



CREaTE

Canterbury Research and Theses Environment

Canterbury Christ Church University's repository of research outputs

<http://create.canterbury.ac.uk>

Please cite this publication as follows:

Hardes, J. and Revell, L. (2017) Law, education and Prevent. Education, Citizenship and Social Justice. ISSN 1746-1979.

Link to official URL (if available):

<http://dx.doi.org/10.1177/1746197917706017>

This version is made available in accordance with publishers' policies. All material made available by CReaTE is protected by intellectual property law, including copyright law. Any use made of the contents should comply with the relevant law.

Contact: create.library@canterbury.ac.uk



Law, education and prevent

One morning Josef K. awakens to find a strange man at his door who tells him that he has been arrested. To his complete bemusement, K's life becomes entwined within a trial and the proceedings of the court, the reasons for which are not only withheld from K himself but are also withheld from the reader. Franz Kafka's famous text *The Trial* of which Josef K. is the protagonist, can not only be interpreted as the human inability to find meaning in a perpetual search for answers but rather, more significantly for this present discussion, it is a demonstration of law's extra-judicial power. It is within this conceptual backdrop that one can arguably situate Britain's Prevent legislation.

Described as a 'soft approach' to counter-terrorism, the Prevent strategy has emerged within the government's larger counter-terrorism strategy titled CONTEST, developed in 2003 and revised in 2009 and 2011. Chiefly, Prevent places statutory demands on schools and universities in Britain to enforce the United Kingdom's Counter Terrorism and Security Act passed in 2015. Outwardly facing, Prevent's focus is on combatting forms of extremism that it describes as 'vocal or active opposition to fundamental British values ... [which] ... include: democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs' (HM Government, 2015: 3). In doing so, it places a duty onto educational institutions actively to 'prevent radicalization' and 'promote British values'. Inwardly facing, Prevent is highly contested and has been subjected to far-reaching criticism, having been vociferously challenged in popular media and notably by the National Association of Head Teachers (NAHT).

For us, Prevent's 'soft' counter-terrorism approach is not only problematic because it mandates legal intervention in educational settings on contested terms but also because it is an example of a wider shift in justice and criminal accusation. Kafka's story of Josef K. provides an apt legal metaphor to depict what scholars like Andrew Ashworth and Lucia Zedner (2014) call 'preventive justice', which is a newly emerging form of justice that already criminalises its subjects long before they try to attack anyone else's interests. Under preventive justice measures, laws, such as the Prevent legislation, empower the authorities to intervene in human lives in the name of justice, but on the grounds of suspicion alone. In this regard, Britain's Prevent policy as it intersects with education provides an apt example through which to bring to the fore a focus on the relation between law, citizenship, education and justice, as the scholars in this Special Issue do.

Indeed, much like Kafka's *Trial* reveals, each contribution in this Special Issue explores the oblique nature of the law and its emergence in the Prevent legislation in terms of its expansion into educational discourse through the curriculum, due processes in teacher education, and through the very values that underpin education. Each paper, in different ways, thus illustrates the diffuse nature of these legal processes and the ways in which these legal processes call people forward as both the objects and the subjects of law in potentially unjust ways.

Justice, education and citizens

The notion of justice is used centrally by O'Donnell to unpick and worry the relationship between education and the citizen. Her focus on the concepts of epistemic responsibility, testimonial and hermeneutical injustice and phronesis allows her to explore the ways in which Prevent may institutionalise self-censorship and therefore prohibit free speech. Counter-terrorism legislation, especially Prevent, is analysed through insights taken from a range of philosophers including Charles Mills, José Medina and Miranda Fricker with a view to answering the question of whether Prevent as it interfaces with education is unjust. O'Donnell's theoretical critique of law and policy further opens us to concerns regarding the wider pragmatic challenges to practices of free speech and 'safe spaces' in many classrooms.

Scott-Bauman's contribution to this issue, by contrast, considers Prevent as a new 'cultural Cold War'. Focusing on how essentialised othering of subjects amounts to forms of racial profiling that are not only illegal under British and European law but also can be conceptualised through different theoretical models such as Giorgio Agamben's 'state of exception', Scott-Bauman argues that legal authority in the case of Prevent acts with an exceptional status, stripping particular subjects of rights at its whim in the name of security. For Scott-Bauman, such conceptual critiques of Prevent are essential in the educational context because they highlight the ways that universities perpetuate the very 'deviant' behaviour that they claim to monitor. Furthermore, in perpetuating such extra-legal behaviour, universities also problematically suppress free speech and academic freedom upon which the foundations of higher education itself rests.

Stereotypes, safe spaces and academic freedom

Paul Ricoeur's hermeneutics of suspicion also emerges in Scott-Baumann's work to shed light on law's reliance on stereotyping and the creation of myths to frame its subjects in the context of Prevent legislation. Ramsay's contribution explains how the institutionalisation of suspicion in education is achieved through the categories of vulnerability, radicalisation and 'safe spaces'. He investigates the sources and nature of the coercion embedded within Prevent. In doing so, he argues not only that Prevent is a 'blatant programme of subversion against the academic freedom' of both students and academics, but that it draws on certain assumptions that also underlie the idea of education as a 'safe space', an idea often contrasted with Prevent. From one perspective, then, Prevent imposes a duty on teachers that undermines and thwarts what Arendt (1958) calls the 'right to have rights', which means 'to live in a framework where one is judged by one's actions and opinions' (pp. 296–297). Under the Prevent strategy, one cannot be judged on one's actions because one is already hailed as an essentialised 'other' and potential non-citizen which categorises abject subjects as the 'right kind of subject' to be targeted and accused.

Where these examples from contributors explain the deep theoretical relevance of an unpacking of Prevent legislation, other contributors in this Special Issue focus on the lived experience of those implicated in legislation. Davies et al., for instance, explore the perspectives of British Muslim undergraduate students, and they draw our attention to the implications of Prevent at the higher education level. Focusing on experiences of British Muslims, the paper provides us with insights into the ways that Prevent legislation hails particular identities as dangerous and other, and the strong impact this has on students. They consider the impact of Prevent on the way students interpret the law in relation to their identity and as individuals whose ideas and activities are potentially of interest to the state. The research considered in this article examines the use of terminology among students and considers why and how respondents appear to have internalised the concepts and political assumptions underpinning Prevent. In this way, the authors draw attention to the regulatory power of the law not only on actions and speech but also on identity and the modes through which individuals internalise state surveillance.

Law, education and values

Qurashi's article contributes an alternative study of the effects of Prevent in higher education through his reflections on experiences and insights gained from personal engagement with a university Prevent Group. He raises issues about the relationship between law and ethical professional behaviour when law is considered as an anathema to personal morality, a question that is pertinent to those who work in all areas of education. Where his focus is on the position of academics in universities, the same questions could be applied to all teachers and educational professionals regulated by Prevent and the Teaching Standards of 2012. He uses the notion of academic expertise to frame a damning critique of the way Prevent compromises intellectual integrity so that law (in the name of counter-terrorism) becomes the mechanism through which knowledge is remade to serve the needs of national security.

Under Prevent's legal obligation, schools must actively promote fundamental British values through the curriculum. Schools are under a legal duty to report students they deem vulnerable to extremism and are threatened with special measures if their policies are not proven robust in their 'safeguarding' process. Indeed, the Prevent policy implicates the entire spectrum of educational professionals, from those teaching at the primary level through to those delivering higher education. Three of the articles in this special edition explicitly consider Prevent in the context of schools, through a focus on policy, the curriculum and teacher professionalism. Bowie reviews the changing legal framework for school responsibilities around the teaching of values. The demands of Prevent coupled with non-statutory guidelines around the cultivation and enforcement of particular values have transformed both the language and the way values are conceptualised in school policy. Using an approach informed by Schwart's theoretical structure of values and Baxi's conceptualisation of the rights of man and modern human rights, Bowie argues that there is a surprising consistency in language used in values education policy and the requirements of Prevent.

Democracy, citizenship and resistance

Where Bowie's focus is on policy, Wolton's article turns to a close examination of teaching resources in order to further leverage criticism of Prevent. Focusing on the teaching materials on the suffragettes, Wolton interrogates the concept of democracy as it emerges in examples taught in the curriculum, in contrast to the way that democracy is conceptualised in Prevent legislation, particularly in terms of its association with 'fundamental British values'. She argues that the conceptualisation of democracy advocated by law in the form of Prevent, as an uncontested and eternal given, has the effect of robbing democracy of the political contestation that is its essence. Through her account of the current crisis of democracy in Britain, she highlights the tensions between the very values that are conceptualised as universally British and the requirements of Prevent to promote and enforce them in the classroom.

The professional conduct of school teachers is directly implicated through the exercise of Prevent and, for the first time in UK history, teacher conduct is regulated by counter terrorist legislation. Through a narrative investigation of teachers' understanding of free speech and safe spaces in classrooms, Bryan's article describes teacher's unquestioning approach to Prevent requirements. The many ambiguities, tensions and contradictions within Prevent and its interface with education, outlined by the contributors to this journal, were absent in the voices of teachers that Bryan interviewed. These teachers claimed no specialist knowledge in the areas of radicalisation or extremism or the law as it pertains to their duties but they neither questioned their abilities nor the expectations that they should perform these roles.

Conclusion

Our intention was for this collection of essays on Prevent to provide space for scholars to think through a pivotal problem of the moment, and the far-reaching implications of preventive justice measures for those concerned with the relation between education, citizenship and social justice. There is a growing recognition and concern regarding the ethics of the Prevent legislation, the stereotypes it cultivates, the forms of ‘justice’ it engages – if, indeed, these can be regarded as ‘just’ – and the problematic social relations it engenders. Viewing law as a product and producer of power relations, Prevent can be understood as operating discursively, as a socially constructed law in a particular historical context. From this view, Prevent should not be regarded as just simply because it is law, but rather Prevent ought to be recognised as a normative arrangement of power that is used to engender a particularistic politics that is ideologically underpinned and leveraged.

We hope that this Special Issue will encourage further discussion within the education sector, not only about the specificities of Prevent but also with regard to law’s broader imposition on education. This Special Issue is intended to act as advocacy for socio-legal, philosophical and critical scholarly work, demonstrated in the essays we find in this Special Issue, that can play a large role in cultivating important discussions about pressing educational issues, and the need for resistant practices to laws that, as Qurashi suggests, do not always sit well with teachers’ sense of morality and ethics. Understood in this way, Prevent can become subject to critical speculation, as a law that is swamped in political rhetoric and that is held up as a mask against the face of education. Taking this critical unmasking further, we ask the readers of this Special Issue to consider how further discussions can be opened within different educational institutions to continue to cultivate this critical dialogue around Prevent.

Jennifer Hardes and Lynn Revell

References

- Arendt, H (1958). *The Origins of Totalitarianism*. New York: Harcourt.
- Ashworth A and Zedner L (2014) *Preventive Justice*. Oxford: Oxford University Press.
- HM Government (2015) *Revised Prevent Duty Guidance: For England and Wales* (Crown Copyright). London: HM Government.