

“Psychological Harm and Free Speech on Campus”
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The basic idea of this essay is that it is a mistake to deny the existence of psychological harms or that such harms may justify limiting certain sorts of speech acts in certain sorts of circumstances, but that such circumstances are not part of the paradigmatic college environment.

Our Situation

A professor at Orange Coast College called the election of Donald Trump an “act of terrorism.”¹ She claimed the election was a painful attack. This misuse of language seems fairly common on college campuses today, but we should not go too far with that thought. Some of what the professor in question said was reasonable. Unfortunately, though, students are often looked at as if they must be protected from offensive statements made by their professors, other students, or others on campus. Hence, students at Middlebury College successfully worked to violently silence Charles Murray, whose views they deemed unacceptable (perhaps mostly without reading his work).² While Dr. Murray was not injured, a Middlebury professor with him was.

The problem is that some think that if a student feels offended—an entirely subjective phenomena—that is enough to warrant interference with a speaker. Many that find this situation unacceptable respond by calling the students “snow flakes” and seemingly worry they will melt in the face of disagreement. Such weakness, it is suggested, is due to their being far too coddled—first by their parents, then by an education industry fearful of being sued for offending anyone. Some making these claims seem to think that offense is completely unserious and that the idea that anyone could be psychologically harmed is absurd. Physical harm can be seen; psychological harm cannot. If it can’t be seen, it may not exist. Respected sociologist Frank Furedi correctly notes that there has been an “expansion of the meaning of harm.”³ He tells us “Once responses to adversity are culturally validated in a disease form they will, sooner or later, be experienced as harmful”⁴ and that because of this, “mental anguish and suffering have become legitimate claims for compensation.”

¹ See https://www.washingtonpost.com/news/grade-point/wp/2017/02/25/an-assault-on-free-speech-school-wont-punish-student-who-filmed-professors-anti-trump-rant/?utm_term=.3883cd7531b5&wpisrc=nl_highered&wpmm=1.

² See <https://www.nytimes.com/2017/03/07/opinion/smothering-speech-at-middlebury.html>. Fortunately, there has been something of a backlash against this sort of anti-speech activity. Indeed, dozens of professors at Middlebury signed a free speech statement; see <https://freeinquiryblog.wordpress.com/>.

³ Frank Furedi, *On Tolerance: A Defence of Moral Independence* (London: Continuum Books, 2011): 100.

⁴ *Ibid*, 106 and 106-107.

One hears of students—and professors!—claiming that stating controversial views or even asking controversial questions in class or other public fora harms listeners and thus should be limited. Talk of rape culture, questioning the extent of racism or sexism, questioning the historical record regarding HIV and AIDS or the Nazi Holocaust, might “trigger” students who must be protected from the harms they will experience upon further discussion. This makes discussion in many classes difficult. When one teaches business ethics, for example, one might read work asserting that employment at will laws are beneficial for workers as well as business firms and some may feel themselves “attacked” because they must be employed while students and see themselves as having no power to resist the evils of their employers who can fire them without cause. Teaching medical ethics, for another example, one might read work denying that a fetus is a person and feel oneself “attacked” either as a religious believer who takes all human life to be of equal importance or even, perhaps, as a person that started off as a fetus. “Free speech,” Furedi claims, “is thus treated as a risk factor that needs to be assessed in relation to the potential harm that it can cause the individual.”⁵ For many that wish to defend freedom of speech, it is easier to insist that none of these things count as harms and so provide no reason to limit speech.

Free speech is best defended neither by a far-fetched claim that any speech act that causes anyone distress must be prohibited or sharply delimited nor by an equally far-fetched claim that all speech acts are permissible. What we need, instead, is recognition of appropriate limits of interference laid out in strict normative principles of toleration. In the next section, I briefly explain what I take to be the correct principle. This crucially involves explicating the way harm is to be understood in the principle. I will then show what this principle means for freedom of speech, especially on college campuses. It does allow that there are limits to free speech—including limits recognizing psychological harm—but in ways I think all will agree are perfectly acceptable.

The Harm Principle and Harm

It would be convenient for free speech advocates if there was no such thing as psychological harm. Almost all of us recognize that the presence of harm is reason to consider limiting freedom. That is, if Alice harms Bill, we recognize that we might rightly interfere with Alice. John Stuart Mill codified this view in the mid-nineteenth century by saying “the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection ... the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.”⁶ If

⁵ Ibid, 117.

⁶ John Stuart Mill. *On Liberty* (Indianapolis: Hackett Publishing, 1978), 9.

speech can harm, then, it provides warrant for interference. This would not, of course, be a demand to limit all speech. Still, even a demand to limit speech that anyone *might be psychologically bothered by* is a big demand that would stifle the academy. This may motivate some to deny that there is any such thing as psychological harm and to instead ridicule those claiming speech has hurt them. Yet, there is some speech that is harmful and should be interfered with. What we need is a middle ground. Mill’s harm principle, properly understood, gives us that middle ground.

Some might read Mill’s principle as indicating that anytime someone is hurt there is reason for interference. This badly misreads Mill. Throughout *On Liberty*, he makes clear that his is a jurisprudential principle, meaning it is about justice. Indeed, some read the principle as indicating interference is only permitted when rights are violated.⁷ We need not concern ourselves with that here. What matters is that the principle does not allow interference unless the “harm” involved is a wrong (which may or may not be a rights violation).⁸

What does it mean to say that the “harm” involved is a wrong? We can understand this more clearly by recognizing that people can be *hurt* without being wronged. In such cases, we tend to think either they have no claim to aid or that they have less of a claim to aid than they would if the hurt were the result of a wrong. To make that concrete: if I stub my toe on my desk, I am hurt, but there is no wrong. Putting the point better: no one wronged me. As no one wronged me, I have no claim to help in interfering with anyone. By contrast, if Burke breaks into my home and stabs me, I am hurt and—this is the important point—I am hurt specifically because of Burke’s wrongful act against me. Given that wrongful and hurtful act, interference with Burke is permissible. That is the point of the harm principle: when one person wrongfully hurts another, the first harms the second and can be interfered with. Absent harm—which means absent either the wrong or the hurt—interference is unwarranted. This does not mean someone cannot charitably offer assistance, but that coercion and force are ruled out.

Consider a couple of more examples. Say I see a car barreling down the road on a clear trajectory to hit Adam, who is haplessly in its way; I can rush to Adam, pushing him out of the way to save his life. If he hurts his knee from the fall caused by my rushed push, he is clearly hurt. To say that I wronged him—when my only goal was to prevent his being hit by the car—is not plausible. In that situation, then, I do not harm Adam and no interference with me—in some perverted attempt to rectify Adam’s situation—is permissible. (Interference with the driver of the car for that reason is likely warranted.) By sharp contrast, if I look out and see Adam innocently

⁷ For “harming as right violating,” see Feinberg *Harm to Others* (NY: Oxford University Press, 1984), 109-114.

⁸ This view is best defended in Joel Feinberg’s four-volume magnum opus *The Moral Limits to the Criminal Law*. See, e.g., his 1984, op cit). I also defend it in my *Toleration* (NY: Polity, 2014).

in front of my house but hate him and wish to see him bloodied and so go outside and, unprovoked, start pummeling him, it is almost certainly the case that I wrongfully hurt Adam—and so interference is warranted according to the harm principle.

In short, the harm principle allows interference when one person⁹ wrongfully hurts another, but not when a person is hurt in ways that are not the fault of another and not when a person is hurt in a way due to the innocent or blameless acts of another. The harm principle rightly indicates we can interfere with an individual if that individual is *at fault*—meaning, they wrongfully cause hurt. In that sort of case, the injured party has a just claim against the other. Where there is no injustice (no wrong) or no hurt, no one has a just claim against another and there is no call for interference. (The Latin “*ius*” is the root of “justice,” “injury,” and “jurisprudence.”)

I should make clear that while the harm principle tells us when interference is permissible, it does not tell us when (if ever) interference is *required*. Interference is warranted when there is or will be harm, but there may be good countervailing reasons to not interfere in specific cases. For example, it seems unlikely that we ought to interfere to punish Jill who slapped Bill in Tulsa and then flew to Russia. Had we caught Jill before she left the U.S., some form of punishment might be reasonable. Pursuing her to Moscow and beyond seems not to be.

Speech and Harm

One way to consider the issue of free speech is to consider its normative limits. That is, we can ask—and I think we ought to ask—if there are any normative limits to speech such that past those limits we should say “no, this speech is not OK and can be permissibly limited.” As should be clear, I think the way to address this is to determine what sorts of speech can harm. If there is such a thing as harmful speech—that is, speech that wrongfully hurts another—the harm principle will allow interference. If interference with speech is morally warranted, that is a limit to the sort of speech that is permitted.

There is something intuitive about the idea that speech is not normally harmful. My talking about Joe is very different from my hitting, stabbing, or shooting Joe. My speech seems not to “touch” him. Of course, strictly speaking, it may. He may hear me, which means the soundwaves I have caused have affected his eardrums and sent impulses to his brain. This is not really what we mean to discuss when we talk of free speech, but doing so is instructive.

Imagine that Sally's speaking inevitably results in the death of whomever she's speaking with—this is due to some physical process having to do with the

⁹ Throughout, really, this should be “one person or group of persons.”

soundwaves she creates, but we need not be concerned with those details here. Imagine Sally knows the affect her voice has, but really hates Joe and wants to see him dead. If she then goes and talks to him in order to see him dead, we would surely say this was wrongful and that interference was permissible. In the language I have been using, we would say that Sally wrongfully hurt (innocent) Joe, so interference with Sally was permissible.

What, though, if Sally did not wrong Joe? What if she is unaware or unable to control the effects of her speech? In such a case, it would seem she does not harm Joe, so coercive interference would seem unwarranted. Of course, we could make her aware of the effects of her voice and once she is aware of those effects, she would seem to have some duty not to use her voice. (I would think she wouldn't want to.) If she does, though, it seems she is willing to hurt others merely to speak—and something seems wrongful about that.¹⁰ In any case, it seems reasonable to interfere with her speech to prevent the deaths she would otherwise cause. Of course, there may be instances where her speech would not be wrongful even given the horrible outcomes. Her failure to speak in a particular case, for example, may have far more serious consequences. In those cases, she would wrong no one by speaking and we would not interfere with her.

Obviously, the Sally case is not really about free speech. The issue about speech is not about vocalization, but about statements, no matter how they are made. Hence, even if we could interfere with Sally vocalizing her speech, we would not be justified in preventing her from writing and publishing her thoughts. The point, though, is that speech can harm. This is true no matter how the message is delivered.

Consider a famous case: Nazis planned to march in Skokie, Illinois in 1977 (then 1978). It seems they chose Skokie specifically because there was, at the time, a large population of Jewish Nazi Holocaust survivors living there. That is, they wished to make a public statement that they knew would be hurtful to a large group of individuals. For those survivors, of course, seeing publicly demonstrated support for the German Nazi's that killed 6 million Jews (and another 6 to 8 million people) was likely to cause distress. By comparison, a peaceful march today for the Black Lives Matter or Gay Pride movements in downtown Atlanta would cause no one distress—no one would have reason to fear those marching or what they stand for. In the Skokie 1978 case, there would be harm; in the Atlanta 2017 case, there would not. If the harm principle is accepted—as I think it should be—there is reason to prohibit the former but not the latter.¹¹

¹⁰ Determining when there is wrongfulness is difficult, but I set that aside here.

¹¹ The Supreme Court of the United States upheld the Illinois Supreme Court decision allowing the members of the National Socialist Party of America to march. (Perhaps mistakenly, according to the view defended here. The Nazis could, of course, have marched elsewhere.) To be clear, having a reason to interfere does not mean having a *decisive* reason to interfere. As already noted, there may be a countervailing reason that is weightier. The harm principle provides a necessary, but not a sufficient condition, for interference.

The difference between the two cases just discussed is not, of course, about the soundwaves or any other purely physical event. It is, about the psychological lives of those receiving the message. In Skokie, the result is distress, fear, uncertainty, etc. In Atlanta, none of these is present. There is a difference.

It seems clear that context matters when discussing the possibility of psychological harm.¹² It may be that Nazis walking in Skokie today would cause no harm at all—it may be that there are no Holocaust survivors remaining there. Let us consider other sorts of cases.

Sound medical advice, offered without malice, is paradigmatically not wrongful. A doctor telling a patient, for example, that he is overweight and needs to diet, may cause offense or insult to the patient, but is not harmful. By contrast, a parent meanly yelling at a seven-year-old child that he or she is a fat, disgusting blob, is likely harmful. A parent’s responsibility to their child requires ensuring the child is healthy, both physically and psychologically. While a parent can echo a pediatrician’s concern and help the child to improve their diet and exercise without causing harm, doing so maliciously can not only hurt the child, but do so wrongfully.

For those that doubt the damage that can be inflicted, it should be instructive to realize that if children live with six of the following ten experiences, their life expectancy is twenty years less than it would otherwise be: emotional abuse, physical abuse, sexual abuse, neglect, feeling unsupported, divorce or separation, domestic violence, substance abuse (by others in the home), mental illness, depression or suicide (by others in the home), or a family member being in prison. Moreover, the presence of four of these more than doubles the chance of heart disease, more than quadruples the chance of depression, and increases the chance of suicide twelve-fold.¹³ If a child is raised with emotional abuse, divorce, substance abuse, mental illness, the imprisonment of a parent, and feels unsupported—none of which involve direct physical harm—their life expectancy is reduced by 20 years. It is very clear that psychological factors affect physical health.

I should note, perhaps, that some that discuss speech want to focus on the wrong in a particular bit of speech—*i.e.*, *the content thereof*—rather than on the harm done by the speech act itself. They focus, we might say on the illocutionary rather than the perlocutionary. Unsurprisingly, this strikes me as backwards. On the view advocated here, it does not matter what you say (or do!) wrong, unless you wrong someone—indeed, unless you *harm* someone.¹⁴

¹² This is true of physical acts as well.

¹³ This according to the Adverse Childhood Experiences Study (see www.acestudy.org),

¹⁴ Case law generally requires viewpoint neutrality when asking if speech can be limited. The idea is that the state should not interfere with speech based on its content. My view accepts this. It is not the evil of the Nazi viewpoint—symbolized in the swastika those wishing to march in Skokie would

Free Speech and Colleges

The context of speech clearly matters. Some speech that would be harmful in one sort of social gathering may not be harmful on a college campus. Some speech that can be prohibited in some places, cannot be prohibited on college campuses. This is because of the nature of colleges. The important factor here is that on college campuses, everyone expects—or should expect—to hear views that conflict with their own. I will explain this further.

Imagine that Steve is invited to the home of a friend of a friend. He knows this person has strong Zionist beliefs. Steve goes, largely because he is curious about Zionism and how it fits with his own (misguided) beliefs that the Holocaust was a hoax. Let’s specify that Steve does not wish to be rude, insulting, or in any way hurtful; he is looking specifically for honest discussion about this issue because others have made him doubt his beliefs. Steve begins, shortly after arriving, by asking “Do you believe the Holocaust actually occurred?” His host, taken aback, indicates that her great grandparents and several aunts, uncles, and cousins all died in concentration camps. She adds that she appreciates that Steve meant no disrespect, but that she does not wish to discuss it further though she is willing to email Steve some information that would aid his doing further research. If Steve persisted, I think, we would all agree that the host was within her rights to end the visit and tell Steve to leave. Even those of us who defend free speech do not claim it requires being able to speak wherever and whenever anyone wishes. The host is in her house and can exclude Steve from her property so that he cannot speak within it. Such violates no right. Had Steve been more belligerent in his delivery, his host may have even been harmed, beginning to fear that Steve is part of an anti-Semitic movement that would not mind deporting or killing all Jews.

Often, many that wish to insist on free speech, seem to forget that it does not require that anyone give anyone else a podium, that anyone listen, or that no one close their doors to speech. This is true in your home, in a neighborhood store, and even in large corporate owned or franchise stores. It is even true, unfortunately, on the campuses of private colleges. Within the confines of private property, the owners of that property can limit the speech of others. They can do this whether there is harm or not. In the public sphere, however, it is only harm that warrants interference to speech (or any other acts).

On college campuses—whether public or private—something else is going on. As I indicated, on college campuses all should expect to hear views they disagree with. This is perhaps a difficult point to make clear in a society that values rote

have worn—that makes interference permissible on my view. It is, rather, the harm the symbolic statement would make *in that situation*. This is why context matters, as indicated above.

memorization up to, and sometimes through, college. If the point of school is to memorize facts, then schooling that presents facts one disagrees with will be either painful or transformative—the latter perhaps in a bad way. One might come to simply accept the “facts” one is repeatedly exposed to, but only because of what seems like the worst form of indoctrination. Classically, though, college is decidedly *not* about memorization. It is, rather, about exercising one’s mind, expanding its muscular stature. For that reason, although we expect civil discourse, good colleges do not shut down conversation about difficult questions.¹⁵

Returning to Mill, he clearly believed that the mind was like a muscle—capable of growing, improving, and strengthening, and equally capable of withering, degrading, and weakening. He tells us that “The mental and moral, like the muscular, powers are improved only by being used;” if they are not exercised, they become “withered and starved.”¹⁶ On this view, we exercise our rational abilities when we are made to question—either because we simply have no belief about the topic at hand or because we do, but our beliefs are being challenged. If one has no answer to a question, one must think it through and work to find an answer. If one has beliefs and they are being challenged, one must think through the issue to work to see if one’s existing beliefs withstand scrutiny and can be defended. This, I would suggest, is the driving force behind the pedagogical belief that college students expand their horizons and learn to use their minds in new and more analytic ways when we expose them to problems they may not have yet considered. That exposure, it is hoped, will force them to exercise (and thus improve) their rational faculties—and we further encourage this by opening available solutions to scrutiny. This is the point of college, properly and classically understood.¹⁷ It is also why I have a statement on all of my syllabi that reads:

I highly value honest and unimpaired, but respectful (and hopefully friendly), dialogue. You should not pretend to think I am (or anyone else you respect, is) right when you don’t; I will extend you the same courtesy. To do otherwise, I think, is to fail to show respect. If you don’t indicate your disagreement, it would seem that you think your interlocutor is *not worth* correcting—i.e., that you do not respect her. As I come to the class assuming you are worthy of respect, I will indicate when something you say is questionable, leaves you committed to something I reject, or even that you are simply wrong (but feel free to challenge me!). I expect you to do the same (and I may challenge you!). I expect this sort of respectful behavior of all in the class. It is my hope that this will allow for a maximally tolerant, open, and honest, discussion.

¹⁵ Sometimes students may seek to shut down speech because they think it or the speaker is harmful to others. That is, their concern may not be with their own welfare but with that of others. In such cases, I would suggest, dialoging with the speaker is likely the better solution.

¹⁶ Op cit, 56 and 58.

¹⁷ Mill also argues, correctly in my view, that by encouraging scrutiny of one’s beliefs, freedom of speech leads us to be justified in our beliefs and leads us to uncover truth.

In the college environment, the real harm is caused when students *are not challenged*. Students might start out devout Christians or Leftists (or anything else) and remain so upon graduation, but if they were not exposed to any beliefs that contradicted theirs in the four years they were in school, the school failed them. Miserably. Any money spent on tuition, fees, etc., were essentially stolen as they did not receive what they paid for.

This means that freedom of speech is especially weighty on college campuses. It's not that speech can never be harmful in such an environment. Psychological harm remains a real possibility. But given that the *purpose* of college is to have one's views challenged, being challenged—even by truly heinous claims—is extremely unlikely to be wrongful and so unlikely to be harmful. Moreover, small wrongful hurts—i.e., harms—will count as *de minimus* and not be interfered with. Shutting down speech to protect one student from a minor harm is too risky. The risk of not challenging countless other students—a great wrong—is too high.

Students Need Comfort Too

Some will object that it is expecting too much of college students to have them constantly bombarded with challenges to their beliefs and that we must recognize that college campuses are *homes* to college students. If this view is accepted, then just as the Zionist can exclude Steve and his questioning from her home, college students should be able to shut out the claims that leave them disturbed. This fails to see how different the situations are. The point in having dinner at a friend's home is very different from the point of going to college. The point in the latter—its *raison d'être*—is to be challenged.

It's not at all unreasonable to want one's home to be a “safe place” where one can get away from intellectual challenge. But a college campus is not a home. Even a college dormitory is *not a normal home*—or at least should not be. A campus dormitory should be a place where college students live *as college students*. That is to say, a place where they discuss, debate, learn, and grow. It should not be free of intellectual debate, but should be continuous with the rest of college life. Many of us think we learned as much, if not more, in non-classroom space at college as we did in classroom space. In any case, it is clear that classrooms are not the only places of learning and growing. Anyone demanding that his entire dorm be a space safe from debate is indicating a desire to not be a college student. That desire can be met only by his withdrawal from the college. Of course, we all do want and need some space that is safe for our own contemplation, relaxation, regrouping, etc. For college students that place is often in their own dorm room. That space is, roughly, their genuine home—and there they are and should be free to block out the outside world in safety. That is the only place for a space safe from intellectual challenge on a

college campus.¹⁸ That is the only space where freedom of speech should not be respected on a college campus. Visiting someone’s college dorm *room is visiting their home*. There, they make the rules. Everywhere else on the college campus, though, is subject only to the rules of academic integrity.

One final note. As Jonathan Rauch wrote, colleges and universities need only one trigger warning:

Warning: Although this university values and encourages civil expression and respectful personal behavior, you may at any moment, and without further notice, encounter ideas, expressions and images that are mistaken, upsetting, dangerous, prejudiced, insulting or deeply offensive. We call this education.¹⁹

Perhaps there are cases where something more is reasonable. The discussion of rape in a class where there is no reason to expect it, can surely trigger truly hurtful memories in rape survivors; providing a warning in advance of such a discussion where possible seems a simple way to prevent that. Given that it is entirely likely that there are survivors in any college class, it's not clear why we wouldn't want to do that. This wouldn't be necessary in a class on the history of marriage (where such discussions are to be expected). Nor should students be exempted from such discussions; providing warning is not exempting. There may be other sorts of issues that could similarly benefit from trigger warnings, but there are not likely to be many and they are not ending speech, but allowing some to retreat to their own homes. Given that sort of retreat is available, there would be no reason not to have speakers on campus that would, perhaps intentionally, trigger some discomfort. Such speakers can challenge students—as is required in a genuinely collegiate environment. That is how students learn and grow. That is how they find their place as independent adults in the broader world. That is how they become contributors.²⁰

¹⁸ Some will worry that this makes impossible groups dedicated to particular religious or ideological views. If the Catholic (or Libertarian) Student Organization, for example, must allow non-Catholic (or non-Libertarian) students to speak against Catholicism (or Libertarianism) at their meetings, the group may think its purpose negated. For my part, as long as those that attend such meetings to bring a dissenting viewpoint do so respectfully, I remain unconcerned. Of course, if the group finds even respectful dissent unacceptable, they could have informal meetings in their dorm rooms or off campus. Respectful dissent, though, is fully compatible with teaching and learning so even if the point is to learn more about the religious or ideological view at hand, there should be no problem.

¹⁹ <http://www.nydailynews.com/opinion/jonathan-rauch-new-trigger-warning-college-kids-article-1.2431527>

²⁰ Thanks to Chris Surprenant, Tom Cushman, and the Institute for Humane Studies for putting together a workshop about free speech on campus where these ideas crystalized. Thanks also to Chris and Daniel Shapiro for comments on a draft of this article.