

Freedom of expression and no platforming

Some complain that either the right to freedom of speech or expression or people's freedom is being restricted in recent times by calls for no platforming certain individuals. This paper aims to argue that such complaints are misplaced. The right to freedom of speech, will be argued, is best understood as a right against governments and social censorship does not restrict or infringe on this right.

First, I will clarify the ways in which this right can be understood, namely either as a Hohfeldian liberty or an immunity. The former can be held against other people but does not correlate with a duty that they refrain from criticising the content of any speech. So demands for refraining from expressing certain opinions are not restrictions of the right to freedom of speech but rather demands for self-censorship, which is not a restriction of our freedom of expression, even if we may *feel* unfree to say things.

The latter is held against a government and is usually a specific instance of freedom of expression, which is freedom of the press. But nobody thinks that the freedom of the press should be unrestricted. There are laws against libel, slander, defamation as well as complex professional ethics standards that journalists must comply with and I take it that a democratic society would not want to do away with those. So, again, it is just a misconception that the freedom of the press should be unlimited and that the press should be immune from the powers of the state.

I then consider the claim that no platforming diminishes empirical (rather than deontic) freedom. I argue that this claim does not withstand scrutiny if we adopt a negative conception of freedom. No platforming may diminish freedom of *choice* but, inasmuch as this is undesirable, it should be compared to the freedom of choice of the members of communities offended or harmed by the speech in question.

In recent years, there have been increasing demands, mostly from student organisations, that specific individuals be banned from speaking on campuses or have their invitations to speak rescinded, because of views they had previously expressed that were considered offensive. Some recent examples in the UK include the journalist Julie Bindel, the feminist writer Germaine Greer, and the politician Amber Rudd but examples abound in other countries too.¹ This practice is referred to as no platforming and it has come under attack for allegedly infringing the right to free speech or discouraging freedom of expression.²

This type of practice is not new. The National Union of Students (NUS) in the UK, for instance, has long had a policy according to which no "individuals or members of organisations or groups identified by the Democratic Procedures Committee as holding racist or fascist views" may

¹ See for instance Bindel (2015) and Dittum (2014).

² See, for example, Cohen (2015) and The Economist (2016).

stand for election to any NUS position, or attend or speak at any NUS function or conference. In addition, or in conformity with this policy, students for instance often protest the fact that certain speakers are invited to give talks on university campuses.

What these forms of protest amount to is a demand that certain views not be heard on certain platforms or occasions. So, if successful, they would result in the speaker not being invited or, if invited, there being no audience. A specific instance of speech would thus not take place. So I will treat protests as a call for no platforming although there have been occasions where protests have successfully prevented an invited speaker from being heard.³ I will mostly be concerned with instances where a proposed speaker was not invited or disinvited.

Guidance issued in the UK by the Equality and Human Rights Commission (EHRC), with help from the National Union of Students, the Home Office and a host of other bodies, makes clear that not inviting certain speakers is permissible but at the same time insists that ‘any decision about speakers and events should seek to promote and protect the right to freedom of expression.’⁴ The language here is well advised since it is not claimed that no platforming would *infringe* or *violate* a right but rather student associations are called on to *protect* and *promote* the right to freedom of expression. This is, however, unusual since it is generally not the job of private bodies to protect and promote rights; this is the remit of governments and specific organisations while private individuals are merely required to *respect* them. In this piece, I will specifically ask two separate questions: 1) whether no platforming infringes on the right to freedom of speech and 2) whether no platforming diminishes freedom of expression. Having a right or legal permission to do something is quite different from having the physical freedom to do, as it will become clearer later on, so they should be treated separately.

So let me start with the right to free speech or to freedom of expression. We tend to use the term ‘right’ in different ways that should be distinguished from each other as W.N. Hohfeld was at pains to point out. Hohfeld noticed that the term ‘right’ is applied in legal discourse at least to any of four different types of entitlements: claims (or rights proper), liberties, powers and immunities. Each of these legal positions are one side of a legal relationship, the other side of which would be described as a ‘correlative’. Understanding these (different) deontic relationships is key to avoiding common traps about rights.

The most important of these positions are the first-order ones, namely claim and liberty. Most of the time, we use the term ‘right’ to refer to a *claim* we have against other people, or the government, or perhaps some other form of political authority. A claim correlates with a duty, which is to say that for every claim (-right) there is at least one party who owes the claim holder a duty with the same content with that of the claim. This is what we mean when we say for instance that we have a right against torture, a right to a fair trial or a right to health care. In all

³ At a debate at Galway university in 2014, the writer Alan Johnson, who was speaking against a boycott of Israel, could barely be heard. See <https://www.newstatesman.com/sarah-ditum/2014/03/when-did-no-platform-become-about-attacking-individuals-deemed-disagreeable>

⁴ <https://www.theguardian.com/education/2019/feb/02/government-tells-universities-to-protect-free-speech-on-campus>

these cases, having the right implies that other people have an obligation to refrain from doing something or indeed to perform certain actions. But it is *other* people's actions or omissions that we have a right to.

In other cases, we say that we have a right *to do* something. We have a right to leave a country, a right to protest against water charges and, of course, a right to express our opinions. The right here refers to our own actions and it is, in Hohfeldian terminology, a 'privilege' or a liberty rather than a claim. A liberty is simply the absence of a duty to another party to (not) perform specified actions; the correlative of a liberty is a 'no-right', to be precise a 'no-right' that the liberty holder does *not* do the specified action. This is indeed what most 'freedoms' refer to; the fact that doing that particular thing is allowed, there is no prohibition against it so we are under no obligation to refrain from doing it. We might add that, for Hohfeld, this absence of a (legal) duty was not a 'right proper' or a right 'in the strict sense'. What should be noted here is that having a liberty does not imply the existence of a duty on others not to interfere with the exercise of this liberty, as long, of course, as the interference would not violate other claims. I may have a liberty to pick up an apple fallen off a tree in a public park, but others may have the same liberty and whoever gets to the apple first and picks it up violates no claim of others.

But people often assert their right to do something and surely, they don't merely mean to assert that they have no duty to do otherwise. They often mean to assert a Hohfeldian liberty protected by a claim to non-interference. But it is the claim that is the 'proper' right here. There are no rights to do things, only rights that others do or not do something. A right to do something can only be a liberty at its core.

Now, the right to free speech or freedom of expression appears to be one of those rights to do something, i.e. to express yourself. How should we understand it? In line with what I said above, it must be first, a liberty to express yourself. You have a right to free expression inasmuch as there is no rule prohibiting (certain forms of) expression. Does that mean that other people have a duty not to prevent you from expressing yourself? Well, that depends. It is of course illegal and unjustified morally if people try to prevent you in certain ways: by throwing stones at you, by assaulting you, by literally trying to shut you up. But those are illegal and I would say clearly illegitimate ways of stopping you because there are other rights that you have that prevent that: rights against assault, physical interference etc.

But people can prevent you from expressing your views in other ways. They can shout louder than you, they can refuse to listen to you or convince other people to not listen to you. They can do those things, in part, because they too have freedom of expression. So freedom of expression just means that you have no duty not to express your views but it doesn't mean that you have a claim that your views be heard. So it can hardly be interpreted as a right against other people that they do or not do things and it seems clear that in this sense no platforming or protests do not violate your right to speak.

But this cannot be all that the right to freedom of expression usually refers to. This seems to be a right that is central to a democratic society and we often invoke it when we think the government is (about to) restrict its scope. That is, when it is about to impose duties on us not

to speak in certain situations or express certain types of views. If the government imposed such obligations or prohibitions, we would not be at liberty or have the legal freedom to express our views in some situations. So it might seem like we are asserting a mere liberty here; but this appearance is misleading, I think. We are asserting that it should not be in the power of a government to place such limits. In other words, we think we should be *immune* from the powers of the state in this respect. So this (democratic) right is best interpreted as an immunity, which is a second-order Hohfeldian position. But note that this still does not mean that the first order position it refers to changes. As regards other private citizens, the right to freedom of expression may remain a Hohfeldian liberty, which entails no duties to listen or provide a platform for any view. So refusal to provide a platform or listen to certain types of speech does not violate a right to speak freely. It would only do so if it was the case that others had duties to listen to every form of speech and I doubt that this is the claim that defenders of freedom of expression want to make.

It's also unlikely that defenders of freedom of expression would want to claim that this is an area where states should have no power at all against us. All states place limits on freedom of expression, such as when it amounts to libel, hate speech or incitement to violence. Nevertheless, the point that I want to make here is that it is indeed only the state that can restrict our right to freedom of expression. This is not a human or natural right (claim) but rather a civil and political right held against the government. Other people cannot restrict or infringe on the right to freedom of expression although they can restrict or infringe on our physical freedom.

So, it is I think a misconception to 1) either complain about the fact that other people restrict our freedom of expression – by failing to listen to us and 2) or to deny that the state can ever place restrictions on this right, i.e. that it is an absolute immunity. So where do these clarifications leave us? I think that they imply two things.

One is that when it comes to freedom of expression (of individuals) this refers primarily to an absence of duty to express certain views rather than a right against others and second, that only the state can restrict this freedom by imposing (legal) duties. Furthermore, inasmuch as it is claimed that the state has no authority, i.e. that we have an immunity as regards speech, this is not an absolute immunity since the state does impose penalties for certain types of speech (e.g. defamation). Now, someone might point out that when people complain about no-platforming or protest, it is not the right or even Hohfeldian liberty to speak that they envisage but rather empirical freedom of speech.

One is normatively free to perform an action inasmuch as it is permissible to do that action. One is by contrast empirically free to act inasmuch as there are no barriers or obstacles to the action. According to MacCallum's classic definition, freedom is 'the absence of certain constraining conditions on possible actions'. On a purely 'negative' conception of freedom, these constraints must render an action physically impossible. Other conceptions of freedom might count constraints, including internal constraints, that make the action merely ineligible rather than impossible. For instance, the costs of performing an action might be so high as to make it ineligible. To take a stock example, if the cost of walking away with your money is losing your arm, it would be a stretch to describe you as free to keep your money even if it is

physically possible for you to do so. A threat does not render you unfree to do something on a pure negative conception of freedom; I will return to the issue of threats.

To be clear, this serves to define a ‘specific’ freedom, i.e. freedom to do X, rather than overall freedom. Claims that individuals or societies are more or less free refer to overall (individual or group) freedom. How to measure the amount of overall freedom that an individual or society has is, of course, a very complex and disputed matter.⁵ We need not, however, attend to those complications. We can assume for the purposes of this essay that removing a specific freedom from an agent’s set of options diminishes the agent’s overall freedom and adding one increases it. So it may be the case that no platforming does diminish one’s freedom (of speech) inasmuch as it removes one specific freedom to speak. But do protests or no platforming make one unfree to speak in a specific instance?

Of course, on a negative conception of freedom, mere (non-violent) protests do not render one unfree to speak in a particular instance. More generally, social pressure aimed at inducing one to refrain from acting in a particular way do not make one unfree to so act. I will say more about this later. But perhaps no platforming does remove a freedom since it may entail physically preventing someone from speaking in a certain place at a certain time. Of course, this does not necessarily mean ‘removing’ a freedom. If I am invited to speak at an event, I’m given an (additional) opportunity to speak. This will mean that barriers that may have previously been in place to my speaking at that event are removed by the invitation. If the invitation is rescinded, the barriers are reinstated. But it was an additional freedom that was removed so I’m no less free than I was before the invitation. Moreover, if I haven’t already been invited and won’t be due to calls for no platforming, it seems quite clear that no freedom was removed and my overall freedom is not diminished. Is my freedom of speech diminished by the lack of invitations to academic events, for instance? I’m guessing not but then it’s true that I may have less overall freedom to express my ideas than a colleague who gets invited all the time.

So let’s accept that no platforming removes a freedom token and that this does indeed diminish a person’s overall freedom (of speech), albeit to almost a minute degree. But inasmuch as we are concerned with overall freedom as a property of agents, a legitimate complaint is presumably not that someone who already has more freedom than others had their freedom diminished. We would want to compare this person’s freedom or opportunity to speak with others’. I’m finding it quite bizarre that these complaints often occur in relation to people who are in the media or public spotlight and get a lot of invitations to speak publicly. The more opportunities they get to speak (and say the same thing) the more the more complaints about breaches of their freedom of speech. It seems clear to me that if we care about freedom of speech, we should seek to increase the freedom of those who have significantly less of it. One may object that the issue is not whether people have the negative freedom to speak in certain places at certain times but whether there are opportunities for certain (unpopular) opinion to be aired, especially in certain circles. But it seems to me that this cannot be the concern about no platforming since that usually occurs precisely because the audience is aware of the views of

⁵ For the best treatment of the issue of measuring freedom, see Carter (1999).

the speaker. Through no platforming the potential audience makes a statement, namely that such views are unpopular. In other words, they are exercising their freedom of expression.

Again, it may be that the complaints are not about negative freedom or even the overall freedom of the person who is no platformed. One claim seems to be that protests and no platforming create a social environment where one is afraid to say certain things that would cause outrage in some circles so certain ideas or opinion are effectively removed from certain spaces. So it seems that the worry is not about the freedom (of expression) of the person who is non-platformed but rather *others'* freedom to speak subsequently. Knowing that some ideas are not welcome, I will be afraid to express them and will refrain. In other words, the claim is that *self-censorship* limits freedom of expression. Interestingly, this is a claim often made by people on the right of the political spectrum and yet it is also a claim that sits uneasily with the traditional 'liberal' concept of freedom. If this is the claim, protests and no platforming are effectively treated like threats (if you say this, we won't speak to you, you won't be invited etc), not just to the person who's no platformed but to others as well. On some views, though not all, threats do restrict freedom. However, on a pure negative conception of freedom, usually favoured by libertarians, threats do not remove the specific freedom to perform that act that one is threatened not to perform. Recall that on this conception, one is unfree to do something only if it is impossible for one to do that. This conception is illustrated in the anecdote that Carter recounts at the start of the chapter on constraints on individual freedom. A Czech citizen, speaking before 1989, assures a Dutch interlocutor that he has (almost) the same freedom of speech as the Dutch: 'We are free to say absolutely anything we like. The only difference is that we don't have freedom after the speech'⁶. On this conception, threats, including the threat of legal punishment, do not remove the specific freedom to do what one is threatened not to do.

However, even on the pure negative conception of freedom, threats arguably diminish overall freedom by removing not a particular freedom but rather a combination of options (Carter, 1999, pp. 226-232). But we should note that it is not the threat but rather its execution that removes some freedoms. If I do indeed kill you should you walk away with your money, you are no longer free to do anything. But prior to the execution of the threat, you remain as free as before, the argument goes. However, as Carter points out, the threat itself may remove the option of performing the actions precluded by the execution of the threat *together with* the action you are threatened not to perform. So, you are not free to walk away with your money *and* keep your life, or perform all the other actions you were going to perform if you were alive. This reduces a person's overall freedom.

However, it does not seem like any combination of options is removed in the kind of case we are examining here, namely no platforming. If the issue is that no platforming is in effect a threat that aims to deter expression of certain views by the no platformed speaker in the future, it does not seem like the sanction consists in the removal of future freedoms. Inasmuch as no platforming can be seen as a threat, it is one that tells the potential speaker that such views are not welcome in some circles and further invitations to speak will not be forthcoming. So the issue seems rather that the speaker's reputation will be damaged. Carter discusses briefly this

⁶ In Carter (1999, p. 219)

kind of case, where the sanction consists for instance in a 'damaged reputation' and is thus better conceptualised as a harm rather than unfreedom (Carter, 1999 p. 230). But if the issue is harm, then the harm threatened must be balanced against the harm potentially inflicted by the speaker, which is precisely what protesters usually argue.

We might also think that the issue is that no platforming is akin to a threat to others. If a speaker is no platformed because of certain views, people who hold similar views will be reluctant to express them for fear of disapproval and diminished reputation. This may be the case but again the issue is not one of freedom. Others remain free to speak even though they may not receive offers of a platform, that is increased opportunities to speak. Now, if the threatened sanction was one that removed options from the set of available options of individuals other than the no platformed speaker, the problem could be conceptualised as one of a reduction of *group* freedom (Carter, 1999, p. 230). But this is not the case for no platforming.

We might nevertheless think that a damaged reputation is a cost that would count as coercive. In other words, if people refrain from expressing certain views because of social pressure, they are coerced into doing so and in that sense their freedom is restricted. Of course, the issue of coercion is a long-standing and complicated one. Libertarians typically deny that coercion of the will counts as a restriction of (negative) freedom. One can interpret this as presupposing a positive conception of freedom, according to which internal constraints restrict one's freedom. But even the libertarian can agree that some threats alter the eligibility of actions and thus perhaps the agent's freedom *of choice*. The libertarian might nevertheless deny that a choice counts as coerced merely because the alternative is costly. Serena Olsaretti argued – convincingly in my view – that the libertarian (i.e. Nozick) must accept that a choice is voluntary 'if and only if it is not made because there is no acceptable alternative to it' (Olsaretti, 2004, p. 71). But even on her view, the costs of the alternative must be high enough to make it 'unacceptable'. It's not clear that social disapproval is the kind of cost that meets this condition. But perhaps it is not important whether the choice to stay quiet about certain issues is non-voluntary or coerced. It may be sufficient to say - and sufficiently disturbing - that that wanting to avoid social opprobrium reduces your freedom *of choice*. Having to choose between the truth, as you see it, and your friends, for instance, is hardly a choice that one can make freely. So we have reached the conclusion that no platforming may diminish the freedom to choose what to say of both those who are no platformed and others. This, however, let us not is not necessarily the conception of freedom adopted in other areas by those who tend to complain about no platforming.

But if this is the claim that people make, I do hope they are willingly to extend it to those who demand no platforming, who may be the kind of people who have been facing this dilemma all along. The groups that claim to be harmed or even merely offended by the kind of speech that tends to be no platformed tend to be precisely those whose views and speech had been met with widespread disapproval. Women, sexual minorities, members of racialised groups often refrain from complaining yet again about prejudice and discrimination for fear of alienating would-be listeners. If social pressure counts as a constraint on freedom (of expression), it may be that no platformers have less freedom overall. Moreover, I think we may also need to pay attention to possibly diminish others' freedom *not* to express themselves. If we are prepared to invite racist

or sexist speakers because we think this will expose these ‘ideas’ to public scrutiny and criticism, we should not expect this criticism to be expressed by others, e.g. women or members of racialised groups. If the dogma is that such ideas must be debated and subjected to public scrutiny, it is important not to expect those who have already had to do it repeatedly and had to face criticism and disapproval. It is, however, often the case that invitations are issued in the name of free speech to speakers who are known to have objectionable views and the expectation is that those who are targeted by these views will stand up and (calmly and rationally) debate the speaker. They are thus arguably coerced into speaking. So, in the interest of an equitable distribution of freedom of expression, the people who invite such speakers should at least be prepared to challenge them themselves instead of offloading this task to the same people all the time.

Now, it may be that the claim is neither of these. As Matthew Kramer points out, ‘the phrase “freedom of expression” (or any cognate phrase such as “freedom of speech” or “freedom of communication” or “free speech”) can be understood in more than one way. In one major sense of that phrase, it denotes a principle of political morality that imposes some deontological limits on the purposes for which any system of governance can legitimately deprive people of their deontic or physical liberties to engage in communicative conduct. In another sense of “freedom of expression,” that phrase denotes the deontic liberties of people to engage in communicative conduct and also the Hohfeldian immunities that normatively secure those liberties against efforts to extinguish or suspend them. In yet a further sense of the phrase, “freedom of expression” refers to the physical and psychological and normative abilities of people to engage in communicative conduct.’ (Kramer, forthcoming, Ch. 5)

I have only discussed the last two and it may indeed be the case that it is freedom of expression in the first sense that most people have in mind when they worry about no platforming. The worry would then be a more diffuse one, not about ‘freedom’ as such, inasmuch as I take it that’s a property of agents but rather about removing certain opinion or ideas from circulation.

I will not have much to say about this although, of course, this is what a lot of the literature on freedom of expression focuses on: the importance of this principle of political morality especially for a democratic society. I am also convinced that freedom of expression in this sense is important but we should note that the relevant domain is the society as a whole in many of these arguments. Most of the complaints about no platforming occur in the context of universities, and possibly other associations. But as other authors have now pointed out, it is appropriate to apply different criteria to speech in universities (Simpson, 2020; Simpson & Srinivasan, 2018). In a university, we might be concerned with academic freedom rather than freedom of expression, but the idea of academic freedom already presupposes that the content of speech is subjected to certain standards.

Some might argue that both academic freedom and freedom of expression are relevant principles for (not) regulating speech within universities; this is what Simpson calls ‘the standard view’ (Simpson, 2020, p. 292). Moreover, the suggestion made by many liberals is that the principle of free expression militates in favour of not making decisions about which views to hear based on their content, that we should be neutral between different views.

‘Communicative activities of sundry kinds can be prohibited in keeping with the principle of freedom of expression, but only if the purposes of the prohibitions are specifiable without reference to the communicative character or contents of the activities – and thus only if the forbidden activities constitute misconduct that can be properly outlawed on communication-neutral grounds’ (Kramer, forthcoming) But even if this is a workable criterion for the society as a whole, it is not clear that it can be applied to universities while also holding on to the idea of academic freedom. As Simpson points out, there is a tension between these two desiderata since ‘academic freedom empowers academics to regulate other people’s speech in a content-discriminatory way’ (Simpson, 2020, p. 292). So, it seems to me that it’s a mistake to simply transfer the arguments in favour of the principle of freedom of expression from the society as a whole to universities.

Now, some may worry that this would infect the society as a whole, as it were, and this is indeed a danger. If it is acceptable for a university or student society to disinvite a speaker, it may be soon considered acceptable for anyone, including a government body, to disinvite a speaker merely on the basis of unfounded accusations.⁷ This is of course an undesirable effect that should be resisted. A diversity of views should of course be encouraged in a democratic society. But if the relevant domain is the society as a whole, it seems strange that many complaints are about the alleged suppression ideas that have been prevalent in most societies for the longest time. Are we really worried that we lack sufficient exposure to racism, sexism, xenophobia or transphobia?

The modest upshot of this chapter is that, after surveying different possible arguments against no platforming to do with *freedom* of expression, none of the stack up and that ultimately the debate is not about *freedom* but, on a charitable interpretation, about the political principle of freedom of expression. In a less charitable interpretation, the debate is about the content of the views in question and perhaps what opponents of no platforming are really motivated by is the thought that the views that some object to are indeed worth hearing. Be that as it may, I argued that no platforming neither infringes on a right to free speech nor does it diminish the empirical freedom of the speaker to a degree that is problematic.

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⁷ This has recently happened to Daniel Weinstock, professor at McGill University, whose invitation to speak on a panel at an event organized by the Quebec government due to a false accusation made by a journalist. The Education Minister later apologized. See <https://www.cbc.ca/news/canada/montreal/daniel-weinstock-jean-françois-roberge-apology-1.5473295>.

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