

THE SOVEREIGN MIND; JOHN STUART MILL'S TEACHINGS ON FREE SPEECH AND
ACADEMIC FREEDOM AT AMERICAN UNIVERSITIES AND COLLEGES.

A THESIS

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On my honor, I have neither given nor received unauthorized aid on this thesis.

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“Education should not be intended to make people comfortable, it is meant to make them think.”

- Hanna Holborn Gray, President of the University of Chicago, 1978 to 1993.

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Introduction

Freedom of expression on university and college campuses is under existential threat. Within the past year, Princeton dismissed a tenured professor for speaking out against anti-racism initiatives, Yale Law students shouted down a visiting speaker, and Stanford University published a list of forbidden words.¹ Students and faculty alike are censoring their ideas and beliefs out of fear of damaging their reputation if they mispeak.² Administrations are promoting programming under the guise of equity and inclusivity that labels offensive actions, intentional or not, as moral wrongs. Rigorous and robust academic debate is overshadowed by the maintenance of classrooms as safe spaces where students remain comfortable but unchallenged. Ensuring a positive college experience for students has taken precedence over expanding the capabilities of human wisdom. Universities play a vital role in society; when they are not functioning properly, we all should be concerned.

I became interested in freedom of speech on campus because of my own experience at a small private liberal arts college. Colorado College, like other small campuses, is made up of students who are all relatively similar in their demographic characteristics and their political leanings; namely white, upper-middle class and liberal (Colorado College).³ I place no judgment on this assessment of CC, I chose to attend this college knowing this information. I wanted to attend a school with a tight-knit, supportive community, where you can recognize faces on campus and build close relationships with professors. I wanted a classroom setting where we can

¹ Anemona Harticollism, "Princeton Fires Tenured Professor in Campus Controversy," *The New York Times*, May 23, 2022. Karen Sloan, "Yale Law Dean Rebukes 'Rude and Insulting' Who Protested Speaker," *Reuters*, March 28, 2022. Michael T. Nietzel, "Stanford University Backs Away From Its Harmful Language List," *Forbes*, January 8, 2023.

² College Pulse and FIRE, "College Free Speech Rankings," *College Pulse*, Fall 2022.

³ "Diversity: Student Demographics," Institutional Planning and Effectiveness, Colorado College, Last modified Fall 2022, <https://www.coloradocollege.edu/offices/ipe/diversity-student-demographics.html>

dive deeply and genuinely into our studies and not just memorize facts for exams, but learn from one another's experiences. I expected that CC would provide this environment.

For the most part, CC did provide this experience for me and my peers. In most of my classes we discussed topics deeply and with a diversity of lenses and I have learned a lot from my time here. However, on a significant number of occasions I have seen students make claims that were unsubstantiated without push back by their peers or the professor. I have sat in classes where students speak in circles, reaffirming their opinions without considering how others may think - whether or not those who think differently were present in the classroom. I have heard students critique professors after class for presenting course material in a certain way or teaching some course topics at all. I myself have not shared some of my own ideas out of fear of accidentally committing a microaggression or being labeled “racist” or “out of touch” in class. As time went on, I began to wonder how much my experience in CC’s classroom would prepare me for the outside world where people do not think the same as me. I wondered how much I was learning about undoubtedly important topics like Diversity, Equity and Inclusion (DEI) without critically examining them; was I being exposed to new information or was I being forced to comply with a new value standard? When I graduate, will I be ready to defend my opinions to those I disagree with? Just recently, Colorado College has implemented a new anonymous reporting system to in part combat discrimination on campus.⁴ Will this system protect marginalized communities on campus or create a surveillance-like atmosphere where students and faculty do not engage with one another out of fear of mispeaking? Out of these important questions began my interest in free speech and academic freedom on the college campuses outside of Colorado College. I hope through my research and synthesis of this paper, we may

⁴ “Speak Up Colorado College,” Colorado College, Last modified January 10, 2023, <https://www.coloradocollege.edu/other/speakup/>.

better understand my experiences in the classroom at Colorado College, how they compare to other campuses and what the path forward may look like.

The mission of the university is to advance wisdom and share knowledge and innovation with the world so society may continue to progress.⁵ The university is meant to be a haven for free speech; a refuge from the sways of ever changing politics and the 24 hour news cycle, a place where ideas are shared, challenged and revised openly and honestly. Only when universities are steadfastly committed to the freedom of speech of their students and the academic freedom of their faculty can we ensure we are advancing authentic and accurate knowledge. Society relies on our universities to serve this mission, without universities, society ceases to progress with new innovations and produce ideal democratic citizens.

The evolution of the modern American university began in the early twentieth century with the formation of the American Association of University Professors (AAUP) and their subsequent Declaration of Principles of Academic Freedom.⁶ Undoubtedly, restrictions on freedom of speech and academic freedom on campus have fluctuated in the past century, but the purpose of the university, for our democracy and our world, has never ceased. Most recently, new concepts of safe spaces, trigger warnings and DEI education have proven adversarial to free expression and inquiry. That is not to say these concepts do not have a place on college campuses, DEI and student's emotional well-being are important to the functioning and advancement of universities. However, their implementation and practice on campus today have been prioritized at the cost of limiting free speech. Administrations are placing greater value on keeping students "comfortable" than challenging students to take on controversial ideas about the

⁵ Keith Whittington, *Speak Freely; Why Universities Must Defend Free Speech*, (New Jersey: Princeton University Press, 2018), 13.

⁶ Hans-Joerg, Tiede, *University Reform; The Founding of the American Association of University Professors*, (Baltimore: Johns Hopkins University, 2015), 2.

most important questions of our time.⁷ In this paper, I seek to answer the following questions: How did American universities and colleges arrive at this precarious place and how do we get back?

Using the teachings of the great John Stuart Mill, I provide an argument for why freedom of speech on college campuses in particular is crucial for the functioning of our society and democracy. The first section will include background on Mill and his understanding of societal progress. This section will also include nine important lessons we can take from Mill's essays and apply to the modern American university.

The second section of this essay will provide background on free expression and academic freedom in the modern American universities. This section will focus on the modern guidelines for free inquiry on campus using documents from the American Association of University, the University of Chicago and federal court decisions. The end of this section will present the current status of free inquiry on campus based on three recent research studies. The third and final section will present two recent case studies of freedom of speech and academic freedom on American campuses. In evaluating these case studies, I apply Mill's lessons from the first section of the paper.

This paper is meant to reaffirm the role of a university as a truth-seeking institution that is the foundation for maintaining and improving society.⁸ Under Mill's guidance, we may be able to relearn why freedom of speech and academic freedom are vital on campus in hopes that we may restore higher education to its original purpose. When free expression and inquiry is protected on

⁷ Greg Lukianoff and Jonathan Haidt, *The Coddling of the American Mind*, (New York: Penguin Press, 2018), 50.

⁸ Whittington, *Speak Freely*, 14.

campus, America's future leaders may better combat "the ever new problems which the changing course of human nature and human society present to be resolved."⁹

Part I

John Stuart Mill Background

John Stuart Mill was born in 1806 and spent his life living between England and France.¹⁰ Mill worked for the East India Company under his father and was a member of British Parliament.¹¹ However, Mill is remembered foremost as a philosopher of liberalism whose works proved monumental for individualism and free expression philosophy.

Mill's unique upbringing and early years prove foundational for his later publications and theories. Mill was educated by his father, James Mill who was a notable political theorist in his own right.¹² Mill also learned under the tutelage of his godfather, utilitarian philosopher, Jeremy Bentham among other notable philosophers and thinkers.¹³ James Mill enforced a strict and intense workload on his son; from as early as three, Mill was learning Greek, Latin and arithmetic.¹⁴ Mill never attended public or private school or university. His unique youth and education influenced his own appreciation for the proper education of youth in order to improve society. However, the intensity of his father's expectations along with his father and Bentham's utilitarian views led Mill to eventually become disillusioned with some of their teachings and

⁹ John Stuart Mill, "On Education, from Inaugural Address at St. Andrews University," in *John Stuart Mill; A Selection of His Works*, ed. John Robson (New York: The Odyssey Press), 413.

¹⁰ Nicholas Capaldi, *John Stuart Mill; A Biography*, (New Orleans: Loyola University, 2004), 3.

¹¹ *Ibid*, 65.

¹² *Ibid*, 34.

¹³ John Stuart Mill, *The Classic Autobiography*, First Published 1873 (Las Vegas: Compass Circle, 2022), 33.

¹⁴ *Ibid*, 14.

resulted in a mental crisis in his young adulthood.¹⁵ This crisis aided Mill in forming his own conclusions about the best way to improve society while still taking Bentham's utilitarian maxim into consideration. Mill was able to reconcile the tension between his seemingly complex and unexplainable emotions with the utilitarian ideas he learned throughout his youth; one can still seek the greatest happiness through intermediary steps that cultivate emotions and feelings in more abstract ways.¹⁶

His reconciliation of his father's theories and his own resulted in Mill's greatest work, *On Liberty* that was published after the death of both his father and Bentham in 1858. *On Liberty* illustrates the essential role free speech and toleration of others' opinions plays in the vitality and functioning of society. Mill demonstrates that opinions must be contradicted and questioned in order to propel society towards a better understanding of the truth. *On Liberty*, among other of Mill's essays such as his *Inaugural Address at St. Andrews*, *The Spirit of the Age*, *Logic of Moral Sciences*, *On Positivism*, and *Considerations on Representative Government* provide the framework for the nine lessons we may apply to universities today.

Mill's Understanding of Progress

Mill's theories tell us that the preservation of free expression is essential for societal advancement in science, philosophy and otherwise. Mill warns us that society does not improve on its own. Societal progress requires outside forces, opposition, challenges that either reinforce or reinvent common assumptions of the truth. Mill warns us in *On Liberty* that "the dictum that truth always triumphs over persecution is one of those pleasant falsehoods which men repeat after one another till they pass into common places, but which all experience refutes."¹⁷ Truth

¹⁵ Mill, *The Classic Autobiography*, 55.

¹⁶ Ibid, 60.

¹⁷ John Stuart Mill, *On Liberty*, First Published 1859 (New York: Dover Publications, 2002), 23.

does not possess any inherent power over error. When speech is suppressed, truth may be censored with it. In order to have the chance of being unearthed, truth requires a unique environment that protects everyone's right to freedom of speech and fosters open discussion and debate.¹⁸ In order for society to progress, we must at the very least, give truth the opportunity to be discovered.

Furthermore, we must keep those truths that we hold close to our hearts, our laws and our society alive; we must encourage that they remain "a living truth" and not "a dead dogma."¹⁹ Mill tells us that "the fatal tendency of mankind to leave off thinking about a thing when it is no longer doubtful, is the cause of half their errors."²⁰ The recognized truths that are foundational to our society, such as freedom of speech, are most threatened when we believe that they are untouchable and permanent. To ensure their proper functioning in society, we must not take our values for granted and allow them to be neglected or abused. Instead, we must continue to revisit these truths, refine them and advance them. Through this paper, I aim to revisit, refine and advance our conception of free speech to ensure it remains a "living truth."

Age of Transition

Mill's understanding of organic periods versus critical periods of time in human history provide further insight into his theory of societal progress. His understanding stemmed from the St. Simonian school of thought in which, during organic periods, "mankind accepted with firm conviction with some positive creed, claiming jurisdiction over all their actions, and containing more or less of truth and adaptation to the needs of humanity."²¹ In contrast to organic periods where there is a prevailing majority opinion about some doctrine of truth, critical periods are

¹⁸ Mill, *On Liberty*, 23.

¹⁹ *Ibid*, 35.

²⁰ *Ibid*.

²¹ Mill, *The Classic Autobiography*, 63,

times in “which mankind loses their old convictions without acquiring new ones, of a general or authoritative character, except the conviction that the old are false” (Auto 63). Mill believes that his present circumstances in the nineteenth century is a critical period of transition, where old thoughts from past centuries have become “unsettled” and no “no new doctrines have yet succeeded to their ascendancy.”²²

The reason the nineteenth century was a transitional period was because of the general population’s increased access to knowledge. The diffusion of knowledge, Mill argues, enables average powerless men to alter and form their own opinions that are no longer based on the opinions of those who hold authority over them. Increased knowledge of the world catalyzes men to form private opinions about their present circumstances. When more people form their own unique ideas, human understanding on the whole grows. Mill notes that the diffusion of knowledge does not necessarily produce true opinions, however it does produce stronger opinions and “to have erroneous convictions is one evil; but to have no strong or deep-rooted convictions at all, is an enormous one.”²³ Furthermore, though men may not be reasoning better than they had in past ages, they are reasoning more. Increased reasoning, according to Mill, means the increased likelihood that true reasons and opinions emerge. These reasons and opinions are also supported by the “accumulation of the ideas of all ages” that the present man, via the diffusion of knowledge, has access to.²⁴ Until the age of transition is over, “the source of all improvement is the exercise of private judgment” and Mill believes that individuals must continue their discussions and exchange of ideas to establish newer, truer doctrines than those of the past.²⁵

²² Mill, *The Classic Autobiography*, 97,

²³ John Stuart Mill, “The Spirit of the Age,” (1831), in *The Spirit of the Age*, ed. Gertrude Himmelfarb (New Haven: Yale University Press, 2007), 55.

²⁴ *Ibid*, 57.

²⁵ *Ibid*, 58.

Mill also warns that this period is destined to come to an end where a new body of doctrine will emerge and a prevailing majority opinion will once again take hold and force society into conformity. Mill warns that it is in this future state of conformity that “the teaching of liberty will have the greatest value.”²⁶ When there is a settled doctrine on truth, humans cease to harness their individuality to spontaneously improve themselves. Progress is more likely to happen in critical periods, but we must ensure progress still exists in our organic periods by maintaining liberty of thought in these times.

Mill further illuminates the tension between critical and organic periods in his characterization of the difference between Order and Progress in a society. Mill concludes that Order may be understood as the preservation of goods that already exist, while Progress is the increasing of those goods.²⁷ Order and Progress are not necessarily antagonistic to one another but may be synthesized to work in tandem.²⁸ Order is often beneficial to Progress; Mill notes that individual and societal qualities that ensure Order, such as industry, integrity, justice and prudence also promote improvement.²⁹ For example, when a person feels safe and protected from harm by a police force, he does not need to be preoccupied with his own security and can instead take steps to improve himself and in turn, society. However, while Order may promote Progress, it does not guarantee it; Mill writes that Progress must also include the individual qualities of originality and invention for improvement to be stimulated in a society.³⁰ Mill believes that the varying tendencies of humans, those who are inclined to boldness versus those who are more cautious, will often balance one another out, and improvement will persist in an orderly society.

However, Mill warns that this is only so as long as “this natural balance is not disturbed by

²⁶ Mill, *The Classic Autobiography*, 97.

²⁷ John Stuart Mill, *Considerations on Representative Government*, First Published UK, 1863 (Kumquat Publications, 2022), 14.

²⁸ Ibid.

²⁹ Ibid, 15.

³⁰ Ibid, 15.

artificial regulation.”³¹ When an authority regulates society so much that men no longer make their own choices on how to live or think, society may no longer advance.

If we understand progress to be an essential good for humankind, how then, are we to ensure order in society while also stimulating progress? Furthermore, how do we ensure that during organic periods, freedom of thought and minority opinion is still protected? The answer may be found in the first lesson of John Stuart Mill.

Lesson 1: Democracy is the best form of government but we must be wary of its shortcomings.

The best form of government that promotes the education, intelligence and innovation of the community according to Mill is a popular representative government because of an individual's ability to have influence in politics. Mill asserts that when a person has agency over their life in the form of political participation, he is more energetic and eager to improve himself and society. In a despotic government where One rules over the Many, citizens remain uninformed and passive about governmental activities.³² As a result, many will have no interest or incentive to improve a government that they do not participate in: “let a person have nothing to do for his country, and he will not care for it.”³³ Political participation stimulates education and individual improvement by incentivizing individuals to learn more about governing institutions and make them better if they are not functioning as they should. A more active and energetic community collectively advances and improves society on the whole; improving not only political institutions but other spaces in society, such as education and the economy. When

³¹ Mill, *Considerations*, 18.

³² *Ibid*, 15.

³³ *Ibid*, 31.

an individual gains access to politics, “he has made himself one of the public, and whatever is their interest to be his interest.”³⁴ In other words, man’s self interest will be absorbed into community interest when he has a say in the practices that legislate his life. Ultimately, a representative government allows those who are the most energetic, and intelligent in a community to directly influence the government. The only way for these intelligent individuals to flourish, however, is to ensure that the government provides an environment for their opinions to be heard. Mill warns that the tendency in representative democracies is for the majority to silence the minority.

The Tyranny of the Majority

Mill asserts that the power of opinion and belief is just as strong as material power in governing bodies. Mill writes that “one person with a belief is a social power equal to ninety-nine who have only interests.”³⁵ Mill warns that in every government, there is one power stronger than the rest, and the strongest power “tends perpetually to become the sole power.”³⁶ This means that the social power of “the tyranny of the prevailing opinion and feeling” tends to absorb any other opinion “not in agreement with its spirit.”³⁷ Democratic government, as Mill describes it, “is not the government of each by himself, but of each by all the rest.”³⁸ Therefore, in a democratic society, people are governed not necessarily by their own values and opinions, but by those of the majority. If the majority belief is successful in suppressing all diverging opinions, Mill states the improvement in the country will cease and decay of mankind will ensue. To give political power to only one identity group via majority rule would be to “crush every

³⁴ Mill, *Considerations*, 43.

³⁵ *Ibid*, 10.

³⁶ *Ibid*, 94.

³⁷ Mill, *On Liberty*, 4, Mill, *Considerations*, 94.

³⁸ Mill, *On Liberty*, 3.

influence that tends to the further improvement of man's intellectual and moral nature.”³⁹ No one group can claim that they know the whole truth on matters political or otherwise, and thus Mill argues that the protection of freedom of thought of the minority, ensures there can be a corrective, balancing force to the majority's will.

Collective Mediocrity

Mill also warns that representative government, though beneficial in promoting the intellect of the community through access to politics, has the tendency of the mediocrity of the majority. Often when a prevailing opinion gains power it does not seek to improve itself, rather “taking no legitimate means of raising itself, [prevailing opinion] delights in bringing others down to its own level.”⁴⁰ Collective mediocrity tends to increase as minorities have less accessibility and less interest to participate in government. When new and dissenting opinions are not advanced in society, the community stagnates and individuals become complacent with the current beliefs. “When the opinions of masses of merely average men are everywhere become or becoming the dominant power” we must correct this tendency with “the more pronounced individuality of those who stand on the higher eminences of thought.”⁴¹ Men and countries can avoid the tendencies of the tyranny of the majority and collective mediocrity through protection of the liberty of dissenting opinions.

The protection of minority opinion is contingent on an enlightened and educated public. The principal condition of good government that “transcends all others, is the qualities of the human beings composing the society over which the government is exercised.”⁴² Just institutions

³⁹ John Stuart Mill, *Essays on Bentham and Coleridge* (1838).

⁴⁰ Mill, *Considerations*, 40.

⁴¹ Mill, *On Liberty*, 55.

⁴² Mill, *Considerations*, 19.

do not matter if those who make up the institutions and vote for the representatives in the institutions are immoral. Government consists of the actions and interaction among men, if the men “are mere masses of ignorance, stupidity, and baleful prejudice, every operation will go wrong.”⁴³ Mill concludes that education of those who compose a community is necessary for a representative government to function properly and promote progress among mankind. Mill’s advocacy of education for the purpose of good governance is notable; his logic is as follows; education is necessary for good governance and good governance is essential for the improvement of mankind; proper education is required for progress in society.

Lesson 1 Modern Application

From Mill, we can conclude, unsurprisingly, that democracy is indeed the best form of government. It encourages citizens to participate in public life to improve society for themselves and the community. However, democracy only functions when the participants are educated *and* protect the voices of those they may disagree with. When we allow a majority opinion to silence those who may think differently than us on campus, we lose the incentive to continually revisit, defend and advance our knowledge. Universities that silence dissenting opinions will fall into the trap of collective mediocrity and will cease promoting their mission of advancing knowledge. As a result, universities restrict the bounds of our education and the functioning of our democracy suffers.

⁴³ Mill, *Considerations*, 20.

Lesson 2: The Rule of Fallibility

The next lesson we may take from Mill's teaching is that all humans are fallible and no one can claim to know the whole truth on a subject. To silence minority opinion would be to claim infallibility by asserting that views contradicting prevailing opinion hold no value because the majority already understands all there is to know. Mill asserts that "complete liberty of contradicting and disproving our opinion, is the very condition which justifies us in assuming its truth for purposes of action; and no other terms can a being with human faculties have any rational assurances of being right."⁴⁴ Opinions can only be true in relation to others. Mill suggests that without opposing viewpoints, no reasonable person can take an opinion to be true; one man's opinion is only true in the context that another man's opposing view is not. Furthermore, Mill argues that contradicting views also help humans to better understand the whole truth of matters. Settled upon ideas do not encapsulate the entire truth and Mill tells us that there are valuable things to learn from ideas that we may assume are false: "those which are false as theories may contain particular truths, indispensable to the completeness of the true theory."⁴⁵

Moreover, prevailing opinions that are in fact the whole truth are only strengthened through debate with contradicting false opinions. When we silence opinions and that opinion holds some truth we "are deprived of the opportunity of exchanging error for truth," when we silence opinions and that opinion is wrong we lose "the clearer perception and livelier impression of truth, produced by its collision with error."⁴⁶ Rationally, we can only claim we are right about something when, at every opportunity for contestation, we refute the opposing claim.⁴⁷ Mill

⁴⁴ Mill, *On Liberty*, 16.

⁴⁵ Mill, "On Education," 411.

⁴⁶ Mill, *On Liberty*, 14.

⁴⁷ *Ibid*, 16.

reminds us that we must thank those who challenge our opinions for giving us the opportunity to reaffirm and defend the “certainty [and] vitality of our convictions.”⁴⁸

Furthermore, Mill reminds us of “how often the most important practical results have been the remote consequences of studies which no one would have expected them to lead!”⁴⁹ In other words, many of the greatest discoveries that changed the world were so rarely arrived at by investigations aimed directly at that object.⁵⁰ Thus, no authority should be able to regulate what is studied and what is not as there are always possibilities that studies provide value to the human condition that could not have been predicted. Mill writes that one should not assert that “the smallest weed may not, as knowledge advances, be found to have some property serviceable to man.”⁵¹ To regulate what students may know is to limit their expanse of their knowledge.

Lesson 2 Modern Application

No professor, student or university administrator can silence the opinion of someone else without simultaneously claiming that they know the complete truth. Many bad theories contain valuable ideas that can contribute to the advancement of knowledge. We cannot take any theory as entirely sufficient or insufficient, but rather as portions of truth that lead us to a complete theory. Universities that put bounds on course topics assert that certain materials provide absolutely no value to a classroom; this assertion may be countered by Mill’s guidance or by any scholar who has learned from evaluating the mistakes of others.

⁴⁸ Mill, *On Liberty*, 37.

⁴⁹ John Stuart Mill, *Auguste Comte and Positivism*, First Published 1865, (Ann Arbor: University of Michigan, 1968), 173,

⁵⁰ *Ibid*, 174.

⁵¹ *Ibid*, 182.

Lesson 3: Education is to make students think, not to tell them how to think.

While Mill was critical of portions of the education he received from his father, he found extreme value in habits he acquired while studying and learning. Mill states that being taught *how* to learn and not just *what* to learn was one of the greatest gifts he received from his father. James Mill never “crammed” his son with facts and with the opinions of others.⁵² Rather, Mill recalls that, “anything that could be found out by thinking, I was never told.”⁵³ Mill was prescribed to fully understand all his studies, not merely memorize facts. Mill criticizes those who are educated solely by memorization, characterizing them as “mere parrots of what they have learnt, incapable of using their minds except in the furrows traced for them.”⁵⁴ Mill advocates for the education that forms “exact thinkers, who attach a precise meaning to words and propositions, and are not imposed on by vague, loose or ambiguous terms.”⁵⁵ Those who are sole memorizers know subjects only vaguely, those who are precise thinkers know subjects deeply and completely.

In his famous address at the University of St. Andrews, Mill declares what the role of the education and the university must be: not to convince students what beliefs are wrong or right, but rather provide all necessary information about all principles in order for students to come to their own conclusion. The diversity of opinion among men on religious and moral beliefs acts as warning to professors that they must not impose their own opinion upon students. In returning to the lesson of fallibility, the beliefs of professors or even great thinkers do not encapsulate the whole truth. Thus, universities must make students “acquainted with the best speculations on the

⁵² Mill, *The Classic Autobiography*, 14.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid, 9.

subject, taken from different points of view.”⁵⁶ Teachers may not take a side on moral or religious doctrines, but rather direct students to all of the doctrines so students may establish their own conclusions using as many resources as possible.

Lesson 3 Modern Application

Neither professors or university administration ought to tell students what to think about course material. A professor's role is to provide students with all the information on their area of study so students may come to their own conclusions. When students know how to think critically and how to think for themselves, they are more equipped to take on challenging topics and make new discoveries. Without a continual recommitment to free speech and academic freedom, universities may devolve into echo chambers of orthodox views that no longer provide students with new discoveries or opinions but simply indoctrinate students into settled dogma or political preference.⁵⁷ Once university officials or administration decide which speech is good or bad on campus, students and faculty inevitably lose insights and knowledge from censored speech; valuable speech is often lost with the “bad” speech.

Lesson 4: Know many things and know them well: A Liberal Arts Education.

Mill believes the best form of education is a liberal arts education, where students do not specialize in one subject but are exposed to many. Mill begins his St. Andrews address by asserting that the purpose of education is not simply to provide information to students so they can specialize in a certain occupation, but to build mental habits so student’s are self-sufficient in

⁵⁶ Mill, “On Education,” 411.

⁵⁷ Whittington, *Speak Freely*, 54.

their studies and future discoveries. “Our aim in learning,” Mill argues, is not simply to know one thing, but “know something of all the great subjects in human interest.”⁵⁸

Students should not only know about subjects, but know them accurately in order “to obtain a true view of nature and life in their broad outline.”⁵⁹ Mill warns against the tendency of man to conflate ambiguous words and expression for facts. He urges students to learn from the Greek and Roman’s concision; the Greeks and Romans “never use a word without a meaning, or a word which adds nothing to meaning... they knew what they wanted to say; and their purpose was to say it with the highest degree of exactness and completeness.”⁶⁰ Student’s must be accurate and detailed in their studies in order to not misconstrue or misrepresent their ideas. Universities must teach habits to students so that whenever they are investigating an idea, students “never to turn away from any difficulty; to accept no doctrine either from ourselves or from other people without a rigid scrutiny by negative criticism, letting no fallacy, or incoherence, or confusion of thought, slip by unperceived.”⁶¹ Only through this meticulous process, can students be sure that their ideas are of strong foundation and as accurate and complete as possible.

Lesson 4 Modern Application

Professors must encourage students to understand material and theories fully before coming to conclusions. This can be done through a liberal arts education where students are exposed to a diversity of course material, theories and subjects. Moreover, when students do speak, they must be held accountable for their thoughts. The standard in the classroom should be

⁵⁸ Mill, “On Education,” 385.

⁵⁹ Ibid, 386.

⁶⁰ Ibid, 392.

⁶¹ Ibid, 391.

to mean what you say and know what you are talking about before you draw conclusions. Class discussion cannot be based on false realities and professors must urge students to think deeply and clearly about their ideas. When students engage with complete and accurate ideas, their discoveries are better suited to make practical change in society.

Lesson 5: The Scientific Method to combat false assumptions.

Mill believes that in order for our theories to be as strong and accurate as possible, they must be tested under a process similar to the scientific method. Many grand “truths” we believe today come from prevailing assumptions that have not been challenged in many years. When we treat our social sciences like hard sciences, we can better ensure false theories do not pass us by undetected. Mill learned from Bentham the value of dissecting commonly held expressions and ideas in order to expose their fallacies. Bentham sought to expose the errors in past ideas while, subsequently, planting “a corresponding truth ” to replace past errors.⁶² According to Mill, Bentham believed that error was often found in the tendency of ideas to be generalized and abstract.⁶³ Moreover, vague ideas often guide the “gravest questions of morality and policy.”⁶⁴ Bentham felt that if such ideas are so important that they guide society’s most vital decisions, they cannot simply be based on “some general sentiment of mankind” or “some maxim in familiar use,” but on carefully investigated doctrines.

Mill was greatly affected by Bentham’s characterization of common models of reasoning in morals and legislation as “dogmatism in disguise, imposing its sentiments upon others” without being grounded in reason.⁶⁵ Mill learned from Bentham’s teachings that truths cannot

⁶² Mill, *Essays on Bentham and Coleridge*.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Mill, *The Classic Autobiography*, 27.

simply be known by “intuition or consciousness,” but rather they must come from careful observation and experience via the scientific method of experimentation. Any supposed truth based solely on intuition or sentiment, Mill maintained, was the “support of false doctrines and bad institutions.”⁶⁶ Bentham’s exposition of past truths influenced Mill’s conception of partial and half truths and led him to the conclusion that all claimed truths, whether past or present, must be carefully understood piece by piece in order to ensure their accuracy.

In order to discern between partial and half-truths among student opinions, Mill advocates for the scientific method to test conflicting ideas. The ability to judge between conflicting truths or doctrines is an essential piece of education that universities must require. Mill points to mathematics to prove the rationality in following the scientific method; one can trust the results of an equation if one can trust each step in the operation. The answer to a math equation is only considered correct if the operations leading to the answer are proven true as well. The same can be applied for student’s discoveries; only when students account for every agent and variable that may influence their conceived opinion, can their opinions be more accurate. Mill notes if human nature “is worth studying at all, it is worth studying scientifically, so as to reach the fundamental laws which underlie and govern all the rest.”⁶⁷

Scientific Method for Social Sciences

The importance of deducing scientific theories for social sciences then, according to Mill, is the resulting ability of man to shape society in ways they desire. “If the differences we think we observe between French and English... can be connected with more general laws” then we are able to judge how permanent these differences are and understand how these differences may

⁶⁶ Mill, *The Classic Autobiography*, 86.

⁶⁷ Mill, “On Education,” 404.

be modified or destroyed.⁶⁸ In other words, once we can understand what causes influence our behavior, we may alter or shape our tendencies to better suit our desires. Practically, this means that politics can aim to improve society by “surrounding any given society with the greatest possible number of circumstances of which the tendencies are beneficial, and to remove or counteract, as far as predictable those of which the tendencies are injurious.”⁶⁹ Mill writes that like how a mathematician who has solved many equations can also solve other equations that are similar, a can theorist who understands a political circumstance in one country may apply it to another, “provided he have some good sense enough not to expect the same conclusions to issue from varying premises.”⁷⁰ Scientific investigation of human nature is essential to not only understand human action as accurately and deeply as possible, but then, mold our actions and political institutions for the improvement of mankind based on the nature of our tendencies.

Lesson 5 Modern Application

All university students come to campus with preconceived notions about the way the world functions. Some may have been taught that a limited government is the best form of government and some may have been raised as socialists. Nonetheless, students must challenge their own preconceived assumptions meticulously and carefully so they better understand their ideas strengths and shortcomings. Challenging assumptions should not be limited to a student's own personal experience, but also the settled ideas we hold on campus or even in America. All students have heard the phrase that freedom of speech is protected under the First Amendment, but what does that look like in practice? Are we held up to that standard? Settled truths such as freedom of speech only become stronger when they are revisited and scientifically tested. It is

⁶⁸ John Stuart Mill, *The Logic of Moral Sciences*, First Published 1843 (New York: Dover Publications, 2020), 54.

⁶⁹ *Ibid*, 64.

⁷⁰ *Ibid*, 70.

the role of universities to ensure we are holding true to our ideals, and if we are not, campuses must foster an environment of innovation and improvement. A university provides the perfect forum for qualified and educated individuals to engage in conversation, exchange ideas and revise and challenge previous dogma through vigorous scientific investigations.⁷¹

Lesson 6: The Past Has Value.

Testing and revisiting past ambiguous assumptions to ensure they are of strong foundation is not to say that the great ideas and discoveries of the past are worthless. In fact, Mill tells us that conserving, understanding, and building off past ideas is the best method to ensure new innovations encapsulate whole-truths. Mill criticizes some of Bentham's work for not "deriving light from other minds" besides his own and not accounting "for previous thinkers and for the collective mind of the human race."⁷² Since no human can experience all there is in life, Bentham's ideas were incomplete. The opinions of those who came before him can provide information to fill in the gaps of Bentham's ideas that his own life and thoughts could not account for: "different things are perceptible; and those who do not see what he sees are the ones most likely to have seen what he does not see."⁷³ Mill concludes that Bentham's exclusion of ideas and experiences other than his own and his reductionist view of human action makes his philosophy only a "half truth;" missing the diversity of perspectives of human life that provide more data to his scientific investigations.

In contrast to Bentham, Mill praises the philosopher Coleridge for his ability to find worth in past thoughts.⁷⁴ "Coleridge considered the long or widespread prevalence of any

⁷¹ Whittington, *Speak Freely*, 18.

⁷² Mill, *Essays on Bentham and Coleridge*.

⁷³ Ibid.

⁷⁴ Ibid.

opinion as evidence that it was not altogether a fallacy” and thus most likely contained a portion of truth he could uncover.⁷⁵ According to Coleridge, there is meaning to be found in the imagination and creativity of people’s past ideas.⁷⁶ Specifically, Mill praises Coleridge's emphasis on the preservation of past thought through property funded by the Church.⁷⁷ Coleridge argues that national property should exist “for the advancement of knowledge, and the civilisation and cultivation of the community.”⁷⁸ In other words, Coleridge believes a tangible place must be established that preserves past intellect that can inform and integrate into any new present doctrines. Most importantly, this property that stores past knowledge must also serve the purpose of diffusing that knowledge— of laws and rights – to all citizens in order to inform and educate all people.⁷⁹ The end goal of the national property must always be, according to Coleridge “the promotion of ‘a continuing and progressive civilisation.’”⁸⁰ Coleridge believed that only through connecting present doctrines to past knowledge in establishments such as these, can humankind improve.

Mill notes that both Bentham and Coleridge were similar in their methods of investigation; both thinkers sought “to bring opinions back to first principles, taking no proposition for granted without examining the grounds for it.”⁸¹ Coleridge and Bentham recognized that a theory is only as complete as the facts and methods at its foundation. Thus, Coleridge’s ideas can be understood to complement, not antagonize, Bentham’s. Coleridge’s investigation provides the information that Bentham lacks; where Bentham would overlook truth in past opinions, Coleridge would provide in his studies. Similarly, where Coleridge would miss

⁷⁵ Mill, *Essays on Bentham and Coleridge*.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Ibid.

“the truth that is not in [traditional opinions] and is at variance with them,” Bentham would discover in his work.⁸²

Mill writes that “a university exists for the purpose of laying open to each succeeding generation... the accumulated treasure of the thoughts of mankind.”⁸³ When students are familiar with the “best thoughts that are brought forth by the original minds of the age” they may mold the best thoughts together to come closer to the true reality of the human experience. Once a true reality is understood, students may derive better ways for society to function.⁸⁴ Since the ascertainment of this truth remains a far away achievement, the university must hold steadfast to their principles of freedom of thought and individuality to continually support the pursuit for the truth.

Lesson 6 Modern Application

Much like the Churches established to preserve classical knowledge in the age of Coleridge, universities have the unique ability to preserve past discoveries for the purpose of educating future ones. Professors must encourage students to see past discoveries in all their complexities and not discount past theories because they may not be seen as “acceptable” or “tolerant” enough today. Books like *Huckleberry Finn* and *The Great Gatsby* are classic novels that have provided insight to students for generations; to remove them from courses would remove the ability for students to address the difficult content they contain and to gain insights that past generations have been privileged to.⁸⁵ All that we know today comes from the work of those who came before us. Universities owe their students access to past wisdom to ensure they

⁸² Mill, *Essays on Bentham and Coleridge*.

⁸³ Mill, “On Education,” 410.

⁸⁴ Ibid.

⁸⁵ Whittington, *Speak Freely*, xx.

may learn why our present reality is the way it is and so students may adequately improve upon and learn from past discoveries.

Lesson 7: Universities must foster discussion and debate, not avoid it.

Viewpoint Diversity

Mill teaches that we all must expose ourselves to the experiences of others in order to acquire the whole truth. No person can experience all the world has to offer; through discussion and debate with others we may gain a better perspective of the world.⁸⁶ By “hearing what can be said about it by persons of every variety of opinion, and studying all modes in which it can be looked at by every character of mind” is the only way a rational person can acquire wisdom.⁸⁷ Mill encourages students to find value and learn from the ideas and opinions of their peers. Each student’s opinions are biased by their preconceived notions and experiences of the world. Their direct perceptions of reality and in turn truth, are limited by their own life experience. In order to eliminate the influence of prejudice in student’s ideas, Mill encourages students to “frequently use the differently coloured glasses of other people.”⁸⁸ Student’s opinions can only be more in line with reality when they are influenced by many experiences, not just their own.

Discussion and Debate.

Discussion and debate are the best ways to learn from others perspectives. In characterizing the transitional age of the nineteenth century, Mill concludes that citizens' increased access to knowledge led to increased opinions and rational thinking and in increased discussion and exchanging of ideas. “Discussion has penetrated deeper into society,” Mill writes,

⁸⁶ Mill, *On Liberty*, 17.

⁸⁷ Ibid.

⁸⁸ Mill, “On Education,” 388.

and although that does not guarantee greater numbers of intelligent people, it does mean less men “grovel in that state of abject stupidity, which can only co-exist with utter apathy and sluggishness.”⁸⁹ As more discussion occurs, ancient doctrines are questioned and their errors exposed. It is by discussion, Mill argues, that true opinions may be found and diffused.⁹⁰ Discussions often expose any inconsistencies in an opinion, as “one single well-established fact, clearly irreconcilable with a doctrine, is sufficient to prove that it is false.”⁹¹ Mill writes that men are often wrong in their opinions because they cannot see past their own prejudices. Men’s opinions are often only half or less than half of the truth, through discussion and the exchange of ideas, men often find the complementary partial truths to their opinions.

The Marketplace of Ideas

When universities foster open discussion and debate the marketplace of ideas may come to fruition. The marketplace of ideas is the concept that when people are free to share their ideas openly and honestly, innovative and genius ideas have the opportunity to come to light.⁹² A society that gives space to contradicting opinions allows dissenters to provide an otherwise mediocre society with originality and innovation. Mill writes that “exceptional individuals, instead of being deterred, should be encouraged in acting differently from the masses” because “all good things which exist are the fruits of originality.”⁹³ In other words, Mill asserts that dissenting opinions can often provide insights that would be otherwise unknown if freedom of speech and discussion were limited. In a society that enables a space where ideas are exchanged whether or not they conform to prevailing opinion, society “becomes rich, diversified and

⁸⁹ Mill, “The Spirit of the Age,” 56.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Mill, *On Liberty*, 54.

⁹³ Ibid.

animating, furnishing more abundant alignment to high thoughts and elevating feelings.”⁹⁴.

Genius, according to Mill, may only arise “from an atmosphere of freedom.”⁹⁵

By nature, those with superior intellect and originality are in the minority in a community. In observing the British government, Mill recognizes that while minorities of superior intellect and character “will necessarily be outnumbered” in any representative body, they still must be heard and their ideas and opinions brought to the public stage.⁹⁶ Mill points to the faults in American democracy which he believes does not represent minority beliefs effectively. He states that “the highly cultivated members of the community,” who are in the minority, “become servile mouthpieces of their inferiors in knowledge” so as not to risk losing their seat in government with their own unpopular beliefs.⁹⁷ Mill writes that when minorities are incentivized to share their opinions by a liberal government structure, they will not simply publish their innovative ideas in books “read only by their own side” but they would “meet face to face and hand to hand” with their adversaries, “and there would be a fair comparison of their intellectual strength in the presence of the country.”⁹⁸ This form of representative government, where opinions, though unpopular and outnumbered, are still taken into consideration is the only characterization of a true democracy, according to Mill, and the only way to guarantee that a representative government can continually promote the improvement of mankind.

Lesson 7 Modern Application

Universities must foster free and open discussion among students and faculty. When students are participating in open and honest conversation, they are able to learn from the

⁹⁴ Mill, *On Liberty*, 54.

⁹⁵ *Ibid*, 55.

⁹⁶ Mill, *Considerations*, 92.

⁹⁷ *Ibid*.

⁹⁸ *Ibid*, 93.

experiences of their peers and better their own thoughts. Furthermore, when students feel they may speak freely, students have the opportunity to share potential genius and innovative ideas that go against majority beliefs or practices. Universities encourage students and professors to discuss “face to face,” so students may connect with peers who think differently than them. When students connect, collaboration and innovation may occur. Moreover, to fulfill their mission of advancing society’s knowledge, universities must produce ingenious ideas. In a polarized society where adversary sides do not often collaborate, a university setting enables students and faculty to commit to taking their own ideas as well as their peers and colleagues’ ideas seriously. The university community asks a lot of its members, it demands them “to shake off their prejudices and preconceptions and be willing to see things afresh and investigate things anew.”⁹⁹ Only in a tight-knit community such as a university, where all members are committed to the advancement of knowledge is this ideal “marketplace of ideas” possible.

Lesson 8: Expertise is valuable.

Mill teaches that all opinions have value in and of themselves, but expert opinion is necessary for society to function effectively. We must rely on experts to make some decisions for us since no individual can perform their own research on every topic. Mill argues that since social science and the science of morals are not held up to the same standards of investigation as physical science, “every dabbler, consequently thinks his opinions as good another’s” and the discussion among average men of conceal, “under loose and vague generalities,” false notions.¹⁰⁰ Some people’s opinions are truer than others and the best way to parse out between cultivated and unrefined opinions is by treating social science like a physical science in the context of

⁹⁹ Whittington, *Speak Freely*, 47.

¹⁰⁰ Mill, “The Spirit of the Age,” 59-60.

expertise; just as an average man who has never studied astronomy would not claim to know the trajectory of a planet's orbit judging from their personal experience alone, average men should also not make claims about social science without background knowledge and study.

Furthermore, in organic periods, most men will only have time to occupy themselves with their particular calling and thus should allow those who have time to dedicate their life to philosophical pursuit to investigate social and moral questions. Thus, men ought to rest the extensive part of their opinions “upon the authority of those who have studied them.”¹⁰¹

It is necessary that men receive most of their opinions “on the authority of those who have specially studied the matters to which they relate,” for society to function efficiently.¹⁰² However, Mill argues that the ascendancy of expert and true opinions will “come of itself when the unanimity is attained” on a new moral doctrine.¹⁰³ To place moral authority in the hands of a single person or organized body is “spiritual despotism” because the sole body would not be tasked with simply promulgating and diffusing principles of conduct but directing “the detail of their application” and inculcating each person’s duty and action.¹⁰⁴ When people are obliged to act in a certain way, via instruction or legal restraint, they are no longer free, according to Mill.

Mill argues that the ascendancy of expert opinion will come through the spontaneous expressions of free thought. When individuals are “properly educated,” Mill asserts they “spontaneously class themselves in a manner much more comfortable to their unequal or dissimilar aptitudes, than governments or social institutions are likely to do for them.”¹⁰⁵ In other words, men will naturally reorganize themselves and place expert opinion into the hands of those who know best without the need for restricting individual expression.

¹⁰¹ Mill, “The Spirit of the Age,” 61.

¹⁰² Mill, *Auguste Comte and Positivism*, 97.

¹⁰³ *Ibid*, 98.

¹⁰⁴ *Ibid*.

¹⁰⁵ *Ibid*, 98.

Lesson 8 Modern Application

Citizens should not be tasked with answering all the great questions of life, government, or society. Rather, universities must produce citizens who *are* experts on these topics to provide society with these answers. Expert opinion works as a complement to the notion of a diverse liberal arts education. Liberal arts education produces the best experts to answer our most difficult questions; they may think critically, understand a variety of perspectives and topics and synthesize different disciplines. Universities must continue to promote free speech within the classroom to ensure the experts we produce and the conclusions our future leaders come to are in fact, accurate, whole truths.

Lesson 9: There are limits to Freedom of Expression, but they are narrowly defined.

Overall, Mill believes that most often we must leave others alone and let them live their life the way they see fit. Mill characterizes this idea as “the region of positive worthiness;” the place where humans can pursue their own interest, so long as they are not harming others in the process.¹⁰⁶ It is within this region of positive worthiness, where personal enjoyment may be shared with others and the natural activity of human nature can “expand itself into useful ones.”¹⁰⁷ Only in a free society where men are able to think for themselves, will individuals spontaneously organize themselves into the best interest for the collective. Mill tells us that, “over himself, over his own body and mind, the individual is sovereign.”¹⁰⁸ When someone’s

¹⁰⁶ Mill, *Auguste Comte and Positivism*, 143-144.

¹⁰⁷ *Ibid*, 146.

¹⁰⁸ Mill, *On Liberty*, 8.

actions are affecting only himself, and those actions result in consequences solely for him, we have no right to interfere.¹⁰⁹ We must give him space to make mistakes and learn from those; we are better off allowing each other to live as seems good to themselves, than by compelling each to live as seems good to the rest.¹¹⁰ Just as it is unjust for a ruler to silence the opinions of his subjects, it is equally unjust for the majority to silence a single person: “If all mankind minus one, were of one opinion, and only one person were the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind.”¹¹¹

Harm Principle

The only limit on freedom of expression Mill provides us is the harm principle. The harm principle states that we may only interfere with someone's liberty if they intend to cause physical harm.¹¹² Mill asserts that “the sole end for which mankind is warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection.”¹¹³ Since we all receive the protection of belonging to a society, we are obligated to return that benefit by not injuring the rights of others.¹¹⁴ When someone does commit “an act hurtful to others” there is cause for punishing that person “by law” or “disapprobation.”¹¹⁵ Therefore, speech that instigates or intends to instigate actions that cause physical harm or “mischievous acts” should be limited.¹¹⁶

¹⁰⁹ Mill, *On Liberty*, 64.

¹¹⁰ *Ibid*, 10.

¹¹¹ *Ibid*, 18.

¹¹² *Ibid*, 9.

¹¹³ *Ibid*.

¹¹⁴ *Ibid*, 63.

¹¹⁵ *Ibid*, 9.

¹¹⁶ *Ibid*, 12.

Speech that is obnoxious, offensive or hurtful should not be silenced. Rather, Mill states that all people have a right to avoid or caution others against someone with an unfavorable view.¹¹⁷ Those who are hateful “may be to us an object of pity, perhaps dislike” to us “but not of anger or resentment” and we “shall not treat him like an enemy of society.”¹¹⁸ From Mill’s view, the best way to “to act upon an unfavorable opinion” is not in the oppression of that opinion, “but in the exercise of our own.”¹¹⁹

Lesson 9 Modern Application

University administration, faculty and students may only silence speech that instigates or threatens physical harm. The way students or faculty choose to conduct themselves and the beliefs they hold that do not physically affect their community are outside the administration's sphere of interference. Students may caution their peers about speakers or professors they disagree with and encourage their peers not to engage with certain people, but they cannot stop that speaker or professor from sharing their ideas with the community. Students and faculty must exercise their own opinions in the face of opinions they find hateful but cannot stop those hateful opinions from being heard.

Part I Conclusion

John Stuart Mill teaches us that the protection of freedom of speech and discussion is an essential good for college campuses, our democracy and our society as a whole. Universities provide the space in an otherwise polarized world for the marketplace of ideas to flourish. Minority opinion within the marketplace is where genius and innovation arises. This genius

¹¹⁷ Mill, *On Liberty*, 66.

¹¹⁸ *Ibid*, 67.

¹¹⁹ *Ibid*.

combats the tendencies of democracy to remain stagnate and mediocre. Universities are spaces where our ideas and thoughts may be held up to the highest standard of the scientific process to ensure the expert opinion guiding our society is correct. It may feel as if we are living in an age of transition on college campuses today, where the old doctrines of education are being overhauled by new, critical lenses and diversity programming. Individual thought on campuses must not be muted by these new doctrines or our education will suffer. Proper education of the future leaders and experts of our country is foundational to functioning democracy. Our universities must recommit to these standards Mill has supplied.

Part II

The Origins of Academic Freedom

Though John Stuart Mill pioneered free expression philosophy in higher education, the formation of the American Association of University Professors in the beginning of the twentieth century further clarified our modern conception of academic freedom.¹²⁰ The AAUP was founded as a faculty response to the overpowering role of university boards and trustees in the hiring and dismissal of professors.¹²¹ Under the formation of the AAUP, university professors sought to democratize the way higher institutions were governed; professors did not want to be treated as merely employees of a business but as valuable members of the university community who have power over educational decisions and processes.¹²² Prior to the formation of the AAUP, presidents and trustees used their excessive power to dismiss “faculty members because

¹²⁰ Tiede, *University Reform*, 2.

¹²¹ *Ibid.*

¹²² *Ibid.*

of their teaching, their public utterances, or their criticism of university operations” without restrictions or due process for professors.¹²³ Professors based their democratization efforts on German universities that resembled “a self governing republic of scholars” as opposed to the traditional hierarchy of university power.¹²⁴ The AAUP felt that when professors gain a voice in the decision making processes at universities, they are less susceptible to being dismissed at the whims of the administration. Thus emerged the movement for academic freedom.

In the earliest draft of *The Declaration of Principles of Academic Freedom*, the AAUP recognized the influence that the public had over state institutions and the influence that donors and wealthy parents had over endowed universities.¹²⁵ These two sectors had the potential to influence what professors taught and researched and to undermine a professor's ability to advance truth without bias or prejudice. The draft noted that social science research in particular “is more or less affected with private or quasi-private interests; and, as the governing body is naturally made up of men who through their standing and ability are personally interested in the private enterprises, the points of possible conflict are numberless.”¹²⁶ To avoid the “numberless” conflicts from the private interests of the board, professors had to become independent. When professors' employment was not determined by their research topic, they could genuinely and credibly come to conclusions about their area of subject.

The Declaration of Principles of Academic Freedom illustrates the AAUP’s instruction for university governance and function. The declaration begins by defining academic freedom as the “freedom of inquiry and research; freedom of teaching within the university or college; and freedom of extramural utterance and action.”¹²⁷ Freedom of inquiry of research ensures that a

¹²³Tiede, *University Reform*, 2.

¹²⁴ Ibid, 31.

¹²⁵ Ibid, 72.

¹²⁶ Ibid.

¹²⁷ Edwin R. A. Seligman et al., “1915 Declaration of Principles on Academic Freedom and Academic Tenure,” *The American Association of University Professors*, (AAUP, 1915), 292.

university may achieve its mission of “promot[ing] inquiry and advanc[ing] the sum of human knowledge” for the purpose of scientific progress and to serve the public good.¹²⁸ The declaration notes that institutions that restrict freedom of inquiry or research cannot be regarded as producing any credible knowledge to serve the public.¹²⁹ Here, we see a reflection of Mill’s theories; that universities must promote free expression to ensure research passes the rule of fallibility and thus effectively serve the public good to improve mankind.

The AAUP, like Mill, defines scientific progress as an essential good for civilization. Professors who are experts on their area of study must not be influenced by those who are not experts. “The proper fulfillment of the work of the professoriate” requires that universities “be so free that no fair minded person shall find any excuse for even a suspicion that the utterances of university teachers are shaped or restricted by the judgment, not of professional scholars, but of inexpert and possibly not wholly disinterested persons outside of their ranks.”¹³⁰ The research and findings of professors who are dedicated to “the quest for truth” must not be influenced by “the opinions of the lay public, or of the individuals who endow or manage universities.”¹³¹ Academic freedom guarantees that professors can carry out their moral responsibility to serve the public good independent of private interests. Mill’s lesson on expertise may be applied: society relies on experts, either produced by or employed by the university, to inform their decision making. The experts cannot be contaminated by outside bias and their research must remain outside the sphere of administration interference.

In order to serve the public good, the declaration claims that universities shall be “an inviolable refuge” from the “tyranny of public opinion.”¹³² The AAUP characterizes modern

¹²⁸ Seligman et al., “1915 Declaration of Principles on Academic Freedom and Academic Tenure,” 292..

¹²⁹ Ibid.

¹³⁰ Ibid, 294.

¹³¹ Ibid.

¹³² Seligman et al., “1915 Declaration of Principles on Academic Freedom and Academic Tenure,” 297.

democracy as tending “for men to think alike, to feel alike, and to speak alike” and for “any departure from the conventional standards is apt to be regarded with suspicion.”¹³³ The university provides a unique space that may be immune from the tyranny of public opinion that Mill was so fearful of; a place where “new ideas may germinate and where their fruit, though still distasteful to the community as a whole, may be allowed to ripen until finally, perchance, it may become a part of the accepted intellectual food of the nation or of the world.¹³⁴ The university must provide space for unorthodox beliefs that may serve as a check on public opinion, a counter-balance to the “more hasty and unconsidered impulses of popular feeling.”¹³⁵

The AAUP also reminds us that a university serves the role of the progressor *and* of the conservator “of all genuine elements of value in the past thought and life of mankind which are not in the fashion of the moment.”¹³⁶ Both Mill and the AAUP find value in past theories and understand that all genuine scientific inquiry must be preceded by understanding past research and thought.¹³⁷ We cannot consider research as complete if it does use, revise or add on to past intellectual inquiry.

The AAUP declaration notes that academic freedom as “freedom of extramural utterance and action” ensures professor’s freedom of expression when they speak outside the classroom.¹³⁸ Scholars should be allowed to express “judgements upon controversial questions” and exercise their freedom of speech outside the university in areas outside their expertise.¹³⁹ Not only does freedom of extramural speech enable professors to inquire freely and engage as a citizen fully, it is an important marker of independence from the university. Extramural speech serves as another

¹³³ Seligman et al., “1915 Declaration of Principles on Academic Freedom and Academic Tenure,” 297.

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*, 293.

¹³⁹ Tiede, *University Reform*, 120.

way to demonstrate that those who fund the school do not overly influence what is taught and what is researched in the classroom. Importantly, the AAUP asserts that freedom of extramural speech and academic freedom generally does not imply that professors may say or teach whatever they wish. Instead, “academic teachers are under a peculiar obligation to avoid hasty or unverified or exaggerated statements, and to refrain from intemperate or sensational modes of expression.”¹⁴⁰ Professors must still ensure that all their findings are “gained by a scholar’s method and held in a scholar’s spirit.”¹⁴¹ Academic freedom does not relieve professors for Mill’s lessons of scientific investigation and open debate with colleagues but rather requires that professors follow these standards to properly do their job.

More recently, the University of Chicago published a 2014 *Report of the Committee of Freedom of Expression*. Notably, the report is not concerned with academic freedom like the AAUP was, but with the freedom of speech of students and faculty alike.¹⁴² The report begins by pointing to a time when a controversial 1932 presidential candidate spoke on the University of Chicago campus and violence erupted. Then University President, Robert M. Hutchins responded to protests and criticism noting that “our students . . . should have freedom to discuss any problem that presents itself” and that the best way to strengthen our views is “through open discussion rather than through inhibition.”¹⁴³ On a later date, Hutchinson said “free inquiry is indispensable to the good life, that universities exist for the sake of such inquiry, [and] that without it they cease to be universities.”¹⁴⁴ Hutchinson’s remarks echo the declaration by the AAUP; freedom of inquiry and discussion is essential to progressing civilization and protecting

¹⁴⁰ Tiede, *University Reform*, 120..

¹⁴¹ Seligman et al., “1915 Declaration of Principles on Academic Freedom and Academic Tenure,” 298.

¹⁴² Geoffrey R. Stone et. al, “Report of the Committee of Free of Expression,” *University of Chicago*, (University of Chicago, 2014).

¹⁴³ Stone et al., “Report of the Committee of Free of Expression,” 1.

¹⁴⁴ *Ibid.*

“the good life.” When students and professors cannot freely debate controversial topics the advancement of truth ceases and universities no longer serve their mission.

The University of Chicago Report observes that it is natural for students’ or professors’ ideas to conflict. However, the university must not “shield individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive.”¹⁴⁵ The report makes a strong case in favor of Mill’s narrow definition of the harm principle. While the report notes that concerns of mutual respect and civility are important in any classroom setting, these concerns cannot be used as “a justification for closing off discussion of ideas, however offensive or disagreeable those ideas may be to some members of our community.”¹⁴⁶ The best way to judge one’s own ideas is by “openly and vigorously contesting the ideas that they oppose.”¹⁴⁷ Much like Mill’s lesson of discussion and debate, the university’s mission is to provide an environment for vigorous and open debate, not to provide the answers or cast judgment on the debate itself.

The limitations the report gives on freedom of expression are “expression that violates the law, that falsely defames a specific individual, that constitutes a genuine threat or harassment, that unjustifiably invades substantial privacy or confidentiality interests, that is otherwise directly incompatible with the functioning of the University.”¹⁴⁸ Notably, these limitations do not relate to any notion of emotional “safety,” microaggressions or “offensive language,” but are rather reasonable limitations for a university to function. The report also denounces students’ or faculty members’ use of the heckler’s veto. University of Chicago members are under no obligation to listen to speech they disdain but “they may not obstruct or otherwise interfere with the freedom of others to express views they reject or even loathe.”¹⁴⁹ A university must not only promote “a

¹⁴⁵ Stone et al., “Report of the Committee of Free of Expression,” 2.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid,

¹⁴⁹ Ibid, 3.

lively and fearless freedom of debate and deliberation but also to protect that freedom when others attempt to restrict it.”¹⁵⁰ To this end, freedom of expression is as much about using your own voice as it is about allowing others to listen to the voices you do not like.

Side by side, the AAUP declarations and the UChicago report provide a framework for universities to follow to ensure they are fulfilling their role in society and their mission to their students. We see Mill’s influence in almost all areas of these documents. From protecting against the tyranny of the majority to the advancement of knowledge through vigorous debate, Mill’s lessons clearly guide how we understand academic freedom and freedom of speech on college campuses today. The question remains of why modern universities have strayed so far from Mill’s lessons and these guiding documents and of how we may return

Research Studies on Campus Expression

The data for the state of freedom of expression and speech on university campuses today do not reflect the intentions of either Mill, the AAUP or the University of Chicago. The three most recent studies on campus expression all demonstrate that students, especially conservative ones, are reluctant to express certain ideas for fear of retaliation by their peers or the administration.¹⁵¹ Students on campus today do not feel comfortable voicing opinions on certain controversial topics and a significant amount of students feel that shutting down campus speakers is appropriate.¹⁵² The studies are produced from research done by the University of North Carolina system in 2022, the non-profit Heterodox Academy in 2021, and The Foundation for Individual Rights and Expression (FIRE), a nonpartisan, nonprofit organization in 2021.

¹⁵⁰ Stone et al., “Report of the Committee of Free of Expression,” 2..

¹⁵¹ Timothy J. Ryan et al., “Free Expression and Constructive Dialogue in the University of North Carolina System,” *FED Survey Report*, August 21, 2022, S. Zhou, M. Stiksma, and S. C. Zhou, “Understanding the Campus Expression Climate,” *Heterodox Academy*, Fall 2021., College Pulse, “College Free Speech Rankings.”

¹⁵² Ryan et. al., ““Free Expression and Constructive Dialogue.”, College Pulse, “College Free Speech Rankings.”

These studies should not be taken as the exact reality on all American campuses, as Mill teaches us, to do so would be to discount the diversity of human experiences. However, the studies may provide an outline for a modern American student's university experience.

The UNC report presented four central findings. The first finding was that "faculty generally do not push political agendas in class."¹⁵³ Most students reported little to no change in their ideological views throughout their time in the UNC system. In fact students reported that only 5-8% of courses "directly talked about politics" in most classes and only 16-30% of courses taken were "indirectly political."¹⁵⁴ This data means that professors in the UNC system are following Mill's lesson of teaching students how to think and not teaching them what to think since faculty are not obviously privileging one political view over another.

The second central finding is of more concern; the finding states that "campuses do not consistently achieve an atmosphere that promotes free expression."¹⁵⁵ A significant number of students in the UNC system are concerned about "stating their sincere political view" and 17-22% of students self-censored more than once in class.¹⁵⁶ Almost a quarter of student ideas are not being shared, challenged and discussed in the UNC system today. The UNC study also reported that students self-censored on "a wide range of political topics for a wide range of reasons."¹⁵⁷ The reasons for self-censorship included the "fear of becoming ostracized from peers, "othering" comments from faculty, and simple imposter syndrome."¹⁵⁸ Similar to the UNC's report, the Campus Expression Survey (CES) done by the Heterodox Academy found that

¹⁵³ Ryan et. al., "Free Expression and Constructive Dialogue."

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

60% of college students “expressed reluctance to discuss at least one controversial topic” of which included politics, race, sexual orientation and gender.¹⁵⁹

The CES study also showed that while there were a number of feared consequences that hindered students from expressing their views, 56% of students were concerned that “peers would make critical comments to others after class” if they expressed their genuine beliefs.¹⁶⁰ The FIRE survey substantiated the UNC and CES study, reporting that 63% of students “worry about damaging their reputation because of someone misunderstanding what they have said or done.”¹⁶¹ While the percentages vary, it is evident that students fear being socially ostracized by their peers and would rather censor than contribute to class conversation. What is left is speech that students find “appropriate” or non-controversial; in other words, an echo chamber of the same idea in different forms. Mill tells us that an environment that promotes censorship cannot produce quality knowledge.

Furthermore, a significant number of students endorse “speech-suppressing actions such as obstructing an invited speaker” and 13-20% of students find it appropriate to fire a professor for objectionable political views.¹⁶² Students do not feel comfortable being completely candid with their peers and professors but *also* support suppressing speech they do not agree with. Notably, the FIRE study found that “majorities of students believe campus speakers with opinions that stray from liberal orthodoxy should not be allowed to speak on campus.”¹⁶³ Furthermore, 59-73% of students opposed allowing controversial conservative speakers on campus whereas only 24-41% of students opposed allowing controversial liberal speakers on campus.¹⁶⁴ 62% of students reported that shouting down a speaker was acceptable to some degree

¹⁵⁹ Zhou et al., “Understanding the Campus Expression Climate.”

¹⁶⁰ Ibid.

¹⁶¹ College Pulse, “College Free Speech Rankings.”

¹⁶² Ryan et. al., “Free Expression and Constructive Dialogue.”

¹⁶³ College Pulse, “College Free Speech Rankings.”

¹⁶⁴ Ibid.

and 20% said using violence to stop a campus speech was acceptable to some degree.¹⁶⁵ This last percentage is of most concern; one in five college students believe that violence is appropriate in response to speech; a clear violation of Mill's principle that we must not interfere, especially not violently, with an individual's right to express themselves.

The third finding in the UNC study is that “students who identify as conservative face distinctive challenges.”¹⁶⁶ The UNC report demonstrated that conservative students are far more concerned with free expression than liberal students.¹⁶⁷ 45-83% of self-identified conservative students are worried about student opinion of their views whereas 13-31% of self-identified liberal students are concerned with their peers' opinions.¹⁶⁸ Furthermore, 35-61% of conservative students self-censored more than once whereas only 9-16% of liberal students did.¹⁶⁹ The CES study also aligned with the UNC findings that Republican and Independent students are less likely to discuss controversial topics than their Democrat peers.¹⁷⁰ Once again, conservative students are often left out of conversation. This data set illustrates the forewarned tendency of the majority liberal belief to overpower the minority conservative opinion. Mill tells us that as universities become more homogeneous in student opinion, the minority belief may be silenced all together.

The final and most encouraging finding in the UNC study was that “students across the political spectrum want more opportunities to engage with those who think differently.”¹⁷¹ Both self-identified conservatives and self-identified liberals and moderates agreed that there are too few opportunities to hear conservative speakers on campus.¹⁷² Furthermore, 41-57% of liberals

¹⁶⁵ College Pulse, “College Free Speech Rankings.”

¹⁶⁶ Ryan et. al., “Free Expression and Constructive Dialogue.”

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

¹⁷⁰ Zhou et al., “Understanding the Campus Expression Climate.”

¹⁷¹ Ryan et. al., “Free Expression and Constructive Dialogue.”

¹⁷² Ibid.

and 50-76% of conservative students reported that there were too few opportunities for constructive engagement with their peers.¹⁷³ The CES study also demonstrated that students seek to engage with those they disagree with.¹⁷⁴ 88% of students reported that colleges should promote respectful interaction between people with differing beliefs and an overwhelming number of students believed that students should ask a question to understand an opinion they strongly disagree with.¹⁷⁵ Students wish to interact with one another more. They seek to understand each other on an interpersonal level in order to discuss challenging topics. Students of all political leanings believe that their undergraduate experience is lacking proper engagement with their peers. Students seek the debate and discussion that university life is meant to foster. This is promising, it means that greater freedom of expression on campus, contrary to assumptions from the right and left, may be welcomed by students.

Court Cases on Free Expression and Academic Freedom

Despite discouraging percentages of censored speech on campus, the courts have often decided in favor of academic freedom and free speech on campus. Throughout the United State's history, the Supreme Court has been confronted with the overarching general question: is hate speech protected by the First Amendment? In the 1929 case *US v. Schwimmer*, a pacifist, Schwimmer was denied citizenship to the United States because she refused to take the "oath of allegiance" when she would not promise to "take up arms" to defend the United States.¹⁷⁶ The Court ruled against Schwimmer and denied her naturalization efforts.¹⁷⁷ In a famous opinion, Justice Oliver Wendell Holmes, dissented, stating that "if there is any principle of the

¹⁷³ Ryan et. al., "Free Expression and Constructive Dialogue."

¹⁷⁴ Zhou et al., "Understanding the Campus Expression Climate."

¹⁷⁵ Ibid.

¹⁷⁶ *United States v. Schwimmer*, 279 U.S. 644 (1929).

¹⁷⁷ Ibid.

Constitution that more imperatively calls for attachment than any other it is the principle of free thought -- not free thought for those who agree with us, but freedom for the thought that we hate.”¹⁷⁸ Though not in the majority, Holmes' statement suggests that censoring speech or thought that we may find immoral would not only violate the First Amendment, but would also be antithetical to the values of the Constitution's mission.

In *Virginia v. Black*, the Court gave a clearer answer to the question of hate speech, deciding that cross-burning does not provide “prima facie” evidence of “intent to intimidate” and thus is a protected act under the First Amendment.¹⁷⁹ Justice O’Connor gave the opinion of the Court, stating that the protection of speech under the First Amendment is “not absolute” and speech that “encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals” is not Constitutionally protected.¹⁸⁰ More specifically, a threat to bodily harm or death is not protected under the First Amendment.¹⁸¹ However, the Court recognized that while the burning of the cross is often “a symbol of hate,” it is also a way for someone to exercise their right to free expression without the intent to intimidate.¹⁸² The Court concluded that to ban *all* cross-burning, though a hateful act, would “create an unacceptable risk of the suppression of ideas.”¹⁸³ *Virginia v. Black* affirms that there is no hate speech exception to the First Amendment so long as that speech does threaten bodily harm or death.¹⁸⁴

More recently the Court reaffirmed that there is no hate speech exception in *Matal v. Tam*.¹⁸⁵ Simon Tam sought federal registration to name his rock band “The Slants” as a way to

¹⁷⁸ United States v. Schwimmer, 279 U.S. 644 (1929)..

¹⁷⁹ Virginia v. Black, 538 U.S. 343 (2003).

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ Ibid.

¹⁸⁵ Matal v. Tam, 582 U.S. ____ (2017).

“reclaim” the derogatory term against Asians.¹⁸⁶ Tam was denied the trademark under a disparagement clause and he subsequently sued under the claim that the clause violated his First Amendment right of freedom of expression.¹⁸⁷ The Court decided in Tam’s favor. In delivering the opinion of the Court, Justice Alito conceded that “speech that demeans on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground is hateful.”¹⁸⁸ However, Alito continued in recalling Holmes’ famous dissent that “the proudest boast of our free speech jurisprudence is that we protect the freedom to express ‘the thought that we hate.’”¹⁸⁹ As in *Virginia v. Black*, the 2017 Court reaffirmed that hate speech *is* protected under the First Amendment.

University campus freedom of speech lawsuits have also been decided by the high level federal courts in favor of free speech and academic freedom. Notably, the United States Court of Appeals for the Ninth Circuit decided in 2010 *Rodriguez v. Maricopa Community College*, that the administration at Maricopa County Community College was not obliged to discipline a professor, Kehowski, who sent emails on a college listserv that advocated for conservative political views on immigration.¹⁹⁰ When the college failed to discipline Kehowski after complaints about his politically charged emails, Kehowski’s co workers filed a complaint to the Equal Employment Opportunity Commission accusing the college of permitting racial and national origin discrimination in the workplace.¹⁹¹ In delivering the opinion of the court, Chief Judge Kozinski concedes that “plaintiffs no doubt feel demeaned by Kehowski’s speech, as his very thesis can be understood to be that they are less than equal.”¹⁹² However, just as there is no

¹⁸⁶ *Matal v. Tam*, 582 U.S. ____ (2017)..

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*

¹⁹⁰ *Rodriguez v. Maricopa County Community College District*, No. CIV 04-2510-PHX-EHC (D. Ariz. Jan. 12, 2006).

¹⁹¹ *Ibid.*

¹⁹² *Ibid.*

hate speech exception to the First Amendment, Kozinski points out that the objection to the emails is based entirely on [Kehowski's] point of view" and therefore the college has no right to "silence speech because the ideas it promotes are thought to be offensive."¹⁹³

The court praised the heated discussions that resulted from Kehowski's email stating that protests and debates are "the best tradition of higher learning."¹⁹⁴ The court states: "Without the right to stand against society's most strongly-held convictions, the marketplace of ideas would decline into a boutique of the banal, as the urge to censor is greatest where debate is most disquieting and orthodoxy most entrenched."¹⁹⁵ Kehowski's speech should not be silenced, as to silence his speech is to challenge the very mission of a university. The court summarized:

Intellectual advancement has traditionally progressed through discord and dissent, as a diversity of views ensures that ideas survive because they are correct, not because they are popular. Colleges and universities—sheltered from the currents of popular opinion by tradition, geography, tenure and monetary endowments—have historically fostered that exchange. But that role in our society will not survive if certain points of view may be declared beyond the pale. "Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die." *Keyishian v. Bd. of Regents of the Univ. of the State of N.Y.*, 385 U.S. 589, 603 (1967) (quoting *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957)). We have therefore said that "[t]he desire to maintain a sedate academic environment . . . [does not] justify limitations on a teacher's freedom to express himself on political issues in vigorous, argumentative, unmeasured, and even distinctly unpleasant terms." *Adamian v. Jacobsen*, 523 F.2d 929, 934 (9th Cir. 1975). 7264-65. (USCOA Ninth Circuit).

Rodriguez asserts that campuses, protected from the influence of public opinion as outlined by the AAUP, are obliged to protect academic freedom to the fullest extent possible to ensure society as a whole may continue to advance. When administrations are forced to discipline all controversial speech by threats of lawsuits, colleges will be more likely to hire

¹⁹³ *Rodriguez v. Maricopa County Community College District*, No. CIV 04-2510-PHX-EHC (D. Ariz. Jan. 12, 2006).

¹⁹⁴ *Ibid.*

¹⁹⁵ *Ibid.*

faculty who promote the orthodox opinion on campus rather than the controversial and innovative opinion.¹⁹⁶ Differences incentivize growth, and as Mill teaches, learning ceases when viewpoint diversity is eliminated on campus.

In 2020, the Eleventh Circuit Court of Appeals ruled on the campus free speech case in favor of First Amendment protections in *Uzuegbunam v. Preczewski*. In 2016, Chike Uzuegbunam was prevented from speaking about and distributing religious literature on Georgia Gwinnett College's campus.¹⁹⁷ After obtaining the required permit to distribute materials in the college's reserved free speech zone, Uzuegbunam was ordered to stop his speech by campus police.¹⁹⁸ The police stated that Uzuegbunam was in violation of the campus policy that prohibits speech that "disturbs the peace and/or comfort of person(s)" in the free person speech zone.¹⁹⁹ Uzuegbunam's friend, Joseph Bradford, who shares the same faith as Uzuegbunam, "decided not to speak about religion because of these events."²⁰⁰ Uzuegbunam and Bradford then sued college officials, claiming that the campus speech policy violated their First Amendment rights. Despite the college's removal of the speech policies, Uzuegbunam and Bradford still sued for nominal damages. The Court decided in favor of Uzuegbunam and Bradford, stating "it is undisputed that Uzuegbunam experienced a complete violation of his constitutional rights when respondents enforced their speech policies against him" and thus the college owes him damages for their violation.²⁰¹ Notably, this decision gives precedent that campus speech codes can violate the First Amendment rights of students. Furthermore, despite the college's reversal in policy, the administration is still held liable for free speech violations prior to any policy reversal; meaning

¹⁹⁶ *Rodriguez v. Maricopa County Community College District*, No. CIV 04-2510-PHX-EHC (D. Ariz. Jan. 12, 2006).

¹⁹⁷ *Uzuegbunam v. Preczewski* - 141 S. Ct. 792 (2021).

¹⁹⁸ *Ibid.*

¹⁹⁹ *Uzuegbunam v. Preczewski* - 141 S. Ct. 792 (2021).

²⁰⁰ *Ibid.*

²⁰¹ *Ibid.*

that universities cannot remove policy for the purpose of avoiding litigation and then reinstate it once the threat of litigation has passed.

Rodriguez v. Maricopa Community College and *Uzuegbunam v. Preczewski* demonstrated that both faculty and students are allowed to exercise their right to freedom of expression at public colleges and their ability to do so is essential to the function of a university. A public university cannot limit speech just because some find it “offensive.” While “free scholarly inquiry and the rigorous testing of ideas are not likely to suffer if personal incentives or racial slurs are excluded from campus,” Mill’s tyranny of the majority lessons tell us that those who define what speech is good or bad, or hateful or not, have the power to limit any form of speech.²⁰² Whittington argues that often those empowered to provide value-judgment on ideas on campus are not faculty members in the classroom, but campus administrators who do not directly participate in the advancement of scholarship but instead serve to protect the university’s public image.²⁰³ Whittington warns that “the tools forged to punish worthless speech will be used to silence valuable speech as well” and administrators may decide that only politically desirable speech should be protected.²⁰⁴ Hate speech should be limited to “personal threats and harassment” as they have in these cases.

The responsibility of calling out or challenging hate speech should be up to the professors and students engaging in scholarly inquiry.²⁰⁵ Treating bad ideas and poor arguments as taboo limits students' ability to demonstrate why these arguments are wrong. Students must be expected to identify “flawed arguments and set aside bad ideas rather than simply be told that some conclusions should be taken on faith and some ideas are too dangerous to be

²⁰² Whittington, *Speak Freely*, 86.

²⁰³ *Ibid*, 93.

²⁰⁴ *Ibid*, 87.

²⁰⁵ *Ibid*, 93.

contemplated.”²⁰⁶ These bad ideas, perhaps censored on campus, exist outside the university walls. If students are never exposed to them, the poor arguments can never be challenged and revised once they graduate.²⁰⁷ Hate is distasteful and upsetting but we cannot empower one fallible individual or set of individuals to define what hate speech is without losing valuable ideas in the process. Just as the AAUP sought to delegate power from administrators to faculty in terms of course material, we must also trust that our professors and students can recognize poor arguments as a product of their scholarly enterprise in the classroom.

Part III

Modern Campus Case Studies

Two recent freedom of speech and academic freedom cases on small private liberal arts campuses may provide insight to the research findings. The case studies do not represent the state of free expression on all American campuses. However, in examining both these cases, we may better understand what factors are influencing students and administrations to restrict speech on campus. Using Mill’s lesson from Part I, we may find best practices to return universities to their truth-seeking function.

Middlebury: A Case Study on Freedom of Speech

On March 3, 2017 a series of violent protests erupted on Middlebury College’s campus. The American Enterprise Institute (AEI), a conservative student organization, invited Charles

²⁰⁶ Whittington, *Speak Freely*, 96.

²⁰⁷ *Ibid*, 93.

Murray to speak on campus.²⁰⁸ Charles Murray is a political scientist whose controversial 1994 book *The Bell Curve* “linked lower socio-economic status with race and intelligence.”²⁰⁹ The Southern Poverty Law Center describes Murray as a “white nationalist.”²¹⁰ However, in light of the recent election of Donald Trump, Murray was invited to speak on behalf of his more recent work *Coming Apart* that explored class divisions among “White America.”²¹¹ Middlebury’s own political science professor, Alison Stanger offered to debate Murray after his speech to challenge his ideas in a public forum.²¹²

Students in the AEI organization wrote an open letter to their peers prior to the event in Middlebury’s newspaper, *The Middlebury Campus*. AEI members invited their fellow students to attend Murray’s speech in hopes of elevating Mill’s lessons of “robust discussion” to foster “diverse thoughts, opinions and understandings on the important topics of today” (Khan et al. 2017). The AEI students reminded their peers that “examining and engaging with a wide variety of thoughts and ideas is an essential part of what it means to pursue a liberal arts education” and that the goal of bringing a speaker like Murray to campus is to “promote open and academic debate and discussion of a wide range of issues.”²¹³ To this end, no debate nor discussion was had between students and Murray, as he was shouted down multiple times and violently swarmed by students. In the end, Murray had to flee campus with Professor Stanger.²¹⁴

²⁰⁸ Katharine Seelye, “Protesters Disrupt Speech by ‘Bell Curve’ Author at Vermont College,” *The New York Times*, March 3, 2017..

²⁰⁹ Ibid.

²¹⁰ Ibid.

²¹¹ Alexander Khan et al., ““AEI Invites You To Argue,” *The Middlebury Campus*, February 23, 2017.

²¹² Seelye, “Protesters Disrupt Speech.”

²¹³ Khan et al., “AEI Invites You To Argues.”

²¹⁴ Seelye, “Protesters Disrupt Speech.”

The violent disruptions began when Murray initially rose to speak to Middlebury community members.²¹⁵ In response, the audience erupted into shouting. Students turned their back from the stage and chanted “racist, sexist, anti-gay, Charles Murray go away!”²¹⁶ When it became clear that Murray would not be able to speak, he and Professor Stanger were moved to another room to complete the interview via livestream.²¹⁷ Protestors moved to the hallway outside the private room where they continued to chant and began pulling fire alarms (Seelye 2017). When the interview was complete, Stanger and Murray left the building to attend a planned dinner. Protestors met Murray and Stanger outside, where one protester “grabbed [Stanger]’s hair and twisted her neck.”²¹⁸ Once Murray and Stanger got into their vehicle, a group of protesters “pounded on it, rocked it back and forth, and jumped onto the hood.”²¹⁹ Murray and Stanger eventually left for dinner at a restaurant farther outside of town to avoid any further violent encounters.²²⁰ Stanger later went to the hospital where she was treated for a concussion and was given a neck brace.

²²¹ The Middlebury protesters clearly violated Mill’s guidance to not interfere with offensive speech by their use of the heckler’s veto. As previously mentioned, the value of free speech on campus is not for the speaker to express themselves, but for other community members to be exposed to and engage with the speaker’s ideas.²²² Whittington argues that when protests only get our attention and then do not add to a productive debate and exchange of ideas, they are not advancing the truth seeking function of the university, but rather limiting the

²¹⁵ Seelye, “Protesters Disrupt Speech.”

²¹⁶ Ibid.

²¹⁷ Ibid.

²¹⁸ Ibid.

²¹⁹ Ibid.

²²⁰ Seelye, “Protesters Disrupt Speech.”

²²¹ Ibid.

²²² Whittington, *Speak Freely*, 99.

communities ability to participate in this function.²²³ Obstructive student protests are antithetical to free speech on campus; when protestors force universities to accept their ideas through “forced compliance” they are claiming that they already know the truth and do not need to debate, critically examine their ideas or even allow others to do so.²²⁴ Student protestors cannot claim their right to free speech and “talking back” if they are restricting other community member’s rights to listen to speech; free speech cannot be a zero-sum game. Whittington emphasizes that students may protest on campus by organizing their own events, publishing and circulating their own views on campus and rallying outside the venue.²²⁵ Recalling Mill, Whittington writes that Mill hoped “in our best moments we would ourselves be willing to engage with and learn from those with whom we disagree most strongly, but he insisted that even in our worst moments we must allow others to engage with and learn from those with whom disagree.”²²⁶

Prior to Murray’s arrival, many students wrote into *The Middlebury Campus*, condemning Murray’s visit. One student, Nic Valenti, wrote that while he understood the principle that colleges are spaces for open academic discussion and debate, “not all opinions are valid opinions” and thus invalid opinions, like Murray’s, should not be given a platform.²²⁷ Valenti cried the fallacy of “false equivalence” in providing a space for Murray to talk.²²⁸ “Just because two sides are opposed,” Valenti wrote, “does not mean they are equally logically valid” (Valenti 2017). Valenti went on to characterize Murray’s ideas as “dangerous” because they “disavow the fundamental equality of all human beings.”²²⁹ Valenti concluded his article by

²²³ Whittington, *Speak Freely*, 99.

²²⁴ *Ibid*, 105.

²²⁵ *Ibid*, 112.

²²⁶ *Ibid*, 105.

²²⁷ Nic Valenti, “Why I’m Declining AEI’s ‘Invitation to Argue’ (And Protesting Instead),” *The Middlebury Campus*, March 2, 2017.

²²⁸ *Ibid*.

²²⁹ *Ibid*.

condemning “white men” for not accepting women and POC as full and equal members of the campus community.²³⁰

While Valenti’s article does not speak for all students who participated in a protest, it provides insight into how protesters may have been feeling prior to the event. If, like Valenti, protesters felt that Murray’s speech was in fact “dangerous” (though dangerous here is not defined as physical) and target “women and POC” as unequal members of the community, then they may have felt justified in their efforts to shut down Murray to prevent physical harm. However, his intentions for his speech and interview were not to exclude any campus members or to put students in danger but to share a recent book about election patterns in white America.

Lukianoff and Haidt point to how the word “violence” has expanded on campus “to cover a multitude of nonviolent actions, including speech that... will have a negative impact on members of protected identity groups.”²³¹ Middlebury students like Valenti misunderstand speech to be capable of physical harm. When I was a child, I was taught that sticks and stones may break my bones but words can never hurt me; students no longer feel this is so, rather they believe that words can and often do hurt you. Thus, you must protect yourself from offensive speech by censoring others. Much is lost when free expression is sacrificed in the spurious name of safety. When we see speech as violence and words that may have “a negative impact on vulnerable members of the community” as hate speech, we are able to justify actions that are antithetical to respectful and charitable university norms.²³² It is much easier to not listen, shout down or be violent towards someone who you believe is committing acts of violence than it is to someone who simply disagrees with you.

²³⁰ Nic Valenti, “Why I’m Declining AEI’s ‘Invitation to Argue’ (And Protesting Instead),” *The Middlebury Campus*, March 2, 2017.

²³¹ Lukianoff and Haidt, *The Coddling of the American Mind*, 105.

²³² *Ibid*, 86.

Lukianoff and Haidt remind us that it is a logical error to accept that harm, even physical harm, is the same as violence.²³³ Students experience physical harm almost daily through the stress of homework assignments or extracurricular activities, but to assign a student an exam or request they attend a talk after class is not an act of violence.²³⁴ When students and professors are able to clearly distinguish between speech and violence and choose to see an alternative opinion as just that, a belief instead of a violent act, can the search for truth resume. Until then, universities will continue to suffer from self-censorship, hostility, and distrust among members as illustrated by the violence at Middlebury.

Before the protests, over 450 Middlebury alumni signed an open letter demanding Murray not be allowed to speak on campus.²³⁵ The letter stated that Murray's visit is "not an issue of freedom of speech" but his poor scholarship and research should disqualify him from speaking.²³⁶ Over 50 faculty members subsequently signed a letter requesting that President Patton not introduce Murray (although she had no intention of doing so). In the faculty's letter, Murray is characterized as a "discredited ideologue" who should not be engaged with.²³⁷ Faculty write that this "is not a case of disagreeing with the ideas of a fellow scholar" but of legitimizing "partisan propaganda."²³⁸

If Murray was on campus solely to spew "partisan propaganda" with poor research, he should not have been given a platform by the AEI because his ideas would not serve the purpose of advancing knowledge. However, in her *New York Times* op-ed, Professor Alison Stanger condemned her colleagues and students and alumni for not doing their own research on Murray and instead believing the majority opinion at face value, especially in a time of high levels of

²³³ Lukianoff and Haidt, *The Coddling of the American Mind*, 86..

²³⁴ Ibid.

²³⁵ Seelye, "Protesters Disrupt Speech."

²³⁶ Aria Bendix, "Conflicting Views on the Middlebury Controversy," *The Atlantic*, March 17, 2017.

²³⁷ Cohort of Middlebury Professors, "Letter From Middlebury Faculty," *The Middlebury Campus*, March 2, 2017.

²³⁸ Ibid.

misinformation.²³⁹ “I was genuinely surprised and troubled to learn that some of my faculty colleagues had rendered judgment on Dr. Murray’s work and character without ever having read anything he has written” Stanger writes.²⁴⁰ She continues, noting that the Southern Poverty Law Center’s (SPLC) label of “white nationalist” for Murray is incorrect.²⁴¹ If students and faculty alike were to do their own fact-checking they would have caught the SPLC’s mistake and found that Murray supports gay marriage and is a “never Trump” Republican.²⁴² Stanger advises that everyone must “be more rigorous in evaluating and investigating anger, or this pattern of miscommunication will continue on other college campuses.”²⁴³ Stanger’s criticism depicts the failing of faculty and students to follow Mill’s guidance of deeply understanding and examining theories before drawing conclusions to ensure that no false theory or assumption goes unnoticed. When we rely on vague assumptions to make decisions, we miss the reality of the situation and miss an opportunity for learning.

Stanger’s piece also argues that the protests were a consequence of the polarized and volatile political climate after Donald Trump’s election.²⁴⁴ However, Stanger writes that “for us to engage with one another as fellow human beings — even on issues where we passionately disagree — we need reason, not just emotions.”²⁴⁵ Students and faculty can no longer “reject calm logic” and “embrace the alternative news” that supports their own biases.²⁴⁶ Murray’s event presented the opportunity for Middlebury students to “exchange error for truth;” they could have engaged and learned by identifying Murray’s mistaken assumptions or even debating him in the

²³⁹ Allison Stanger, “Understanding the Angry Mob at Middlebury that gave me a Concussion,” *The New York Times*, March 13, 2017.

²⁴⁰ *Ibid.*

²⁴¹ *Ibid.*

²⁴² *Ibid.*

²⁴³ *Ibid.*

²⁴⁴ Stanger, “The Angry Mob.”

²⁴⁵ *Ibid.*

²⁴⁶ *Ibid.*

Q and A portion of the event.²⁴⁷ Similarly, if they felt that engaging with Murray would give him undeserved legitimacy, they could have simply protested outside, walked out or refused to attend the event and followed Mill's narrowly defined harm principle.²⁴⁸ Stanger believed that the AEI event was a moment to demonstrate her, and the college's, "commitment to a free and fair exchange of views."²⁴⁹ Stanger concludes her piece with a warning; if Americans can no longer engage civilly with one another, democracy fails. Moving forward without the free exchange of ideas, open discussion and debate "would be antithetical to the very ideals of the university and of liberal democracy."²⁵⁰

Middlebury's President, Laurie Patton condemned the event as well. She emphasized that "peaceful, non-disruptive protest" is allowed and *encouraged* on campus; all members of Middlebury have the right to make their "voices heard, both in support of and in opposition to people and ideas."²⁵¹ However, Patton criticized protestors for disrupting into violence when "available means of peaceful protest were declined."²⁵² She stated that Middlebury is "committed to upholding the right to speech, even unpopular speech" and she pointedly asked "if colleges and universities cannot serve this role, who can?"²⁵³ Both Patton and Stanger recognize the vital role that college plays in the maintenance of our democracy and rightly fear the consequences of events like those at Middlebury.

According to Middlebury's 2017 Student and Faculty Handbook, students are free to support causes, protest or demonstrate so long as they "do not disrupt the regular and essential

²⁴⁷ Stanger, "The Angry Mob."

²⁴⁸ Ibid.

²⁴⁹ Ibid.

²⁵⁰ Ibid.

²⁵¹ Laurie Patton, "March 6 Statement from President Laurie Patton," *Middlebury*, March 6, 2017.

²⁵² Ibid.

²⁵³ Ibid.

operation of the College or community.”²⁵⁴ The handbook further describes prohibited disruptions as “purposefully blocking the view of others at the event; banners or items that block the audience's view; noise or action that disrupts the ability of the audience to hear... or disrupting essential operations at the College.”²⁵⁵ The handbook also protects students freedom of expression, stating that they “should be free to take reasoned exceptions to the data or views offered in any course of study and to reserve judgment about matters of opinion” (Middlebury 2016). Similarly, in reference to AAUP’s 1940 Statement, faculty are given freedom of research and inquiry as academic freedom is “fundamental to the advancement of truth.”²⁵⁶ The 2017 handbook demonstrated the administration's commitment to both freedom of expression and academic freedom for the purpose of fulfilling the college’s role of advancing and sharing the truth. Student actions sought to undermine the ability of the college to fulfill this mission and 74 Middlebury students were disciplined for their violations as a result.²⁵⁷

Why were Middlebury students so ready to undermine the administration's commitment to freedom of speech despite other avenues of protest? Robert Boyers provides an answer in his warning of a “total culture” taking over university campuses.²⁵⁸ “Total culture” according to Boyers, is a clear set of expectations on campus of what is good and what is bad and to travel outside of those expectations is prohibited.²⁵⁹ These expectations are not explicitly written out in policy, but are upheld by social norms of community members. The research findings that students fear social ostracization for expressing certain opinions illustrates “total culture” in

²⁵⁴ “General Information,” College Handbook, Middlebury, Last modified June 12, 2017, https://www.middlebury.edu/office/sites/www.middlebury.edu.office/files/2022-12/collegehandbookmiddlebury2016_2017.pdf?fv=acSouxDD.

²⁵⁵ Ibid.

²⁵⁶ Ibid.

²⁵⁷ Stephanie Saul. “Dozens of Middlebury Students Are Disciplined for Charles Murray Protests,” *The New York Times*, May 24, 2017.

²⁵⁸ Robert Boyers, *The Tyranny of Virtue; Identity, the Academy, and the Hunt for Political Heresies*, (New York: Scribner, 2019).

²⁵⁹ Ibid, 97.

action. Boyers points out the irony of this culture at universities: “that a culture officially committed to diversity and openness should be an essentially conformist culture and that hostility to the clash of incommensurable ideas and even to elementary differences should be promoted.”²⁶⁰ Faculty and students pursue education with a “determination not to offend, not to disorient, not to stir discomfort” to the detriment of authentic research and discussion.²⁶¹ When faced with content that does offend or cause discomfort, students and faculty respond by shutting it down.

The modern orthodoxy on campus seeks to make all ideas simple: good or bad, worthy or not. However, reality shows that ideas, like Murrays, are “at best strenuous and incompatible” with simplicity and are often extremely complex.²⁶² Boyers warns that “an educational establishment committed to ‘accepted community values’ will never find a way to honor the transgressive, the inexorable, or the instability that are at the heart of the ‘modern condition.’”²⁶³ We cannot really understand ourselves or what we are trying to research if our learning can only fall between certain lines of “acceptance community values.”²⁶⁴ Instead of examining Murray’s theories for remnants of partial-truths, the Middlebury community labeled Murray as falling outside the confines acceptable values. Thus, to engage with Murray would be to engage with evil and would result in a student or faculty’s social ostracization.

As centers of learning and discovery, Whittington argues that universities cannot reinforce the “total culture” by being selective about which speakers or student groups they allow on campus.²⁶⁵ Discovery and advancement of knowledge do not just happen in the classroom but are bolstered by student groups and visiting speakers’ engagement. While more radical thinking

²⁶⁰ Boyers, *The Tyranny of Virtue*, 97.

²⁶¹ *Ibid*, 98.

²⁶² *Ibid*, 100.

²⁶³ *Ibid*, 100.

²⁶⁴ *Ibid*.

²⁶⁵ Whittington, *Speak Freely*, 129.

speakers may draw controversy to campus, unorthodox ideas are essential to a lively and healthy campus community. However, Whittington warns that student groups or faculty should not invite outside speakers to campus who are solely provocateurs and whose arguments are “shocking” but mostly insubstantial.²⁶⁶ Instead, outside speakers should challenge the status quo with thoughtful and serious arguments.²⁶⁷ Nonetheless, outside speakers provide the campus community with another way to advance, challenge and grow their own knowledge; and those speakers who provide the most for the campus community are the ones that disagree with us.

The Middlebury case illustrates the increasing lack of viewpoint diversity on campuses. Universities are able to claim authority on factual questions when there exists viewpoint diversity among faculty and students.²⁶⁸ However, when most of the campus community hold the same political preferences, “research shows that reviewers go easy on articles and grant proposals that support their political team.”²⁶⁹ If all community members have the same opinions, they also all hold the same confirmation bias. When our own biases cannot be naturally corrected by our peers, the quality and accuracy of academic research declines.²⁷⁰ The worst scenario of the deterioration of viewpoint and political diversity on campus comes in the form of witch hunts like the event at Middlebury. Mill teaches us that the strongest power tends to become the sole power in any community; as the number of those who believe in the orthodoxy on campus increase, the corrective force of the minority weakens until it becomes altogether prohibited.

The event at Middlebury illustrates three important happenings on the modern campus. The first is that students are conflating offensive speech with violent acts and thus are feeling more justified in committing violence in response to offensive speech. The research studies

²⁶⁶ Whittington, *Speak Freely*, 133.

²⁶⁷ *Ibid.*

²⁶⁸ Lukianoff and Haidt, *The Coddling of the American Mind*, 109.

²⁶⁹ Lukianoff and Haidt, *The Coddling of the American Mind*, 109.

²⁷⁰ *Ibid.*, 112.

support this claim with one in five college students believing that violence may be necessary to prevent someone from speaking.²⁷¹ The second is that faculty and students alike are falling victim to the tyranny of the majority and believing unproven but outspoken assumptions without doing their obligated research. The final happening is that campuses are under threat of a total culture that creates binaries of good and evil. When we understand our world to be black and white, we lose the complexities that Mill tells us exist in all theories and research. We also lose any endorsement by our peers or colleagues to engage on difficult topics because to do so would be to engage with someone that is evil and unworthy. Mill tells us that prohibiting discussion and debate about all topics prevents innovation and advancement for the university and society.

Hamline University: An Academic Freedom Case Study

In October 2022, Dr. Erika López Prater was teaching an adjunct course on art history at Hamline University in Minnesota when she displayed an image of the Prophet Muhammed to her class. The class syllabus that she distributed to students at the beginning of the semester also warned that images of the Prophet would be shown in class and requested that students reach out to her with concerns.²⁷² In the October class, López Prater told students they would be viewing the image that day and gave students the opportunity to leave the class without penalty if they wished.²⁷³ No one said anything, so she showed the image.²⁷⁴ A senior student then complained to the administrative officials about the incident. Subsequently, the administrations labeled López

²⁷¹ Ryan et. al., “Free Expression and Constructive Dialogue.”

²⁷² Vima Patel, “A Lecturer Showed a Painting of the Prophet Muhammed. She Lost Her Job,” *The New York Times*, January 8, 2023.

²⁷³ Ibid.

²⁷⁴ Ibid.

Prater's actions as "islamophobic" and university officials informed López Prater that "her services next semester were no longer needed."²⁷⁵

In many sects of Islam, viewing or creating an image of the Prophet is forbidden.²⁷⁶ However, much of the Islamic community is divided on the issue and not all Muslims prohibit the viewing of the Prophet.²⁷⁷ The student who complained about the image to officials, Aram Wedatalla, said she felt her identity as a Muslim was disrespected when López Prater showed the image: "as a Muslim, and a Black person, I don't feel like I belong, and I don't think I'll ever belong in a community where they don't value me as a member, and they don't show the same respect that I show them."²⁷⁸ Wedatalla first went to López Prater after class to share her frustration in viewing the image.²⁷⁹ When the conversation did not appear to be productive, López Prater emailed her department head, Alison Baker, warning that Wedatalla might complain.²⁸⁰ Baker responded to López Prater, writing "it sounded like you did everything right... I believe in academic freedom so you have my support."²⁸¹ López Prater then followed up with Wedatalla via an email apology, writing that often "diversity involves bringing contradicting, uncomfortable and coexisting truths into conversation with each other."²⁸² Professor López Prater recognized that complete academic endeavors require that professors provide students with a diversity of perspectives without privileging one belief over another. She continued in the email stating "I am sorry that despite my attempt to prevent a negative reaction, you still viewed and were troubled by this image."²⁸³

²⁷⁵ Vima Patel, "A Lecturer Showed a Painting of the Prophet Muhammed. She Lost Her Job," *The New York Times*, January 8, 2023.

²⁷⁶ Mark Berkson, "Letter to the Editor on Islamophobia Accusations," *The Oracle*, December 6, 2022.

²⁷⁷ Ibid.

²⁷⁸ Kimia Kowsaria, "Who Belongs," *The Oracle*, December 6, 2022.

²⁷⁹ Patel, "A Lecturer."

²⁸⁰ Ibid.

²⁸¹ Ibid.

²⁸² Ibid.

²⁸³ Kowsari, "Who Belongs."

On November 7, almost a month after the image was shown, the vice president for inclusive excellence at Hamline, David Everett, sent an email to all employees stating that specific actions that occurred in a class last month were “undeniably inconsiderate, disrespectful and Islamophobic.”²⁸⁴ On November 11, Everett informed the university's newspaper, *The Oracle*, that “in lieu of this recent incident, it was decided it was best that this faculty member was no longer part of the Hamline community.”²⁸⁵ The university then held a panel on December 8, led by Jaylani Hussein who is the executive director of a Minnesota Muslim civil rights group.²⁸⁶ Hussein told the audience that “if this institution wants to value those [Muslim] students it cannot have incidents like this happen. If somebody wants to teach some controversial stuff about Islam, go teach it at the local library.”²⁸⁷ Hussein’s remarks reflect the same commitment to “total culture” as Middlebury. “Controversial stuff” is deemed outside of accepted values and thus off limits for professors to distribute and students to consume.

López Prater’s choice to show this image was not a unique act among art history classes in universities, rather many universities highlight this image because of its significance to Islamic culture.²⁸⁸ Christiane Gruber, professor of Islamic Art at the University of Michigan states that the image “is considered by scholars, curators and art collectors a masterpiece of Persian manuscript painting” and that “it is often taught in Islamic art history classes at universities across the world, including in the U.S., Europe, the Arab world, Turkey and Iran.”²⁸⁹ Gruber also noted that the movement to “decolonize” art history courses encourages scholars to incorporate Islamic art into their class materials.²⁹⁰ Furthermore, the image López Prater showed

²⁸⁴ Patel, “A Lecturer.”

²⁸⁵ Kowsari, “Who Belongs.”

²⁸⁶ Patel, “A Lecturer.”

²⁸⁷ Patel, “A Lecturer.”

²⁸⁸ Ibid.

²⁸⁹ Christiane Gruber, “An Academic is Fired Over a Medieval Painting of the Prophet Muhammad,” *News Line Magazine*, December 22, 2022.

²⁹⁰ Ibid.

is not unique within Islamic art history; the image belongs to a collection of depictions of the prophet throughout history.²⁹¹ Gruber also emphasizes that the image was made “without exception, by Muslim artists for Muslim patrons in respect for, and in exaltation of, Muhammad and the Quran.”²⁹² The paintings do not represent a hatred towards Islam, but are “by definition, Islamophilic from their inception to their reception.”²⁹³ Professor Omid Safi of Asian and Middle Eastern studies at Duke University also shows images of the Prophet in class but without the content warnings López Prater provided.²⁹⁴ He explains to students that the images are “works of devotion created by pious artists at the behest of devout rulers.”²⁹⁵ In class, López Prater informed students that she was showing them the image for a reason; to challenge the stereotypical thinking that Islam “completely forbids, outright, any figurative depictions or any depictions of holy personages” and instead reminded her students that there is “no one, monothetic Islamic culture.”²⁹⁶ López Prater sought to fulfill her duty as a professor to not take sides on a certain belief, and instead, as Mill guides, allow her students to come to their own conclusions.

We are left to understand why the university acted so hastily in labeling López Prater’s actions as islamophobic and subsequently dismissing her when she was clearly not teaching anything out of the ordinary. A new commitment to intent over impact on campus may help explain the university’s decision. Deangela Huddleston, a Hamline student and member of the Muslim Student Association told *The Oracle*, “Hamline teaches us it doesn’t matter the intent, the impact is what matters.”²⁹⁷ If Hamline officials do teach their students that intent is more

²⁹¹ Gruber, “An Academic is Fired.”

²⁹² Ibid.

²⁹³ Ibid.

²⁹⁴ Patel, “A Lecturer.”

²⁹⁵ Ibid.

²⁹⁶ Kowsari, “Who Belongs.”

²⁹⁷ Ibid.

important than impact, then professors like López Prater who seek to fulfill their obligations as a professor and teach challenging course material are set up to fail. For a student to have a negative experience in class appears to be a moral wrong at Hamline and those who commit moral wrongs in a total culture are exiled.

Boyer's warns of the conflation of intent versus impact.²⁹⁸ On a "total culture" campus, no one is "permitted to acknowledge that sometimes a mistake is just a mistake, that we are all susceptible to making such mistakes, or that judgements based upon insufficient evidence of malice or callous indifference are not to be trusted."²⁹⁹ When we do not leave room for our peers or professors to slip up and when the consequence of offending is exile from the community, students and faculty self-censor in order to protect themselves. The self-censorship comes at the cost of students hiding potentially innovative thoughts for fear of social ostracization. The fear of offending that is taught to students and then reproduced by them across campus, according to Boyers, is paternalistic: "for what can be more condescending than the thought that other persons are incapable of handling criticism or benefitting from the free play of ideas."³⁰⁰ Instead of self-censoring, López Prater chose to provide important educational content at the risk of unintentionally offending. As a result, López Prater was not treated with grace and respect by her students or the Hamline administration, but as someone who committed a moral evil who must be "canceled" and forced out of the community. The university jumped to conclusions about López Prater and assumed that a marginalized student who was hurt *must* be prioritized over López Prater's academic freedom. In attempting to provide her students with material that spotlighted a normally overlooked culture, López Prater was punished and mischaracterized as hateful. The shaming of those who think differently, Boyers writes, has only distracted faculty

²⁹⁸ Boyers, *The Tyranny of Virtue*, 48.

²⁹⁹ *Ibid.*

³⁰⁰ *Ibid.*

from the university's "primary obligation, which is to foster an atmosphere of candor, good will, kindness, and basic decency without which we can be of no use to one another or our students."³⁰¹

Hamline's treatment of López Prater demonstrates a new commitment to emotional reasoning on college campuses where the emotions students or faculty feel are taken as the reality of the situation. Similar to the case at Middlebury, it appears the university officials did not do their proper research but instead relied on the majority sentiments regarding the incident. Hamline University took the feelings of a student to be the truth of a situation without any independent investigation. When universities function properly "scholars engage one another within a community that shares norms of evidence and argumentation and that holds one another accountable for good reasoning, claims get refined, theories gain nuance, and our understanding of truth advances."³⁰² However, if professors encourage students to conflate reality with their emotions and to "teach students that intention doesn't matter... to find more things offensive.. and that whoever says or does things they find offensive are "aggressors" who committed acts of bigotry against them" then the search for truth is overshadowed by the search to call-out those "aggressors."³⁰³ The administration's characterization of López Prater as "islamophobic" in response to a Muslim student's negative experience demonstrates the fallacy of emotional reasoning; it is not possible for López Prater to hate islam while elevating an important piece of Islamic art. A student has every right to feel upset by seeing the image, but that student's negative experience does not automatically make López Prater's actions hateful. Notably, Haidt and Lukianoff write that "the notion that a university should protect all of its students from ideas that some of them find offensive," a notion that is fostered and cultivated by the falsehood of

³⁰¹ Boyers, *The Tyranny of Virtue*, 34.

³⁰² Lukianoff and Haidt, *The Coddling of the American Mind*, 39-40.

³⁰³ *Ibid*, 46.

emotional reasoning, “is a repudiation of the legacy of Socrates, who described himself as the ‘gadfly’ of the Athenian people.”³⁰⁴ Our ideas only grow stronger when they are challenged or exposed to new information, if we cannot challenge one another ideas without being labeled as “aggressive” or “hateful” then we cannot adequately search for truth.

Mark Berkson Ph.D. and chair of the Hamline Religion Department wrote a letter to the editor in the campus newspaper in defense of López Prater in December 2022. The letter was removed for a month after being live for only two days, it was then republished in January 2023. Berkson writes that labeling the act of showing an image of the Prophet in academic context as islamophobic “is not only inaccurate but also takes our attention off of real examples of bigotry and hate.”³⁰⁵ Berkson challenges students' prioritization of impact over intent, writing that islamophobia is defined as “fear, hatred, hostility or prejudice against Muslims” and thus “the intention or motivation behind the act” is essential in judging whether or not an act was truly islamophobia.³⁰⁶ Since López Prater only wished to educate her students through the image, her intention was clearly not islamophobic.³⁰⁷ Berkson writes that if her acts were truly islamophobic it would mean Islamic Art could never be shown, in an academic context or otherwise.³⁰⁸ Berkson asks “ Should no student be able to see this art? And what would it mean for a liberal arts institution to deem an entire subject of study prohibited?”³⁰⁹ To prohibit all Islamic art that depicts the Prophet would essentially mean that if an act is prohibited in a particular religion, everyone must obey that prohibition so as not to offend the members of that religion.³¹⁰

³⁰⁴ Lukianoff and Haidt, *The Coddling of the American Mind*, 49.

³⁰⁵ Berkson, “Letter to the Editor.”

³⁰⁶ Ibid.

³⁰⁷ Ibid.

³⁰⁸ Ibid.

³⁰⁹ Ibid.

³¹⁰ Ibid.

The incident that occurred in López Prater’s classroom should not be about Islamophobia according to Berkson but about “balancing academic freedom and religious commitments” in the classroom.³¹¹ Berkson condemns administrators who characterized López Prater as islamophobic and dismisses her without learning her perspective.³¹² Administrators and educators alike are in no position to weigh in on religious debates. In fact, Mill tells us that to do so would be to claim that one religion is the whole truth. Berkson notes that forbidding professors from showing images of Muhammad would privilege one religious interpretation of another.³¹³ To avoid this, professors must follow López Prater’s lead and “present a religious tradition and its artistic heritage in all of its richness and diversity.”³¹⁴ Berkson concluded that intentions *must* be valued over impact in order to move “forward in open conversation and mutual respect.”³¹⁵ While Muslim or Jewish students may be distressed by particular actions, those actions are not always islamophobic or antisemitic, and are often just misunderstandings.³¹⁶

Hamline officials’ inaccurate characterization of López Prater’s actions illustrates a decreased commitment to holding the use of language to high standards. Boyers describes the “cleansing of the common language,” where students and professors weaponize good ideas to enforce the “total culture.”³¹⁷ Similar to how the word privilege is a common “buzzword” students and faculty deploy on campus in order to “distract all of us from the substance of our discussion,” “islamophobic” was used to distract Hamline students from an opportunity for critical learning.³¹⁸ Boyers argues that wielding the charge of privilege or islamophobic in any

³¹¹ Berkson, “Letter to the Editor.”

³¹² Ibid.

³¹³ Ibid.

³¹⁴ Berkson, “Letter to the Editor.”

³¹⁵ Ibid.

³¹⁶ Ibid.

³¹⁷ Boyers, *The Tyranny of Virtue*, xx.

³¹⁸ Ibid, 11.

argument is the easy, and often unsubstantiated, way to win approval.³¹⁹ When islamophobic is used in any argument, “total culture” tells students and faculty that the person wielding the charge *must* be right because they are making a moral claim. As a result, any investigation into the claim or the argument all together ceases. “Cleansing the common language” and using words like islamophobic in a spurious way only serves to sow confusion in the classroom.³²⁰ Mill advised that students “never use a word without a meaning, or a word which adds nothing to meaning” when sharing ideas in the classroom.³²¹ When we use words without their proper meaning, we lose the ability to make distinctions between “what is important and less important, between doing what is injurious and being deficient in doing what is possibly good, between sponsoring injustice and simply living more or less modestly in an imperfect world.”³²² When we cannot distinguish between these acts, we cannot truly investigate or claim truth to any of our studies. Instead, people are so fearful of saying the wrong thing they withdraw their voice and opinion all together.

Hamline’s use of “islamophobic” is also an example of Susan Jacoby’s concept of “junk thought.”³²³ Junk thought is language used to promote ideas that have little or no relation to the reality they purport to describe.³²⁴ For example, crying male privilege when your male friend beats you, a female, in a basketball game. Junk thought is improperly used to simplify otherwise complex and ambiguous ideas. Labeling López Prater’s actions as islamophobic simplified the situation to the detriment of López Prater’s career. Boyers reminds us that often, “we are impatient with ambiguity and positively uncomfortable with irony” and would rather have what

³¹⁹ Boyers, *The Tyranny of Virtue*, 12.

³²⁰ *Ibid*, 17.

³²¹ Mill, “On Education,” 342.

³²² Boyers, *The Tyranny of Virtue*, 72.

³²³ *Ibid*, 148.

³²⁴ *Ibid*.

is offensive and what is acceptable clearly sketched out for us.³²⁵ Hamline University administrators participated in validating the junk thought of the student who complained. When administrations or faculty “let an obvious misstatement or distortion of fact go unchallenged—often for fear of introducing a factor, or a fact, that would decidedly complicate the trajectory of an ongoing discussion,” they signal to their students that the obvious misstatement, the junk thought, is at the very least, credible and at the very most, the truth.³²⁶ Students seek ideological transparency in all ideas so they may categorize them as good or bad. However, Mill teaches us that all ideas worth studying do not neatly fall into one category or the other. The most worthy ideas to be investigated are those that we do not understand well and those that make us uncomfortable. We cannot teach our students to use “junk thought” to sweep unwanted topics aside or call-out someone who made us uncomfortable. We must encourage them to lean into their discomfort and ask harder questions in hopes to get to a better conclusion than when class began.

López Prater was not rehired by Hamilton as a result of this incident. As an untenured adjunct professor working for little pay, López Prater did not enjoy the same academic freedom protection as full salaried tenured professors. López Prater told *The Oracle* that her actions and teachings were “lamentably mischaracterized” when Everett called her actions “undeniably... Islamophobic.”³²⁷ Furthermore, López Prater believes her “opportunities for due process have been thwarted” once she was labeled an islamophobe because no faculty member in good faith could defend someone who was hateful.³²⁸ In response to the administration's actions, López Prater has sued Hamline for religious discrimination and defamation.³²⁹ López Prater’s attorney

³²⁵ Boyers, *The Tyranny of Virtue*, 148.

³²⁶ Ibid, 151.

³²⁷ Kowsari, “Who Belongs.”

³²⁸ Ibid.

³²⁹ Nina Moini, “Former Hamline professor Erika López Prater sues for religious discrimination, defamation,” *Sahan Journal*, January 18, 2023.

Nicholas May states that the professor's association with "islamophobia... has hurt her career goal of one day becoming a tenured college professor."³³⁰ López Prater is seeking "damages for that harm to her reputation as well as to the emotional distress."³³¹

Initially, Hamline President, Fayneese Miller, challenged claims that López Prater was "fired" or "dismissed" and instead Miller claimed that the decision for López Prater to not teach another class was "made at the unit level and in no way reflects on her ability to adequately teach the class."³³² Miller defended the universities decision citing that the American Federation of Teachers states that "academic freedom and its attendant rights do not mean that 'anything goes.'"³³³ Miller continued, that the concept of academic freedom should not infringe upon the rights of students and that Hamline's Civility Statement "guards our campus interactions" to ensure all students are given equal protection at the institution.³³⁴ The conflict of individuals' rights is the heart of the liberal tradition and there is never an easy answer. We could look towards the harm principle provided by Mill and reaffirmed by the Supreme Court that only when someone intends to commit physical harm should their rights be restricted. López Prater did not intend to commit any harm nonetheless physical harm to her Muslim student. Thus, under Mill's guidance, the university should not discipline her. However, it is unclear if López Prater even violated her students rights of equal protection. If we avoid the fallacy of emotional reasoning, López Prater took every effort to enable her Muslim students to engage fully in class and a single student's negative experience does not imply discrimination.

On January 17, Hamline University Board of Trustees Chair Ellen Watters and President Miller released a joint statement conceding that characterizing Prater's actions as islamophobic

³³⁰ Moini, "Former Hamline professor."

³³¹ Ibid.

³³² Ellen Watters and Fayneese Miller, "Statements from Hamline University," *Hamline University*, January 17, 2017.

³³³ Ibid.

³³⁴ Watters and Miller, "Statements from Hamline University."

was “flawed.”³³⁵ The statement also noted that the Board believed “that academic freedom and support for students can and should co-exist” on campus through “exciting, robust, and honest conversation.”³³⁶ The board affirmed that academic freedom is not of lower concern than student-care and that “faculty have the right to choose what and how they teach.”³³⁷ The administration's concessions further re-emphasizes that Hamline officials violated López Prater’s right to academic freedom. While this concession is significant and may serve as a lesson to other small private schools in academic freedom cases, it does negate the fact that López Prater is out of a job and now suffers from a tarnished reputation.

The Hamline University case study demonstrates that university administrations are just as susceptible to the tendencies of the tyranny of the majority as students. The dissenting opinion was silenced in multiple ways: by not letting López Prater tell her side of the story, by taking down Dr. Berkson’s letter in the school newspaper and by taking a student's emotions as reality and fact without any investigation that would have proven otherwise. Students and administrators are weaponizing words, like islamophobic, to benefit their perception of “the total culture.” When words no longer have meaning, productive discussion and debate with one another ceases. Furthermore, the AAUP created the right of academic freedom in order to prevent the overreach of university officials. Hamline officials should have treated López Prater as an expert on the subject of Islamic art history. Administrators, who are not expert scholars, were obligated to defer to her in the decision to show the image of Muhammad. When professors are not seen as experts but simply channels to communicate the administration's perception of “accepted community values,” free inquiry and genuine research is impossible.³³⁸

³³⁵ Waters and Miller, “Statements from Hamline University.”

³³⁶ Ibid.

³³⁷ Ibid.

³³⁸ Boyers, *The Tyranny of Virtue*, 100.

A Note about Safe Spaces and Trigger Warnings

Safe spaces and trigger warnings have become common practices on college campuses that have been abused by students and faculty alike. Whittington argues that these well-intentioned mitigators of harm for specific students have been co-opted by the greater campus community. As a result, safe spaces and trigger warnings limit free speech and academic freedom on campus.³³⁹ Safe spaces are important spaces at universities because campuses are not only centers of learning and innovation but also of living, eating and recreating. Affinity housing or same-sex lounges are essential spaces on campus that give students the opportunity “to set ideas aside for a time and to emotionally recharge.”³⁴⁰ However, labeling the classroom as a “safe space” may limit the passionate debate that advances knowledge and challenges our own beliefs. Whittington writes that “safety” in the classroom has been conflated with “comfort.”³⁴¹ These loosely defined terms have enabled students to continually demand restriction of speech or material course work in the name of “safety” and “comfortability.”³⁴² Undoubtedly, the classroom must be a space without threats of violence and where students respect one another. However, civility does not equate to comfort, and to shelter students from difficult ideas does not foster an environment of learning but enables an echo chamber of affirmation.³⁴³ Just as offensive speech should not be confused with violent acts neither should course material or topics of discussion.

Much like safe spaces, faculty and student’s normalization of trigger warnings in the classroom have not only harmed students who medically need trigger warnings to participate in

³³⁹ Whittington, *Speak Freely*, 71.

³⁴⁰ *Ibid.*

³⁴¹ *Ibid.*, 69.

³⁴² *Ibid.*

³⁴³ *Ibid.*, 73.

the class, but have restricted course material faculty may offer. Whittington reminds us that trigger warnings originated to serve people who suffer from medically diagnosed Post Traumatic Stress Disorder (PTSD) and as a result can become “triggered” by certain material or topics that remind them of their trauma.³⁴⁴ Trigger warnings for students who do suffer from PTSD are an essential accommodation for them to be able to fully participate in classroom discussion. However, trigger warnings have lost meaning as students demand the need for trigger warnings on all topics that may be emotionally challenging.³⁴⁵ Works like *The Great Gatsby* and *Huckleberry Finn* are removed from the classroom in the name of preventing “physical harm” students may suffer from reading certain passages³⁴⁶ As conservators of all past knowledge and discoveries, Mill tells us that universities have a unique obligation to continue to teach course materials. Recently, the AAUP issued a report critical of trigger warnings, stating in order to avoid driving controversial subject matter out of the classroom, faculty must cease “making comfort a higher priority than intellectual engagement.”³⁴⁷ Controversy is essential to growth; to challenge our own ideas and others so we may all come closer to the truth. Trigger warnings and safe spaces once again distract students and faculty from the mission of the university.

Conclusion

Universities and colleges are not fulfilling their role of advancing knowledge for the public good to the fullest extent. The events at Hamline and Middlebury and the findings of the research studies illustrate that freedom of speech and academic freedom on campus rest in a

³⁴⁴ Whittington, *Speak Freely*, 60.

³⁴⁵ *Ibid*, 63.

³⁴⁶ *Ibid*, 64.

³⁴⁷ *Ibid*, 65.

precarious position. Whether these two freedoms remain a priority or whether they get swallowed by the tyranny of the campus majority is decided by how we see the future roles of university in society. Shall universities continue to transform into large corporations that partake in the practice of customer service, treating students as consumers who should be able to determine the outcome of their “luxury experience” on campus?³⁴⁸ Shall we continue to prioritize goals other than academic excellence on campus in order for the university to maintain an attractive and accommodating experiences for prospective students?

Mill tells us that to sacrifice the university's role as a truth-seeking institution would be detrimental for the functioning of our democracy and the improvement of mankind. In this age of transition of campus, we must protect our most cherished doctrine of free speech to avoid this fate. Ages of transition enable progress, but progress may be only guaranteed when free inquiry is protected and advanced. When we reinstate the values of free speech and academic freedom on campus, we may continue genuine scientific advancement and ensure those who make up our democracy possess good habits of discussion and critical thinking.

In the conclusion of his address at St. Andrews, Mill reminds students of the unique opportunity they have in university to pursue grand questions about the human condition. A student's time at university is one of those rare times when they can fully commit themselves to pursuing truths without the responsibilities of occupation, family or otherwise.³⁴⁹ The greatest reward students may gain in their time at university is the “deeper and more varied interest you will feel in life: which will give it tenfold its value, and a value which will last to the end.”³⁵⁰ The knowledge gained at this unique interval in a college student’s life supplies value to the rest of their pursuits outside of university. Students must harness as much knowledge as they can during

³⁴⁸ Lukianoff and Haidt, *The Coddling of the American Mind*, 199.

³⁴⁹ Mill, “On Education,” 420

³⁵⁰ *Ibid.*

their time in school. We must ensure that this knowledge that guides students' futures is as complete and close to the truth as possible.

Final Thoughts

As my time at Colorado College comes to its end, I reflect on all the important knowledge and wisdom I have gained that will guide my future decisions. I am grateful for every peer and every professor who challenged me to think outside my own experience and rethink my own closely-held beliefs. My liberal arts education has allowed me to learn about the world and my own experience in a diversity of ways. I would never have written this paper if it were not for a class book that influenced me to think about the college experience differently. My hope is that all students, at Colorado College and elsewhere, have that same opportunity; to see the world in new ways they never thought possible.

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