of no single answer. We can, however, identify the poles of a spectrum. At the strong end, we have made the heritage our own. It presents to us as our own position, fully in our possession. At the weak end, the heritage subsists in us in 'a condition of vagueness and sedimentation.'<sup>97</sup> This is (by far) the more populated pole, which explains the emptiness of everyday sloganising - words and phrases used without any inwardness with their meaning.

In the current condition of vagueness and sedimentation, in which the language is overrun by clichés, we thus find overstatements of the risks to free speech; appropriations of 'free speech' as an anti-progressive slogan; free speech positioned as a counter-value to identity-speech; incontinent assertions of 'free speech' rights and incontinent assertions that those 'rights' are being denied; absurdities to the effect that 'thinking for oneself' requires the discounting to zero of informed, even expert, judgments;<sup>98</sup> the dismissal of 'free speech' as reactionary, or racist; the collapse of free speech as an independent value. It is at this level that current controversies subsist.

### A. *Current controversies*

Speech controversies contribute to the self-definition of the times. Perhaps especially our times. Why are they so important now? In part, because identity politics tend to work themselves out in speech (class politics, less so). In part, because many public quarrels are about places far away, or events a long time ago – so they can *only* be talked about. In part, because of the general character of post-1989 oppositionist politics, which exhausts itself in railing against what it execrates. In part, because of the salience of conspiracy theories, the discursive form taken by populist politics; the 'theories' are structured precisely as the breaking of silence. The sheer volume of this speech in sound and size, the downwards drive in quality, is enabled by the Internet - that

<sup>97</sup> J Klein, 'On Liberal Education' in *Lectures and Essays* (St John's College Press 1985) 265.

<sup>98</sup> 'We should *not* use our understanding without the guidance of others; instead, a primary function of our understanding is in orienting us well towards such guidance.' Neil Levy, *Bad Beliefs* (OUP 2022) 152 (discussing Kant's injunction *Sapere Aude!*).

instrument the most responsive in human history to what Hegel describes as ‘the goading desire to say one’s say and to have said it.’<sup>99</sup>

Among these controversies (and I put to one side, say, those regarding the Tech companies, in their perverse censoring and contaminating of public speech; those regarding the impact of the Chinese Communist Party on liberal democracies’ free speech capacities; and those generated by ‘culture war’ skirmishes conducted by the political Right) let me identify controversies regarding:

*First*, the institution, the University. We can take the types of controversy at a run. Controversies over state and donor<sup>100</sup> interference; intra-university conflicts between academics and administrators, academics and trustees (e.g., over external speaker invitations, honorary degrees); determination of academic issues by reference to non-academic criteria (‘risk management’<sup>101</sup>, ‘health and safety’, etc.); curriculum questions (decolonisation) and literary text questions (trigger warnings); campus activism (‘No Platforming’). And throughout, the same question arises: What risks of menace or ignominy are academics willing to court as the price of intervening in a controversy? Among the risks of ignominy, Mary Leng identifies ‘the reverse Voltaire’ move, which she finds behind many of the denunciations of Kathleen Stock: ‘I agree completely with what you say, but I’ll fight to the death to prevent you from saying it.’<sup>102</sup>

*Second*, the question, What is antisemitism? That is, disputes over whether certain language or campaigning counts as antisemitic, and whether Jews are to be believed when they say they regard that language or campaigning as antisemitic. The question is now posed: Are Jews liars? It has many points of origin. The most distant is Luther’s *On the Jews and their Lies* (1543);<sup>103</sup> the most proximate, Walt and Mearsheimer’s *The Israel Lobby and US Foreign Policy*

<sup>99</sup> GWF Hegel, *Outlines of the Philosophy of Right* (TM Knox tr, S Houlgate ed, OUP 2008) 301 (§ 318).

<sup>100</sup> J Schuessler, ‘Leader of Prestigious Yale Program Resigns, Citing Donor Pressure’ *NYT*, 30 September 2021.

<sup>101</sup> Docherty, *Political English* (n 81) 145.

<sup>102</sup> <https://medium.com/@mary.leng/harry-potter-and-the-reverse-voltaire-4c7f3a07241>. On the suppression of academic freedom in respect of gender-critical work, see Judith Suissa and Alice Sullivan, ‘The Gender Wars, Academic Freedom and education’ *Journal of Philosophy of Education*, Vol. 55, issue 1, pp 55-82. ‘Examples include: attempts to prevent research or suppress research evidence; no-platforming and shutting down of events and conferences; dis-invitations from academic events and publications; blacklisting, and attempts to get people fired; harassment and smear campaigns directed at students and staff.’

<sup>103</sup> T Kaufmann, *Luther’s Jews* (OUP 2017).

(2006/7).<sup>104</sup> The contribution of the latter to current antisemitic conspiracism would be hard to overestimate. The authors stipulate: US support for Israel is strong, yet contrary to the US's national interest. Why then, they wonder, is this so? The answer is the Israel Lobby, which has the power to bend legislators to its will, and thereby subvert the national interest.<sup>105</sup> Among the Lobby's weapons is the charge of antisemitism, 'the Great Silencer.'<sup>106</sup> The Jews are liars; and they lie about being liars.

Many of the instances in this second group of controversies occur in university settings, and thus add to the controversies in the first group.

### B. *The Liberal Doctrine is in poor shape*

There is a general sense that what was possible to say at some time in the near past, is no longer possible. This is so, both for good and ill.<sup>107</sup> But there is more to speech possibilities than that. The current controversies suggest that the Liberal Doctrine is itself in poor shape – that it is inadequate to the challenge the controversies present, that it has been tested and found wanting. The intensity and breadth of this conviction of enervation, of failure, is right now especially intense and widespread. Must we allow the possibility that what I point to as evidence of a 'living doctrine' is in fact evidence of nothing more than *decline*?<sup>108</sup> Even if this overstates the point, we must still ask: *Why* this enervated, somewhat shambolic, no longer fit-for-purpose condition?

<sup>104</sup> 'Supporters of Israel ... have a history of using fears of a new anti-Semitism to shield Israel from criticism.' 'The charge of anti-Semitism' is 'the Great Silencer.' It is a 'tactic.' 'No discussion of how the Lobby operates would be complete without examining one of its most powerful weapons: the charge of anti-Semitism.' '[T]he Lobby's campaign to squelch debate about Israel is unhealthy for democracy. Silencing skeptics by organizing blacklists and boycotts—or by suggesting that critics are anti-Semites—violates the principle of open debate upon which democracy depends. The inability of the U.S. Congress to conduct a genuine debate on these vital issues paralyzes the entire process of democratic deliberation.' *The Israel Lobby and US Foreign Policy* (Penguin 2008) ix, 190, 191.

<sup>105</sup> In a sentence in their original paper, which did not make it into the book, they posed the question thus: 'The situation has no equal in American political history. Why has the US been willing to set aside its own security in order to advance the interests of another state?' 'The Israel Lobby and U.S. Foreign Policy' March 2006, RWP06-011, 1. <https://www.hks.harvard.edu/publications/israel-lobby-and-us-foreign-policy>.

<sup>106</sup> *Ibid* ix, 190, 191.

<sup>107</sup> M Wade, 'Billy Connolly: I'd be cancelled if I was starting out in comedy now' *Times*, 13 October 2021.

<sup>108</sup> '... the freedoms of thought and expression that have existed in some societies in the past few centuries cannot be transplanted at will throughout the world. Late growths of Judaism and Christianity, these liberties are products of a particular pattern of

There are many reasons. Our free speech institutions – parliament, universities and schools, the libraries, have their own weaknesses. Our liberal democracies are themselves in trouble: low political engagement; creeping technocracy; social, confessional, ethnic divisions so deep as to jeopardise national integrity; ‘launch’ failures among new democracies (post-1989 disappointments); the emergence of fresh fissures and fault-lines in the liberal democratic world system. And let us not overlook liberalism itself – its contradictions and unrealised promises, its tacit collusions with oppressive forces, its weakness before the challenges of radical democrats and populists - which are on display, perhaps as never before. But let me focus on dysfunctional iterations of the Liberal Doctrine itself. We find it:

- *Self-subverted* In a certain preoccupation with imagined adversaries and antagonists in the formation of the discourse of the group, so that demands for the suppression of *their* speech becomes the preoccupation, and the largest part of the content, of the group’s own discourse. The proposition is: ‘For us to speak, they must be silenced.’
- *Stymied* In the inadequacy of its response to the challenge of internet hyper-speech. This is Timothy Wu’s point.<sup>109</sup> It is no longer speech that is scarce (still less, at risk of suppression) - rather, it is the attention of listeners. And those who seek to control speech use new methods that rely on the weaponisation of speech itself, such as the deployment of ‘troll armies’, the fabrication of news, or ‘flooding’ tactics. Error does not collapse, exposed to truth; error overwhelms truth.
- *Missing* In the absence of a liberal free *art* speech theory. This is a neglected topic, in need of development. Political philosophers continue to fall short of conceptualising art speech, appealing instead, for example, to ‘context.’<sup>110</sup> Yet we need such a theory to

historical development. At present, they are being discarded in the societies where they originated.’ J Gray, ‘The West isn’t dying – its ideas live on in China’ *New Statesman*, 28 July 2021.

<sup>109</sup> ‘Is the First Amendment obsolete?’ (2018) 117 Mich L Rev 547.

<sup>110</sup> ‘I do think there’s a lot of room for context. For example, when you’re thinking about the violence in rap lyrics, an obsession that began in the conservative pearl-clutching in the ‘80s, you’ve got to think about what those invocations of violence are doing performatively in a piece of art, that is, rap music. It’s not the same thing as someone standing up in the middle of the town square, trying to deliberately incite violence against people.’ Amia Srinivasan on Utopian Feminism (Ep. 132) | Conversations with Tyler.

protect art works from the many objections that are now directed at them – cultural appropriation, political insensitivity (or worse), morally imperfect makers, etc.<sup>111</sup>

And let me add to this list of reasons *why* the Liberal Doctrine is in poor shape, the debilitating effect on it of the strong generalising pressure of the Internet, its overrunning of all discursive boundaries to produce a single, formless ‘Net speech’, so subversive of the System Principle, and its slogan, To each discourse, its own freedom. This loss of the specificity of discourses, in their full institutional and regulatory mode of existence, (call it the phenomenon of Internet aggregation), is not to be muddled with those modifications *within* individual discourses, standard in their life. The deleterious effects of Internet aggregation are multiple: a collapsing of the disciplinary integrity of discourses; an erasure of demarcations between science and the Pseudosciences; and an equalising of status of quack and expert, causing not just a collapse of trust in reliable sources of information (of course, and as widely acknowledged), but also threatening the vitality of the constitutive discourses, their actors’ and institutions’ morale, and their regulatory capacities.

The poor shape matters, not least because there is no decent *non*-liberal theory of free speech. That is, no theory that has come from the illiberal Right, in any of its various, and often contradictory, reactionary and conservative versions in its two hundred years’ existence. Nor is there any decent theory of free speech that has come from the non-liberal Left. There are only leftist *critiques* of Liberal Doctrine – but here, as everywhere else, there is an asymmetry with the Right, given the value to liberalism of these critiques (especially the immanent ones).

Free speech claims thus have to be made by reference to liberal premises, and in conformity with canons of liberal reasoning. To make a claim to free speech is to declare oneself a liberal (if only for that purpose). Without the Liberal Doctrine, no principled defence of free speech is possible. Only liberalism attaches sovereign value to free speech. Its theory of free speech is a theory of freedom.

The Doctrine must therefore be defended. If we lost our grip on it, the prospects of human flourishing would be diminished. The

<sup>111</sup> I have begun to sketch out such a theory in ‘More Bentham, less Mill’ in A Julius, M Quinn and P Schofield (eds), *Bentham and the Arts* (UCL Press 2020) 160-197, and in ‘Art’s Troubles’ *Liberties*, Winter 2021, Vol 1 No 2, 6-37.

hegemony of illiberal interests would be extended. So when the Liberal Doctrine slips behind the times, it needs to be revised. When it is threatened, it must be championed. But this need for defence, which is acute now, and only complicated by a parallel, pressing need for revision, has brought into existence not so much defences and revisions as further damage to the Liberal Doctrine, as the wrong kind of defenders – unprincipled, opportunistic, uninformed, muddled – pitch in, frustrating more considered, useful interventions. We are not in a good place.

#### 4. Q3: Does liberal free speech doctrine require us to defend the antisemitic conspiracy-‘theorising’ of a sociology professor?

The only reason that it’s a question, is because of a certain collision in premises, a certain antinomy. According to *Premise #1*, if academic free speech should *protect* anything, it’s the discourse of a professor. According to *Premise #2*, if academic free speech should *exclude* anything (now, especially), it’s conspiracy theories. What then to do? I give my answer in five propositions; in the last one, I touch on the relation of the Miller Affair to the Stock Affair.

##### A. Proposition 1: Conspiracism lives in several discourses

In the broadest sense, conspiracism posits a *truth* about the world – that is, its ‘unsurveyable complexity’ (Luhmann)<sup>112</sup> – as a *problem* to be solved. To this bogus problem it proposes a false answer: the world works according to conspiracies. (The correct answer, surely, is that ‘the world can be meaningful only as an indeterminate horizon for further exploration’).<sup>113</sup> In their common tendency, conspiracy theories tend to privilege: agency over structure; coherence of agency over incoherence of agency;<sup>114</sup> secrecy of agency over transparency of agency; continuity of agency over *ad hoc* grouping (and long-term

<sup>112</sup> Luhmann, *Differentiation* (n 21) 232.

<sup>113</sup> Ibid.

<sup>114</sup> ‘... the tendency to personalise groups as collective agents [is an] important factor shaping conspiracy stereotypes. This tendency is associated with perceiving groups as entitative categories (that is being viewed as highly similar, and with common goals and fate ...’ M Biddlestone et al, ‘Conspiracy theories and intergroup relations’ in M Butter and P Knights (eds), *Routledge Handbook of Conspiracy Theories* (Routledge 2021) 221.

operation over short-term); and simplicity of motive over complexity of motive.<sup>115</sup>

A person with a conspiracist orientation is someone who is not a match for the world; he is instead thrown back upon an illusory, inner realm.<sup>116</sup> Hence conspiracism's appeal to the paranoid – though 'appeal' does not do justice to its compelling attraction. In conspiracism, we find a certain coexistence of scepticism and gullibility. There is thus a conspiracist version of the paradox of scepticism, which runs like this: I will trust anything that confirms that nothing is to be trusted.

'Conspiracism', 'conspiracy theories', do not conform to one discursive type. The 'conspiracy' concept occupies a position in legal discourse (where it is a doctrine); religious discourse (in both pagan and monotheistic iterations, and in which it has a certain elevated existence), literary discourse (where it is a topic); political discourse (where, especially in liberal political discourse, conspiracies comprise a foundational danger) and academic discourse (where the concept is mostly investigated, but in certain instances embraced).

### B. *Proposition 2: It is an instance of political discourse*

Conspiracy theories' appeal is four-fold. The 'theories' (though we should not dignify conspiracism-talk with the term):

- *Explain* They clear up confusions: the enemy steps out of the shadows. They simplify the political space, replacing a complex set of determinations and differences with a stark dichotomy;<sup>117</sup> the line between 'us' and 'them' brightens, sharpens. Germany's defeat in World War I, say, is attributed not to complex military and political causes, but instead to the plots of the Reich's internal enemies (socialists and revolutionaries, and behind them, the Jews). 'Everything seems impossible, or frightfully difficult, without the providential arrival of antisemitism, through which all

<sup>115</sup> 'Whatever our political commitments are, all of us can sometimes fall into the trap of seeing part of the world as an undifferentiated, threatening network. We risk becoming David Miller when we see people as cyphers for something else, when we cannot recognise their complexity and individuality.' K Kahn-Harris, 'Into the flatlands' (n 15).

<sup>116</sup> TW Adorno, 'The meaning of working through the past' in *Critical Models* (Columbia UP 1998) 98. Adorno is writing here of the antisemite - but the judgment is the same.

<sup>117</sup> E Laclau, *On Populist Reason* (Verso 2005) 18.

things fall into place and are simplified', wrote the French anti-semitic Charles Maurras.<sup>118</sup>

- *Elevate* They offer privileged insight. The first encounter with a conspiracy theory can be revelatory – 'my eyes were opened', the initiate may reminisce, 'I saw things plainly for the first time.' Conspiracy-theories are successful because they promise knowledge denied to others. A conspiracy theory makes use of random coincidences that become dense with meaning, and of connections between completely unconnected facts.
- *Divert* In several registers. They distract from painful reflections on the injustice of the world. They comprise a compromised theodicy: nothing happens by chance, everything has a reason. But they are *also* a hobby, an 'interest' – they address an idle curiosity about the world. And they have a group-forming power, drawing together 'information activists', 'independent researchers', 'freelance investigative journalists', bonding them in thrilling collective endeavours.
- *Fortify* They strengthen adherence to pre-existing political convictions (and in the extreme, justify them). The more paranoid the conviction, the more the person in its grip seeks the evidence of conspiracies to confirm its truth.

Though conspiracy theories lack the qualities necessary to qualify as instances of serious thinking (not only specific denials of *reality*, but more radically, denials of what psychoanalysis terms the *reality principle*),<sup>119</sup> they do have serious political consequences. Though conspiracism answers to the wish to know, the 'knowledge' to which it gives the believer access tends to be disempowering. Its tacit slogan? Knowledge is impotence. In Umberto Eco's gloss: You give up, and fret and fume.<sup>120</sup> In the rare, but then mostly catastrophic instances

<sup>118</sup> J-D Bredin, *The Affair* (Sidgwick and Jackson 1987) 28.

<sup>119</sup> Freud, 'Two principles' (n 44) 219.

<sup>120</sup> 'Conspiracy' in *On the Shoulders of Giants* (A McEwen tr, Vintage 2019) 334. 'Results revealed that exposure to information supporting conspiracy theories reduced participants' intentions to engage in politics, relative to participants who were given information refuting conspiracy theories. This effect was mediated by feelings of political powerlessness.' D Jolley and KM Douglas, 'The social consequences of conspiracism' *British Journal of Psychology* (2014) 35-56. 'A survey showed that people who believed in one conspiracy were more likely to also believe in others. Belief in conspiracies was correlated with anomia, lack of interpersonal trust, and insecurity about employment.' T Goertzel, 'Belief in conspiracy theories' *Political Psychology*, Vol 15, No 4, 1994, 731. See also Mercier and Sperber, *The Enigma of Reason* (n 46) 246.

when it does generate action, this belief in an imaginary conspiracy will generate real counter-conspiracies<sup>121</sup> (the most recent of these instances, the 6 January United States Capitol assault). In even rarer instances, with catastrophic consequences many magnitudes greater, wars are waged in notional defence against fantasy threats composed entirely of fantasy conspiracies.<sup>122</sup>

The conspiracy theories that have generated the *most* catastrophic counter-conspiracies, in addition to other, similarly catastrophic political actions, are the antisemitic ones ('ASCTs'). ASCTs are paradigmatic conspiracy theories.<sup>123</sup> They are the ones to which conspiracy-theorists graduate.<sup>124</sup> They are all iterations of the one thesis: The Jews are a malign collective, acting in their own interests and to the detriment of the non-Jewish world. That is to say: antisemitism itself is one giant meta-conspiracy theory - one of the ways in which it differs from other racisms. It marks the meeting-point of Left and Right conspiracy theories.<sup>125</sup> Antisemitic conspiracy theories are both inventive and repetitious. Though they ingeniously attach themselves to passing scandals, they possess a strong, shared identity. It is the magician's move: there is always a Jewish rabbit to be pulled out of the hat. The rabbit of course will have different names. Reviewing these names across the centuries, we find: an assembly of rabbis and lay leaders in Narbonne;<sup>126</sup> the governing body of the Minsk Jewish community;<sup>127</sup>

<sup>121</sup> K Popper, *The Open Society and Its Enemies* (Princeton UP 1950) 288.

<sup>122</sup> I Yablokov, 'The five conspiracy theories that Putin has weaponized,' *New York Times*, 25 April 2022.

<sup>123</sup> 'The collective Jew is the threatening Other: powerful, well-organised and evil.' K Braut Simonsen, 'Antisemitism' (n 14) 367.

<sup>124</sup> See RJ Evans, *The Hitler Conspiracies* (Penguin 2020) 70.

<sup>125</sup> For example, Left and Right converge on the trope, *Zionists control governments*. 'The Labour Party is effectively a prisoner of the Zionist movement and the Israeli State and that's what they want to do with every other public institution in this country and indeed in other countries.' The sacking of David Miller: Israel's war on academic freedom and free speech - YouTube; Dominic Kennedy 'Lecturer David Miller quits 'Zionist' Labour Party' *Times*, 16 June 2020. Compare the acronym 'ZOG' ('Zionist Occupation Government') which originated in Far Right milieus in the USA, and was then picked up by the European Far Right. See M Butter, *Plots, Designs, and Schemes* (De Gruyter 2014) xi.

<sup>126</sup> '... the leaders and rabbis of the Jews who dwell in Spain, at Narbonne, where the seed of kings and their glory flourishes greatly, meet together, and cast lots of all the regions where Jews lived. Whichever region was chosen by lot, its capital city had to apply that lot to the other cities and towns, and the one whose name comes up will carry out that business, as decreed.' Thomas of Monmouth, *The Life and Passion of William of Monmouth* (M Rubin tr, Penguin 2014) 61.

<sup>127</sup> In reality this was based on some minutes of routine business kept by the official recognised kahal of Minsk from 1789 to 1828, supplemented by some similar material from other towns. But to this material the author added a commentary which made it look as if the kahal in each town aimed at enabling Jewish traders to oust their

various European Jewish philanthropic organisations;<sup>128</sup> world Jewish leaders ('the Elders of Zion') / the first Zionist Congress, held in 1897 in Switzerland; the Rothschild banking families;<sup>129</sup> a New York charity;<sup>130</sup> Israel, the Jewish State (an identification which began in earnest in the USSR in the early 1960s).<sup>131</sup> To this list Miller adds: the Bristol JSoc.

We spend so much time exposing the viciousness and the untruthfulness of all this, we tend to overlook how exceptionally feeble it is, and what stupidity on the part of its adherents it reveals. The stupidity tends to be concealed behind the malice, and it's that, the ill-will, on which we tend to focus. It is a stupidity which is *wilful*.

Christian competitors and in the end to acquire all the Christians' property.' See N Cohn, *Warrant for Genocide* (Eyre and Spottiswoode 1967) 53-5.

<sup>128</sup> 'Regarding the antisemitic work *Jewish Fraternities, local and universal* (1868; 1888):] In it the existence of certain international Jewish organisations is "unmasked" as though it were a great secret. The organisations in question are a society for the reprinting of basic Jewish texts; the Alliance Israélite Universelle [AIU]; the Society for the Dissemination of Education among the Jews in Russia [SDEJR]; the Society for the Promotion of Colonisation in Palestine; and the Association for the Support of Jewish Refugees in London. These were all well-known philanthropic organisations, with nothing secret about them; but that did not prevent the author from treating them as branches of a secret, worldwide Jewish conspiracy. The AIU, which was shown as the hub of the conspiracy, had been founded in Paris in 1860 and quickly became hated by all anti-Semites. In reality it was a purely French institution and not at all international. It was however concerned to help the persecuted Jews of Russia and Romania, both by providing educational facilities and by succouring refugees.' Cohn, *Warrant* (n 127) 53-5.

<sup>129</sup> In China, a bestseller attributed the rise of Hitler, the Asian financial crisis of 1997-8, and environmental destruction to the Rothschilds. The analysis was read and debated, it is said, at high levels of business and government. See C Sunstein, *Conspiracy Theories and Other Dangerous Ideas* (Simon and Schuster 2014) 2.

<sup>130</sup> Henry Ford put a squad of agents into New York to unmask the operations of the secret government. These agents – some of them fanatics and others mere crooks – shadowed prominent Jews, investigated such improbable bodies as the Shipping Board, and above all carried on a melodramatic correspondence with headquarters at Detroit, using code names and signatures. In the end they heard of the official New York Jewish community organisation, which under the name 'Kehilla' (Yiddish for 'kahal') was chiefly concerned with protecting and educating Jewish immigrants. This, they announced, was the secret government in whose hands President Wilson, Herbert Hoover, and Colonel House were willing tools. See Cohn, *Warrant* (n 127) 163.

<sup>131</sup> 'During the 1963 Khrushchev-sponsored campaign Judaism was vilified as a subversive, parasitical, repulsive and conspiratorial faith. Four years later, Zionism itself was characterised as a racist, criminal conspiracy, modelled on Nazism. In place of the Nazi libel of a Jewish Bolshevism, the Soviets devised the balancing libel of a Jewish Nazism. In the 1970s, Soviet publicists, all "antizionists", emphasised the "bestial hatred" of Gentiles supposedly inculcated by the Talmud. "Most of the major monopolies producing arms are controlled by Jewish bankers," explained one such "antizionist". "It is understandable that peace in the world is the main enemy for Zionism.'" Robert Wistrich, *From Ambivalence to Betrayal* (U of Nebraska Press 2012) 432-9.

*C. Proposition 3: Conspiracy theories (including ASCTs) in the academy comprise both pseudo- and counter- academic discourse*

In the academy, conspiracy theories are generally an object of investigation. Psychologists, for example, study the mechanisms of cognitive bias.<sup>132</sup> Historians study the influence of conspiracy theories on political events. Literary historians examine the appeal of the conspiracy narrative in novels.<sup>133</sup> Sociologists contrast their own disciplinary methods with the pseudo-disciplinary practices of conspiracists.<sup>134</sup>

But conspiracism is also embraced. Its presence in the academy surprised Eco; it surprises us. Eco's solution to his surprise was a discreet silence;<sup>135</sup> we do not have this option with Miller. How then should we characterise this embrace? Perhaps as a double disordering of the discourse. It is both:

- *Pseudo-academic* Academic conspiracy theories have the 'outward limbs and flourishes of scholarship, but are characterised by evasions, half-truths and bad science.'<sup>136</sup> Richard Hofstadter noticed

<sup>132</sup> S Blancke and J De Smedt, 'Evolved to Be Irrational?' in M Pigliucci and M Boudry (eds), *Philosophy of Pseudoscience* (U of Chicago Press 2013) 361-375.

<sup>133</sup> Butter, *Plots* (n 125) *passim*.

<sup>134</sup> Summarising four accounts of modern antisemitism and the emergence of sociology in the journal *Patterns of Prejudice* (Vol. 44, Issue 2, 2010), including his own, Marcel Stoetzler writes: 'Taken together, the four pieces present the following picture. Bodemann argues that (German) sociology most of all avoided addressing the issue of antisemitism and the positioning of Jews in society, and was ambivalent, to put it politely, on the rare occasions when it did. Vörös shows that (Hungarian) sociology in spite of, and also somehow by way of, its being "progressive" actively contributed to antisemitism by making the "Jewish question" look like a legitimate problem to which a solution had to be found. Stoetzler argues that the authoritarian aspects of positivism and an ideology of productivity can be found at the heart both of the modern antisemitism that emerged out of "early socialism" and the sociological tradition, and that this ambiguity was complemented in classical sociology by a tendency to construct a benign form of capitalism by blaming social corrosion on "egotistical utilitarianism", a discursive strategy that was likewise shared by antisemites. Morris-Reich points to a link between some social scientists' responses to antisemitism and whether they grew up while the assimilationist perspective of (German) Jewry was still (sort of) intact, namely, before circa 1880, or afterwards: while intact, assimilationism seems to have encouraged a critique of racialism but a reluctance to challenge antisemitism; the break with assimilationism (as in Zionism) seems to have encouraged a challenge to antisemitism but not to racialism.' 'Modern antisemitism and the emergence of sociology: an introduction,' *Patterns of Prejudice*, Vol 44, No 2, 2010, 115.

<sup>135</sup> 'Anyone wanting to have an idea about ... conspiracy theories can read a book [on 9/11]. You will not believe it, but in this book there appear the names of some highly respected colleagues, whom I will not identify out of respect.' U Eco, 'Conspiracy' (n 120) 334.

<sup>136</sup> D Aaronovitch, *Voodoo Histories* (Vintage 2010) 325.

the ‘quality of pedantry’ paranoid writing shows.<sup>137</sup> That is, *pseudo-critical, pseudo-evidence-based* thinking.

- *Anti-academic* Academic conspiracism proposes no criteria for distinguishing real from false conspiracies, and no criteria for determining valid inferences. It is a defection from reason, to borrow a phrase.<sup>138</sup> The embracing of conspiracy theories is the most radical of repudiations of the academic vocation today – that is, of the duty of the educator to assert the sovereignty of the reality principle.<sup>139</sup>

Miller is our example. His longest work of conspiracy theorising is his booklet on the Israel Lobby and the EU.<sup>140</sup> It is a weak child of Walt and Mearsheimer’s work. Its thesis is no more than that Jews support Israel, and that a few of the wealthier among them contribute money to bodies that advocate for Israel’s interests in Europe. It does not argue the Walt and Mearsheimer thesis that they are especially effective, still less that they influence the EU to act against its own interest in any serious way.<sup>141</sup>

There is a minor character in Shakespeare’s *Henry IV Pt. 2*, Francis Feeble, a woman’s tailor and country soldier. Falstaff praises him, ‘most forcible Feeble.’<sup>142</sup> Let me ask: What is feeble in Miller’s

<sup>137</sup> ‘The very fantastic character of [a conspiracy theory’s] conclusions’ coexists with an ‘elaborate concern with demonstration.’ It is ‘argued out along factual lines.’ It performs ‘heroic strivings for “evidence” to prove that the unbelievable is the only thing that can be believed.’ *The Paranoid Style in American Politics and Other Essays* (Vintage 2008) 35-6. See also RJ Evans, *The Hitler Conspiracies* (Penguin 2020) 215: ‘Conspiracy theories exhibit a strong obsession with detail, often taking the form of highlighting a tiny piece of evidence and blowing it up out of all proportion, and buttressing their claims with a display of pseudo-scholarship, quasi-academic documentary editions and endless footnotes.’

<sup>138</sup> KA Appiah, *The Ethics of identity* (Princeton UP 2005) 192.

<sup>139</sup> ‘Education can be described without more ado as an incitement to the conquest of the pleasure principle, and to its replacement by the reality principle; it seeks, that is, to lend its help to the developmental process which affects the ego. To this end it makes use of an offer of love as a reward from the educators; and it therefore fails if a spoilt child thinks that it possesses that love in any case and cannot lose it whatever happens.’ S Freud, ‘Two principles’ (n 44) 224. The academic antisemitic conspiracist sins twice, then. He incites *against* the reality principle; he *denies* love to his (Jewish) students.

<sup>140</sup> PII\_IsraelLobbyEUreport2016\_Cronin\_Marusek\_Miller.pdf (bath.ac.uk)

<sup>141</sup> ‘Western politicians’ *acquiescence* to the Israeli narrative *is made possible partly because* there is a significant international network of groups dedicated to preserving the notion that “a democratic Israel is merely acting in self-defence against Palestinian rocket fire”. *Ibid* 6 (italics added).

<sup>142</sup> R Proudfoot, A Thompson, D Scott Kastan, eds, *The Arden Shakespeare Complete Works* (Bloomsbury 2011) 411.

presentation, and what forcible? The feeble? Everything that should matter to an academic: methodology; research; evidence; history. The forcible? Everything that an academic should shun: extravagant claims, unmoored from evidence; the antisemitic premises of the work; the verbal assaults on Jewish students - assaults which are the inevitable outcome of his writing and speech-making.<sup>143</sup>

But of course the feebleness of the analysis does not matter to people who are already convinced of the malign existence of the Lobby. Miller does not have to prove anything to them – still less, anything new. Just to write or speak the word ‘Lobby’ is enough: the sought-after effect is achieved. This is writing as evocation. He reminds his audience of what it already knows. That’s why to complain that (as seems likely) many of his supporters haven’t actually read his stuff misses the point. All they need to know is that he writes about the ‘Israel Lobby’.

#### D. Proposition 4: Conspiracy theories are resurgent

Let’s turn away from Miller and look at conspiracy theories today generally. They are now resurgent<sup>144</sup> - a ‘marker of the early twenty-first century.’<sup>145</sup> The evidence of this resurgence is in the appearance of new forms of conspiracy-thinking, in new kinds of engagement with conspiracy theories, and in new platforms. As to forms, in contrast to the *classic* form of the conspiracy theory, that generates simulated knowledge by simulated research,<sup>146</sup> conspiracy theorists now tend just

<sup>143</sup> See D Rich, ‘Why “academic freedom”’ (n 15).

<sup>144</sup> A commonplace enough observation – ‘Our culture is awash in conspiracy theories.’ JE Uscinski, ‘Down the rabbit hole we go!’ in JE Uscinski (ed), *Conspiracy Theories & the People Who Believe Them* (OUP 2019) 2; ‘We in the West are currently going through a period of fashionable conspiracism.’ Aaronovitch, *Voodoo* (n 136) 3; ‘Conspiracy theories are all around us’ Sunstein, *Conspiracy Theories* (n 129) 1. The observation has inevitably attracted dissent: see, e.g., J-W van Prooijen, *The Psychology of Conspiracy Theories* (Routledge 2018) 20-22, distinguishing (somewhat implausibly, I think) between the speed of dissemination of conspiracy theories and the total numbers of conspiracy theorists.

<sup>145</sup> JE Uscinski, ‘Down the rabbit hole we go!’ (n 144) 1.

<sup>146</sup> See Rachel Fraser, ‘Epistemic FOMO’ *The Cambridge Humanities Review*, Issue 16. ‘Modern epistemology begins with a conspiracy theory. “I shall suppose”, writes Descartes, “that some malicious, powerful, cunning demon has done all he can to deceive me [...] I shall think that the sky, the air, the earth, colours, shapes, sounds and all external things are merely dreams that the demon has contrived as traps for my judgment.” Descartes’ project is to discover whether we can know that this conspiracy theory is false; he concludes that we can, but only because we can know that God exists. The atheists among us cannot be so sanguine.’

to make stuff up ('the election was rigged'); or dizzy themselves with 'disturbing questions', 'troubling anomalies', 'unresolved puzzles', 'not entirely unfounded suspicions', and 'alternative perspectives';<sup>147</sup> or get to play at insurgency, courtesy of the devisers of QAnon.<sup>148</sup> As to engagement, consider, for example, the conspiracy entrepreneurs, commodifiers of conspiracy theory for profit or political advantage.<sup>149</sup> My reference to platforms requires no elaboration.

### E. *Proposition 5: Academics have a duty to combat professorial conspiracy-'theorising'*

Given Proposition #4, this duty is especially pressing.

Academics have duties like the rest of us. One is never to act other than as a human being, when an academic; one may never separate oneself from human values, when acting in accordance with academic values.<sup>150</sup> But what of academics' further, specifically professional, duties? Susan Handelman, in her study of rabbinic tales of teachers and mentors, identifies two groups of duties: the academic duty to scholarship and the academic duty to teaching.<sup>151</sup> This seems right. The longer list of items, for example, that Max Weber proposed, in his 1917 lecture, 'The Scholar's Work', can all be assigned to one or other of these groups:

- *As to the duty of scholarship* – academics must conform to the laws of logic and rules of method; to honour the principle that the result of academic work must be 'worth knowing.'
- *As to the duty of teaching* - academics must not muddle academic analysis and political activism; they must enlarge students' understanding of the world (which includes getting them to recognise uncomfortable facts – *not* to be muddled with subjecting them to the test of a hostile or unfavourable milieu).<sup>152</sup>

<sup>147</sup> Aaronovitch, *Voodoo Histories* (n 136) 11.

<sup>148</sup> M Rothschild, *The Storm is Upon Us* (Monoray 2021) 142-3.

<sup>149</sup> C Birchall, 'Conspiracy Theories and Academic Discourses: The necessary possibility of popular (over)interpretation' *Continuum: Journal of Media & Cultural Studies* (2001), 15:1, 70; Sunstein, *Conspiracy Theories* (n 129) 12.

<sup>150</sup> I do not agree with Stanley Fish (one never quite knows when he's joking): 'I don't mean that professional values take precedence over more general human values, but that more general human values should not be the ones dictating your behaviour when you are acting as a professional.' *Versions of Academic Freedom* (U of Chicago Press 2014) 113.

<sup>151</sup> *Make Yourself a Teacher* (U of Washington Press 2011) xi.

<sup>152</sup> The phrase is Melanie Klein's, used in a different context. See 'Symposium on child analysis', *Love, Guilt and Reparation* (Vintage 1998) 165.

Weber speaks in these respects of the academic's 'conscience', and acting in conformity with it as an 'ethical achievement'.<sup>153</sup> The point has been made: To the extent that example is an essential ingredient of effective teaching, students must witness critical thinking by the teacher, and that too requires some freedom - but freedom to allow the job to be done properly, not to respect the teacher's alleged right to self-expression.<sup>154</sup>

Drawing on Weber's lecture, and on the many other considerations of the university teacher's professional ethics, we may conclude that the academic vocation is an ethically burdensome one. What then does it mean to behave with academic integrity?<sup>155</sup> We can put the answer in negative form: not to abuse one's authority. And this in turn means, say, to be alive to the extraordinary openness of students to the academic's pedagogy, and to be alive too to the corrupting risks of that 'transfer' of professorial authority whenever speaking of one's work in a political register to them (or indeed, when speaking of it to non-university audiences).

What then of Miller and Stock? I have heard it asked: How can one side with Stock and against Miller? There are some who say both academics should be defended on academic free speech grounds ('the indivisible free speech group'); there are others who say both should be condemned on hate speech grounds ('the indivisible hate speech group'); and there are those who take a position on each by reference to their politics, and don't care at all about free speech or hate speech considerations. I am interested in the 'consistency' advocates; we can disregard the last group.

To the indivisible free speech group, I answer like this: You muddle academic free speech with political free speech. The doctrine of

<sup>153</sup> M Weber, *Charisma and Disenchantment: The Vocation Lectures* (P Reitter and C Wellmon eds, D Searls tr, New York Review of Books 2020) 24, 27-8, 30, 36, 41. AD Nuttall proposes that the 'most obviously moral component in the scholarly ideal [is] an altruistic reverence for truth, in all its possible minuteness and complexity.' *Dead from the Waist Down* (Yale UP 2003) 194. The choice of the phrase 'altruistic reverence' (instead of the more obvious candidate, 'respect'), is itself an aspect of that 'ethical achievement,' by virtue of the elevated standard it sets for the scholar.

<sup>154</sup> GC Moodie, 'On justifying the different claims to academic freedom' *Minerva* 34: 1996, 140. The 1915 AAUP Declaration was clear on this point. 'Academic freedom was not a license for academics to say and write whatever they wanted on any issue.' See Hurwitz, *First Amendment* (n 25) 109.

<sup>155</sup> 'All the university must require of its members,' wrote Karl Jaspers, in the aftermath of World War II, 'is professional and intellectual standing, mastery of their tools, and integrity.' *The Idea of the University* (Peter Owen 1960) 81. What immense weight he gives to that word, 'integrity'!

political free speech requires adherence to limited legal norms. The doctrine of academic free speech adds to those norms some further norms. The boundaries of permissible academic speech are considerably narrower than the boundaries of permissible political speech. When the scholar ‘errs with mankind,’ wrote Emerson, he ‘forfeits his privilege’<sup>156</sup> – that is, in our terms, he loses the protections that attach to the practice of academic speech. The scholar, having joined the generality of mankind in its false thinking, must then rely on whatever protections are available to all.

My reading of Kathleen Stock’s book *Material Girls: Why Reality Matters for Feminism* (2021) is that it is a serious work written by a serious academic. The reported accusations made against her reflect neither the contents of the book nor positions that she has taken elsewhere, so far as I have seen. I have found nothing in Miller’s writing and YouTube presentations, on the other hand, that would qualify as possessing academic substance. Indeed, as I have argued, his conspiracy-mongering is actively inimical to academic values. (Subscribing to, and promoting, conspiracy theories is not an intellectual pursuit).<sup>157</sup> It is no easier to understand how Stock could with justice have been extruded from her university as to understand how Miller could justify a place for himself in any university.

One can therefore maintain, without inconsistency, that while both Miller and Stock can claim the benefit of *political* free speech, only Stock can claim the benefit of *academic* free speech. And indeed this is my position.

Now consider the indivisible hate speech group. Trans people have objected to Stock; Jews have objected to Miller. How can one attend to the concerns of the one (whichever one) and disregard the concerns of the other? Surely all objected-to speech should be treated alike?

To which I respond: No – not in these categorical terms. We should make assessments case by case, attending both to what the complainants say and what the complained-against said to cause the complaints, and say in response to the complaints.

The charge of hate speech (for this is what the charge is, in these and similar cases) should be one of last resort – when no other explanations

<sup>156</sup> ‘The American Scholar’ (1837) (n 42) 58.

<sup>157</sup> Cf.: ‘Academic freedom, which allows members of institutions of higher learning to engage in intellectual pursuits without fear of censorship or retaliation, lies at the heart of the mission of the university.’ J Lackey, ‘Academic Freedom’ (n 82) 3.

makes sense.<sup>158</sup> It should be a reasoned charge, and engage with the content of what is complained of. The charge, and the actions taken in prosecution of the charge, should be proportionate, should respect due process, and above all, be lawful. No vigilantism. No death threats. No intimidation. This is the necessary self-discipline of the complainant.

The self-discipline is not always possible. Sometimes it crumbles before unbearable provocation; sometimes it must give way in favour of a resourceful defence against attack. A general condition of vulnerability, exposure to casual contempt and hostility, to a wilful, malicious ignorance, uncertainties in self-definition, the inner adoption of values destructive of self-respect – all this can make the call for self-discipline inhumane in its indifference to the complainants' suffering. These are fact- and context-specific considerations.

The complainants should be heard, but not given the last word. That is: they should be treated with respect; but they should not be permitted to dictate outcomes. Treated with respect means that objections should be investigated, and processes should be expeditious and transparent. But assessments should be based on objective criteria. The objected to must be objectionable.

Against these considerations, we can identify two extreme positions, both of which I reject.

- *Position 1* A radical scepticism regarding free speech as a value, informed by a privileging of identity. The scepticism combines a radical sensitivity to the harms of speech (it makes unsafe, etc.) and a strong suspicion towards the good faith of free speech defences (typically, a means of further oppression). This privileging of identity gives to the complainant the power to determine whether the discourse is objectionable.
- *Position 2* A radical commitment to free speech as a value, informed by a refusal to allow any merit to objections to speech. *This* commitment combines a strong sensitivity to the risks to speakers ('debate can be shut down', etc.) with a radical indifference to the impact of their speech on the complainants. This privileging of free speech gives to the speaker the power to determine whether the complainant complains in good faith.

<sup>158</sup> 'It remains to be seen what the enemy will do, but one thing is sure, for trans\* people everywhere, the true enemy has nothing to do with feminism.' J Halberstam, *Trans\** (U of California Press 2018) 128.

Neither position makes very much sense; but to hold *both* positions, the sceptical one and the committed one, in respect of different groups, makes no sense at all (though some people *do* contrive to do it).<sup>159</sup> My impression is that the free-speech sceptical position, *Position 1*, is found more frequently among Stock opponents than Miller opponents. My impression is that the free-speech committed position, *Position 2*, is common among Miller defenders, but very rare among Stock defenders.

### 5. Conclusion: Louise Glück #2

And now back to Glück's poem. Persephone's will to ignorance, the pseudo-creative denial of reality and substitution of something fantastic, takes a self-destructive form. Only Persephone herself is affected by this fantasy, however. We should not blame her. The will to ignorance in her case is (a) personal, directed at herself alone, and (b) the product of trauma. In Miller's case, the exact opposite obtains, in both respects. This conspiracy-thinker's will to ignorance takes a hateful form. At first, only *other* people are affected; over time, this becomes unbearable; the conspiracy-theorist seeks the conclusive evidence for his conspiracism in his own persecution. Gratification thereafter awaits him regardless of outcome. A vindication of his innocence, either in a reversal of his dismissal, a triumph of justice *over* the 'Lobby,' or, in a rejection of his appeal, further evidence of the *power* of the 'Lobby'. We may term this, now borrowing from Glück's *title*, 'A Myth of Miller's innocence.'

Gratifications are not so readily available to the rest of us, contemplating this *Affair*. One can always fall back on Saul Lieberman's witticism that while rubbish is rubbish, the study of rubbish can be scholarship. It is a remark that sustained me across the years I spent writing my history of English antisemitism, *Trials of the Diaspora* (2010, 2012).<sup>160</sup> But I no longer consider it adequate. I have instead

<sup>159</sup> *Position 1*: 'freedom of speech has been retooled as a technology of racist amplification;' '[it] functions as a structure of racialised coercion.' *Position 2*: '... one trajectory of attack is determinedly anti-free speech, attacking academics involved in critical race or postcolonial studies, or active in anti-racism, or – more recently – the Boycott, Divestments, Sanctions (BDS) strategy against the Israeli occupation of Palestine. These attacks follow a common script whereby a right-wing group capture something said, posted or tweeted by a faculty member, the statements are then decontextualized and wrapped in moral outrage, broadcast through the right-wing media ecosystem, and eventually find their way into the mainstream media.' G Tittley, *Is free speech racist?* (Polity 2020) 115, 119.

<sup>160</sup> *Trials of the Diaspora* (OUP 2012) 588.

attempted something else: a general account of the liberal free speech doctrine, one without recourse to a 'rights'-based vocabulary; an account of the place of academic free speech in the doctrine; an explanation of why academic conspiracy-speech is the enemy of academic speech (that is, of the strongest version of 'free thinking'); and why it is right to support Stock and oppose Miller. I have also been glad to find an opportunity to praise Louise Glück's admirable poem.