Tomorrow's Affairs
Analysis of today
Assessment of tomorrow

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UK universities confront possible downsides of new free speech law

British universities are embarking on the first academic year in which they will have to navigate the terms of a new law that seeks to combat the threat of so-called cancel culture in academia. The Higher Education (Freedom of Speech) Act came into force in May after a lengthy two-year passage through parliament in which the government rejected arguments that it could end up stifling the very diversity of academic debate that it seeks to protect. The legislation was introduced after a number of widely reported cases in which speakers invited to events had their invitations rescinded because their views conflicted with what was seen as the prevailing orthodoxy. In future, universities and higher education providers will have to guarantee they are complying with tougher free speech rules or face sanctions from the higher education regulator, overseen by a freedom of speech "tsar". Universities and student bodies are now also open to the threat of legal action by individuals, whether staff, students or visiting speakers, who claim their freedom of speech has been suppressed or their careers affected. With an eye to potential litigation, law firms have already drawn up check lists to help academic administrators ensure that their free speech policies comply. In parliament, opponents said the act could have the opposite effect to the one intended if cash-strapped student groups declined to invite particular speakers for fear of legal proceedings.

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A former Conservative universities minister, Lord Willetts, said he was concerned that the "much more intrusive regulatory regime" could result in a safety-first environment whereby no speakers at all were invited for fear of falling foul of the legislation. In some of the no-platforming cases, which predominantly have focused on gender identity and the rights of minorities, universities were accused of bowing to the threats of militant students by cancelling events, including for security reasons. In 2019, Cambridge University rescinded its offer of a visiting fellowship to Canadian psychology professor Jordan Peterson, who calls himself "professor against political correctness", reflecting his controversial views on gender and race. The following year the feminist Oxford history professor Selina Todd had her invitation to the university's international women's festival withdrawn under what she said was pressure from trans-gender activists. Also in 2020, the former home secretary Amber Rudd was uninvited by an Oxford University group over her role in the Windrush scandal involving the status of an early generation of immigrants from the Caribbean. These and other instances of "no-platforming", and the headlines that accompanied them in sections of the media, prompted the government to introduce its freedom of speech bill.

> From the outset, ministers were accused of over-reacting to an isolated phenomenon by wielding a hammer to crack an academic nut

In July 2021, Gavin Williamson, then education minister in the Boris Johnson government, told MPs that fear of censure was having a chilling effect on campuses. He said there were too many reported instances where students or staff had been silenced or even threatened with dismissal for airing views or opinions that others disagree with. He made it clear that "if universities would not protect free speech, the Government would". That itself, coming from a politician later forced out of office for bullying, might have had an equally chilling effect on universities intent on preserving their traditional autonomy. Williamson was short on examples but defended the proposed legislation as a matter of principle. It is another matter of principle, however, that governments should not introduce laws in the absence of a crime. Critics in parliament and academia claimed the government was exaggerating the threat exposed by a vanishingly small number of incidents to impose an unfair legal burden on universities and students alike.

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It could be said that the concept of "cancel culture" barely existed in the political discourse before 2018. According to research by the Policy Institute at King's College London and polling company Ipsos, that was the first year that the phrase appeared in the British media. By 2021, the number of references rose from 6 to 3,670, almost a quarter of the latter appearing in the pro-Conservative Mail newspaper. The King's College research indicated a growing number of the population perceived the country as being divided by attitudes to cancel culture and a wider culture war. The Policy Institute head, Professor Bobby Duffy, said it came as no surprise that the media debate had affected public opinion. Subsequent research by the Institute, published this month, presented a mixed picture in which each side of the cancel culture controversy could find evidence to support its case. Its report did not deny the existence of a problem but said more evidence was required on what actually works to protect freedom of expression.

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"The challenge to free speech in universities is often either overstated or too readily dismissed, when the reality is it's not nearly as bad as often made out," Duffy said. "But there is enough of a signal in the trends to suggest that positive interventions to support free speech should be a focus." The research showed a fairly positive outlook among most students on freedom of speech. Eighty per cent of those polled said they were free to express their views at their university. That was down on the 88 per cent recorded three years earlier but higher than the 70 per cent of the general public who said they felt free to express their views in UK society. Whatever the impact of the legislation, there are valid arguments that the less government is involved in the workings of academia the better. The law is unlikely to unleash a spate of litigation. But it is likely that an individual or group will test the new legislation by taking an alleged infringement to the courts.