

UNIVERSITY OF CAPE TOWN: A BLOW TO ACADEMIC FREEDOM

David Benatar

The irony should be lost on nobody. A speaker invited to give the annual academic freedom lecture at the University of Cape Town (UCT) has been prevented by the University Executive from giving that lecture.

In March 2015, the Academic Freedom Committee at UCT decided to invite Flemming Rose, a prominent defender of freedom of expression, to deliver the 2016 T.B. Davie Memorial Lecture, which was due to take place on 11 August.

As the culture editor of the Danish newspaper, the *Jyllands-Posten*, Mr. Rose had published some drawings and cartoons depicting Mohammed. The purpose of this exercise was to establish the extent to which artists were self-censoring.

The question had arisen following a number of European instances of self-censorship pertaining to Islam. One of these occurred when the author of a children's book about the life of Mohammed had had difficulty finding a willing illustrator because artists indicated they were fearful. Mr. Rose wrote to members of the association of Danish cartoonists, asking them to "draw Mohammed as you see him".

Twelve illustrations, not all of them depicting or targeting Mohammed, were published on 30 September 2005. Among those lampooned by the cartoons were the author of the children's book, the leader of a Danish anti-immigration party, and the *Jyllands-Posten* itself. Nevertheless, two Danish Muslim clerics used the publication of the cartoons to incite international violence in early 2006. These reactions galvanized Mr. Rose, and he became a prominent advocate of free speech.

It is unsurprising that Mr. Rose's unrepentant publication of the Mohammed illustrations makes him a controversial figure. However, it is precisely such a person who is a barometer of how much freedom of expression we enjoy. Everybody is willing to tolerate some speech. The real test of freedom of expression occurs when people are asked to tolerate the speech of those whose ideas they do not like. On that test, the University of Cape Town has shown that it does not have the robust commitment to freedom of expression that it says it has.

In explaining the University Executive's decision to override the Academic Freedom Committee's invitation to Mr. Rose and to disinvite him, the Vice-Chancellor, Dr. Max Price, makes the obligatory affirmation of "our commitment to the right to academic freedom and freedom of expression".

As all those who seek to curtail freedom do, he is quick to qualify this commitment by noting that "[l]ike all fundamental rights ... the right to academic freedom is not unlimited". Of course, there is a sense in which academic freedom and freedom of expression are appropriately limited. Dr. Price notes that according to section 16(2) of the South African constitution the right to free expression does not extend to "(a) propaganda for war; (b)

incitement of imminent violence; or (c) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm”.

These restrictions are reasonable, at least if we interpret them appropriately. Thus, what is ominous about a reminder that a right to freedom of expression is not unlimited is that it is commonly used to segue into a justification of an unjustifiable limitation. That is exactly what Dr. Price does. He provides justifications that fail to meet any of the above criteria.

The justifications he provides are listed under three headings. One might presume that each heading would correspond to a different reason. However, he regularly slips from the titular reason to another. Irrespective of how they are classified his justifications fall short.

The first purported reason is that the lecture would provoke conflict on campus. It is not clear what Dr. Price means by “conflict”. In elaborating, he refers to “protest and disruption” and then to the likelihood that the lecture will “divide and inflame the campus”.

Many events at UCT are protested against, and yet that has appropriately not been thought good reason to cancel them. The prospect of protest is not a reason – even under the South African Constitution – to limit freedom of expression. Instead, protest, on condition that it is peaceful and does not prevent the expression of those against whom the protest is being held, is itself a form of expression, and thus to be protected.

Nor does the prospect of disruption indicate that the potentially disrupted expression exceeds moral (or legal) limits. Disruption might be indicative merely of the disrupters’ intolerance, and thus one has to show on other grounds that the limits are exceeded. If one cannot show this then the disruption itself exceeds the limits of acceptable protest. UCT has proved very ineffective at prohibiting such forms of (illegal and immoral) protest, which makes the prohibition of (legally and morally) “protected” speech all the more curious.

Moreover, the campus is already divided – about all sorts of matters. If a view’s likelihood to cause division were grounds for prohibiting it, then Dr. Price’s own letter should be prohibited for it too will divide the campus. If his letter does not *inflame* the campus, that is only because the people who disagree with him on this matter are unlikely to cause a conflagration.

The second reason for disinviting Mr. Rose is “security”. The Vice-Chancellor tells us that he and the University Executive are “convinced” that the lecture “would lead to vehement and possibly violent protest”. The mere vehemence of the protest is beside the point, and thus we are left here with the conviction that there will *possibly* be violence.

There are two problems with this argument. First, we have been provided with no evidence that violence is likely to result from Mr. Rose’s lecture (even though the Academic Freedom Committee specifically requested such evidence). Second, if a lecture results in violence it does not follow that the lecture itself exceeds the moral or legal limits of freedom of expression. If it did follow, then those willing to respond violently will have a *de facto* veto on any ideas they dislike.

Put another way, there is a difference between “incitement” to violence and a violently intolerant response to a speaker or the expression of an idea. Speech constitutes incitement to violence when the speech aims to elicit the violent behaviour of those who then act violently. If the content of the speech does not seek violence then it is not incitement. Your violent reaction to my expressing an idea does not mean that I have incited you. It means you have resorted to violence when you should not have done so.

The expectation of a violent reaction may sometimes require somebody to desist from expressing the idea that will be reacted to violently. However, in the rare cases that this is true, the reason for being silent is not that one’s right to freedom of expression has exceeded its limits.

Instead one’s right is being violated by those threatening violence. Perhaps Dr. Price and his colleagues have this position in mind. If that is the case, then they should unequivocally acknowledge that academic freedom and freedom of expression are being violated. Dr. Price does gesture at such a possibility, but it is obscured by his more extensive (but flawed) implied argument that Mr. Rose’s lecture would fall foul of the Constitution’s limits on freedom of expression.

When legitimate speech has to be curtailed because of a threat of violence, limiting the speech has to be seen as a temporary measure until the threat is neutralized. Dr. Price’s attempt to defend the position of those opposed to Mr. Rose’s speaking encourages rather than neutralizes that threat. Dr. Price’s energies should be focused on condemning those who threaten violence rather than on veiled condemnations of Mr. Rose. He is thus ill-placed to invoke an “imminent violence” defence of the Executive’s decision.

The third purported reason for disinviting Mr. Rose is that bringing him to campus “might retard rather than advance academic freedom on campus”. Here Dr. Price’s “doublespeak” reaches full-throttle. He wishes to restrict academic freedom in order to advance it.

He says that we “know that many within our universities don’t feel safe to engage, which undermines the spirit of mutual tolerance and understanding”. He asserts that this is “a deeply worrying situation which all adherents of academic freedom should find disconcerting, and ultimately unacceptable”. However, he asks rhetorically whether progress will be made “by inviting somebody who represents a provocatively ... divisive view”. Because the Academic Freedom Committee’s brief is to defend academic freedom on campus, he implies that in sticking to its invitation to Mr. Rose it is in breach of its brief.

Dr. Price is not explicit about who “feel unsafe to engage”. It is unlikely to be campus revolutionaries and those who will resort to violence, for their very actions suggest that they feel very safe. It is much more likely that Dr. Price is referring to campus liberals who have either been cowering or, if outspoken, under constant attack – without a public word of support from the University Executive. (If Dr. Price is referring to this group, then the fact that he does not identify them as such is another indication of just how politically dangerous it has become to express sympathy with them.)

Thus, it seems that we are being told that we must restrict the speech of those serious about freedom of speech in order to protect those same people's freedom of speech. That is exactly the wrong response. Instead, the University should be standing firm on freedom of speech and teaching those who do not already know, that this value extends (most crucially) to people with provocative and even divisive views.

There is a fourth reason running, as a thread, through Dr. Price's argument for disinviting Mr. Rose. This takes the form of impugning Mr. Rose, although in a slippery way. Thus, Dr. Price *refers* to accusations of bias and bigotry that are buttressed by the claim that "the *Jyllands-Posten* had previously refused to publish cartoons that mocked Christ, on the grounds that this would offend its readers, and also said that it would not publish cartoons about the Holocaust".

In fact the *Jyllands-Posten* has published several cartoons ridiculing Jesus. It has also published anti-semitic and Holocaust-mocking cartoons – not because it endorsed them, but so that their readers could see for themselves what, for example, was being published in the Arab and Iranian press. Mr. Rose is at pains to emphasize that publication does not constitute endorsement.

Dr. Price also says that "Mr. Rose is regarded by many around the world as right wing, Islamophobic, someone whose statements have been deliberately provocative, insulting and possibly amount to hate speech". Dr. Price quickly adds that "[n]o doubt all these claims can be contested". This is exactly why it is not sufficient to trot out those accusations as a basis for disinviting. For example, there are those who have said that Edward Said, who in 1991 gave the TB Davie lecture without disruption, was an anti-semitic and terrorist sympathizer. It is easy to make such accusations but harder to make them stick. Anybody wanting to *disinvite* a speaker because they are not a suitable "chosen champion of the University of Cape Town to deliver its symbolic and prestigious TB Davie public lecture on academic freedom" will have to make the accusations stick. In fact, the accusations against Mr. Rose, to which Dr. Price refers, are utterly groundless. Mr. Rose's commitment of freedom of expression is a deeply principled one and has resulted in his defending the anti-democratic speech of fundamentalist Muslims.

Almost all of the arguments that Dr. Price musters could be advanced, *mutatis mutandis*, against giving a platform for the many Israel-bashers who speak on campus. These speakers are typically selective in their moral outrage, cause division and hostility between different groups, and risk "diminishing, rather than bolstering, the opportunities for proper and mutually respectful intellectual and institutional engagement".

Moreover, they occur against a background of millennia of anti-semitism. This is not to say that anti-Israel speakers should be banned from campus, but rather that the selective application of the arguments to some speakers is revealing.

The one argument that does not apply to anti-Zionist speakers is the argument about violence. The University Executive have had grounds for confidence that campus Zionists will not engage in violent, disruptive protest. We can only hope that that remains the case and that

other parties learn the bounds of acceptable protest. The University Executive should be helping them learn that rather than pandering.

The decision to disinvite Mr. Rose is not the only way in which freedom of expression has been limited recently at the University of Cape Town. It is, however, the most obvious and the least deniable example. During the Apartheid era, the torch of academic freedom was extinguished. It was only rekindled with the advent of democracy. It is now time to extinguish it again, and to keep it extinguished at least until Mr. Rose delivers the lecture he was invited to give.

Postscript (4 December 2016)

As fate would have it, the four-year membership term of the University of Cape Town's Academic Freedom Committee expired in the middle of 2016, soon after Mr. Rose was disinvited. The committee's expression of outrage was its final act.

The process of constituting the new committee overlapped with the outgoing committee's struggle with the University Executive and was completed only after the outgoing committee's term of office had ended. There is some reason to think that the outgoing committee's stand on the Flemming Rose matter galvanized the dominant regressive sector of the University in a way that influenced the membership of the incoming committee. The majority (but not all) of the outgoing committee's most vocal critics of the decision to disinvite Mr. Rose are not on the new committee even though they were nominated. Still worse, is that the new committee includes people who openly criticized the invitation of Mr. Rose or who supported his disinvitation. It thus seems that the Academic Freedom Committee has largely been "tamed", thereby enabling future repression of academic freedom to be more readily swept under the carpet.

Amidst this ominousness, there is one ray of light. Upon learning that Mr. Rose had been barred from delivering the Thomas Benjamin Davie Memorial Academic Freedom Lecture, the South African Institute of Race Relations promptly extended an invitation to Mr. Rose to deliver the Alfred and Winifred Hoernlé Memorial lecture in 2017. Mr. Rose has accepted this invitation. While he will not be delivering the lecture created in Dr. Davie's memory, he will be following in Dr. Davie's footsteps, for Dr. Davie delivered the Eleventh Hoernlé Memorial lecture in 1955.

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