

The Verbal and the Implicit: forms of violence?

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Abstract

Questions of classification (are the verbal and the implicit forms of violence?) seem directed toward establishing moral and legal reprehensibility and so are replaced with the questions of such reprehensibility. The moral question is suspended; the legal question is considered.

Current law seems to grant importance to the verbal and the implicit only insofar as they are related to physical injury. Discussion focuses on the issues of harassment and the banning movement in academia, as both grant considerable importance to the verbal and the implicit, independent of physical injury.

Notwithstanding the injury that can result, psychological assault should not be legally reprehensible because (a) unlike physical assault, injury is not certain--since we, to a large degree, control our thoughts and feelings, psychological injury is, to a large degree, 'voluntary', and (b) the loss of freedom of speech is not worth the dubious gain of protecting people from offense. Since insult (psychological assault) should not be reprehensible, threat (of psychological assault) should not be reprehensible; this is consistent with current law concerning physical assault and threat of physical assault.

While such voluntariness seems to be correlated to sex, it is not caused by sex; furthermore, correlation seems to be with relative power rather than with sex per se. Separate standards are therefore unnecessary.

A performative standard is invoked such that just as the verbal--whether insult or threat--should not be legally reprehensible until it becomes manifested in a physical action, so too the implicit should not be legally reprehensible until it's manifested in a physical action.

The Verbal and the Implicit: forms of violence?

Insofar as violence is defined as the use of *physical* force, neither the verbal nor the implicit can be considered a form of violence: words cannot inflict physical injury and physical force cannot be implied (only the *promise* of physical force can be implied).[1]

However, insofar as the definition of violence is expanded to include the use of *psychological* (cognitive or emotional) force, that is, to include coercion (the non-physical equivalent of violence?), both the verbal and the implicit may be forms of violence.

But perhaps better questions--and perhaps the purpose behind asking whether the verbal and the implicit are forms of violence (or coercion)--are whether they are immoral and/or illegal. It is important to note, however, that not all that is violent is considered immoral (for example, using physical force to knock a child out of the path of a car) or illegal (for example, self-defence)--so perhaps establishing the verbal and the implicit as forms of violence is misguided from the beginning.

It is also important to keep the moral and the legal separate: what is considered immoral is not always considered illegal (for example, premarital sex) and what is considered illegal is not always considered immoral (for example, jaywalking). This paper will focus on the legal sphere.

While the *Canadian Criminal Code* recognizes the importance of the verbal and the implicit, this importance is dependent on physical injury. ASSAULT (s.265(1)(b)) includes the verbal and the implicit, "by an act or a gesture...threatens", but the threat must be "to apply force." [2]

INTIMIDATION (s.423(1)) also refers to the verbal, threats, but such threats must be "threats of violence."

UTTERING THREATS (s.264.1(1)(a) and (2)) refers to both the verbal and the implicit, "in any manner...utters or conveys", but again only in relation to physical injury: "a threat to cause death or serious bodily injury."

CRIMINAL HARASSMENT (s.264(1) and (2)) includes the verbal, "communicating with" and possibly the implicit, "either directly or indirectly" and "engaging in threatening conduct", but again, the condition "that causes that other person . . . to fear for their safety" suggests dependence upon physical injury.

Only TORTURE (s.269.1(1)) eliminates the necessity that physical injury be involved: "any act or omission by which severe pain or suffering, whether physical *or mental*, is intentionally inflicted on a person" (my emphasis). However, the suffering must be severe, and it must be for the purposes of obtaining information, punishing or intimidating. Thus simple and straightforward 'emotional assault', verbal or implicit, is not criminal; while a physical punch is legally reprehensible, a psychological punch is not.

However, there are two current and controversial trends that grant legal importance to the verbal and the implicit, respectively, *independent* of physical injury, in such a way as to suggest that psychological injury is legally reprehensible:[3] the expanding definition of harassment and the banning movement in academia.

While the *Canadian Criminal Code* defines harassment such that fear for one's safety is required, the *Ontario Human Rights Code* defines it such that merely humiliation is required: "a course of comment or conduct consisting of words or actions that disparage or humiliate a person in

relation to one of the prohibited grounds" (*Guide 9*).[4] Thus while the verbal and the implicit are included, physical injury is not; in fact, compensation may be awarded for the 'mental anguish' caused (rather than for any physical anguish).

The difference between criminal harassment and non-criminal harassment exposes a distinction between insult and threat: both are verbal, but the former can injure only the psyche, while the latter is (usually) a promise to injure the body (perhaps as well as, perhaps therefore, the psyche). While criminal harassment restricts itself to threats, non-criminal harassment includes insults as well.

Proponents of the banning movement in academia advocate banning social, romantic, and/or sexual relationships between professors and students because any invitation from a professor implies a threat to use his/her greater power against the student--thus the implicit is given great importance. This importance is, again, independent of physical injury, for the implied threat in mind is a failing grade, a poor letter of recommendation, etc.

Should the verbal and the implicit have such importance, such value? Should psychological harm 'count' as much as physical harm? To consider the possible answers of the second question first, psychological harm can be legally reprehensible or not; it can be as, less, or more reprehensible than physical harm; there can be exceptions or not. Then, if it *is* reprehensible, perhaps for no reason other than consistency, we must say that since threat of physical harm counts, because physical harm counts, then threats of psychological harm must also count, because psychological harm also counts. And, I would presume, the relation between the threat and the harm itself (that is, how much less reprehensible it is) would remain the same whether the harm is physical or psychological.

The possible answers to the first question are as numerous. With regard to the verbal, should only threats be legally reprehensible or should insults be reprehensible as well? As much as, more, or less? Always? And is the implicit legally reprehensible? As much as, more, less? Always?

Perhaps we can begin to answer these questions by asking why psychological harm has traditionally *not* been as legally reprehensible as physical harm. That is, why, in current law, are the verbal and the implicit important only to the extent of their relation to physical injury?

Is it because we consider the body more important than the mind?[5] Perhaps we do--after all, the mind depends on the body for its existence: if the body dies, so does the mind;[6] but if the mind dies, the body may continue (I'm referring to so-called 'brain-dead' people).[7]

'Perhaps we have' may be a more fruitful answer than 'perhaps we do.' The lawmakers have traditionally been men; and men have, traditionally, spent more time in the physical arena than in the emotional arena. So perhaps it is not surprising that physical hurts have received more attention than emotional hurts. After all, 'real' men don't even *have* emotions!

This appeal to tradition, this call to past practice, may well explain the tradition, the past, but it doesn't justify the present--and is not a good reason for subordinating the mind to the body, psychological injury to physical injury. But that is not to say that there is not a good reason.

Perhaps we consider bodily harm more seriously than emotional harm because of an assumption that we can control our emotions, specifically our emotional responses, our attitudes, our fears. If A punches B's body, no matter how strong B's will, B's body will bruise. But if A punches B's psyche, if B is strong, i.e., has a firm sense of self-worth, that blow need not injure B.[8] Is this a valid assumption? I'm tempted to say that like the devaluing of emotions, this

valuing of control, this belief that one can, should, control one's emotions, is a masculinist thing. But no. I'm a feminist *because* I value that same *self*-control. I think this issue of control has merit and I will come back to it.

For now, I'd like to try a different approach. If the consequences of psychological force are similar to those of physical force, then psychological harm should be as reprehensible as physical harm.[9] One of the reasons physical force is reprehensible is that it hurts, it causes pain. The more hurt, the more reprehensible we consider the force to be: consider the distinction between assault causing bodily harm (s.267(1)(b)) and the more serious crime of aggravated assault (s.268(1)) which involves wounding, maiming, or disfiguring.

To argue then that insofar as psychological force--through the verbal and the implicit--causes pain, it should also be considered legally reprehensible is to assume, however, that *all* that causes pain is legally reprehensible. Positing the examples of knocking the child out of harm's way, many medical procedures, sports, and sadomasochism pose a problem--unless we say then that some pain is acceptable, that is, *not* legally reprehensible; grounds for such acceptability may be greater good and consent. Nevertheless, it seems clear that psychological force can cause unjustified pain just as physical force can--and for that reason should perhaps be legally reprehensible.

Physical force is reprehensible not only because it causes pain, but also because it restricts one's freedom. This approach may be a little more promising because it is easy to say that threats (verbal or implicit) do restrict one's freedom. If A has threatened to kill B, B will be less apt to go where, when, and how B usually goes; this restriction of B's freedom of movement would therefore allow us to consider the psychological force of a threat as reprehensible as the physical force of a punch.

However, the harm of the threat depends on B believing A. Common to both the verbal and the implicit is the role of subjectivity. Suppose A does say to B, 'if you don't accept my invitation, I'll give you a failing grade': if B believes A, there will be psychological pain and a loss of freedom--so it's reprehensible; but if B doesn't believe A, there will be neither pain nor loss of freedom--and nothing blameworthy has been done. The same is true for the implicit: if B thinks there is a threat implied in the professor's invitation, or the workplace comment, then there is pain and a loss of freedom, and hence, basis for an accusation; otherwise, there is nothing.

But then the test of whether or not a certain verbal expression (the professor's invitation) is a threat or not, or an insult or not (the workplace comment) is determined by the recipient's response. So you don't know you've made a threat until you have--this is not helpful.

Furthermore, this dependence on the recipient's response makes application of the law up to the individual. Whether or not something is harmful and hence reprehensible, punishable, should not depend on any individual--be it that individual's carefully considered judgement, whim, or neurosis.

So we call on the standard of reasonableness (non-criminal harassment refers to what "ought *reasonably* to be known to be unwelcome" [*Guide* 9, my emphases] and what would be perceived "on *reasonable* grounds" [*Canada Labour Code*, my emphasis] or the community standard. But there are problems with both.

A.P.Herbert points out, with reference to a fictional water traffic accident case, that "legally there *is* no reasonable woman" (5); therefore, he suggests that "the learned judge should have directed the jury that, while there was evidence on which they might find that the defendant had not

come up to the standard required of a reasonable man, her conduct was only what was to be expected of a woman" (5). Though his comments are given 'tongue-in-cheek', his suggestion that a 'reasonable woman' standard may be different than a 'reasonable man' standard is worth consideration--especially given the sexism in our society.

"All of us are over-responsive to certain stimuli that have been endowed with special significances in our life times" (Gaylin 450); as is indicated by the low social status still accorded to unmarried women and the predominance of men in positions of prestige, power, and authority, *men* have been endowed with 'special significance' for women in our society, and our believing their words (whether of insult or threat) may be, as an example of our 'over-responsiveness', quite reasonable.

But as long as we maintain separate standards for the sexes, we will get into difficult corners: if men are not particularly sensitive to the other, to interpersonal relationships (see Kohlberg and Gilligan), then it will not be reasonable of us to expect men to allow for the context of the other and to know that in situation X, action Y is harmful to individual B but not to individual C.

Further, eliminating the merit of separate standards doesn't eliminate the need for a standard, because surely some perceptions --whether by men or women--are unreasonable. Gaylin distinguishes between 'normal anxiety', which is proportionate to the threatening situation, and 'neurotic anxiety', which is not--but who determines what is 'proportionate'?

As for using the community standard, the obvious question is 'which community--which values and norms shall be the measuring stick?' "We tend to assume that because we speak the same language and because we function in the same national setting, we therefore share the same general framework of concepts and values" (Kluge 123); there are subcultures, however, and to some extent there are subcultures according to sex, each with a different framework of concepts and values.

Though Arendt's definition of violence as "distinguished by its instrumental character" (46) suggests that neither the verbal nor the implicit are forms of violence, (words may be considered 'implements' or 'tools', but not "for the purpose of multiplying natural strength" [46]), her analysis may, nevertheless, be helpful.

Power, according to Arendt, belongs to a group and is the instrument of rule. Strength belongs to the individual. Force, she defines, as "the energy released by physical or social movements" (45). Lastly authority, vested in individuals or offices, is indicated by the "unquestioning recognition of those who are asked to obey; neither coercion nor persuasion is needed" (45); "to remain in authority requires respect" (45).

Is it then that the verbal--insults and threats--has power and authority only when it is from a man to a woman? It has power because the individual man is an automatic member of the ruling class in our society, and it has authority because women are 'asked to obey'; and it has strength as well because as an individual, he is a man. So the same insult, the same threat, from one man to another, or from one woman to another, is not injurious, is not violent--or at least, is not *as* injurious, is not *as* violent? And is the same true for the implicit?

All of this might suggest that the definition of violence (insofar as what causes pain and restricts freedom is considered violence) should be different for women than for men. Verbal expression X harms Woman A but not Man B; Woman A understands a threat to be implicit in an

act or gesture whereas Man B does not. And both are responding reasonably, given our community. But let's be careful. It's not *because she's a woman* that verbal expression X harms: it's *because she's a woman and he's a man and sexist perceptions and values determine their behaviour*. If any one aspect of the situation is not fulfilled, the harm wouldn't occur: if, for example, she, in an unsexist fashion, wasn't intimidated by him; if, for example, he, in an unsexist fashion, didn't assume she would take him seriously. We enter a minefield when we make group membership mandatory: what if she didn't act 'like a woman'--should she be treated as one? what if she doesn't want special treatment by virtue of her sex--should she still be treated as a woman?

Being a woman or a man is more than a matter of anatomy--at least when power and authority are concerned: it is a matter of social construction. And socialization impacts on people to varying degrees--which woman, and which man, are involved? Further, society is fluid--it isn't either patriarchal or not patriarchal; sexism may be stronger or weaker at any given time and place, in any situation.

It is not so much because person A is a woman but because Person A is powerless that verbal expression X harms (explicitly, by insult, or implicitly, by threat). *Perhaps* most women are more powerless than most men most of the time, in most situations; and *perhaps* most students are more powerless than most professors most of the time in most situations. *But perhaps not*. Partly, of course, it depends on our definition of powerlessness. Do we mean a lack of alternatives? A lack of attractive alternatives? In any case, identifying the crucial factor as powerlessness rather than as sex allows some women not to be so harmed--and allows some men to be so harmed; it allows the individual context to take priority over the societal context.

And, in any case, I think we can--at least, I think we should--expect that all adults, men *and* women, have enough power, enough psychological strength, to withstand insult without injury.[10] "The idea that women can't withstand verbal or emotional pressure infantilises them" (Roiphe 67-68). It is here then that I return to the issue of control--and psychological strength and maturity. Though usually more intentional than the physical jostling and bumping that occurs on a crowded subway, I think that insults are no more harmful and therefore are no more cause for legal reaction.

(I am therefore amazed that a murder can be reduced to manslaughter if the act is provoked by an "insult that is of such a nature as to be sufficient to deprive an ordinary person of the power of self-control" (*Criminal Code* s.232(2)). That the section goes on to say "if the accused acted upon it on the sudden and before there was time for *his* passion to cool" (my emphasis) suggests that a testosterone tantrum is what's in mind--I repeat that we should expect *both* men and women to be psychologically mature enough to withstand insult.)

True, when the insult occurs in the workplace, our alternatives may be limited: we cannot easily leave. However, that's mixing arenas--that's a physical response to a psychological assault. We do have several 'psychological responses' available to us: we can ignore it, or we can respond to it; we can respond with a personal message ('do you know that you hurt me when you say that?'), an educational message ('what exactly are your reasons for saying As are sick people?') or a similar message ('yeah well your mother wears army boots too'). We do have alternatives; we do have psychological power.

If the insulter has physical power (not necessarily physical strength, but rather, the ability to take physical actions) over the insultee, then surely if the verbal assault is strong enough and continuous enough to cause concern, it will eventually be acted upon--the insultee will be fired,

demoted, denied overtime, relegated to unpopular shifts in spite of seniority, etc. And *at that point*, legal reaction is called for. And if the insulter does *not* have power over the insultee, then why is there concern?

In addition to the argument of psychological maturity, the argument of freedom of speech also provides support for legalizing insult. Prohibiting insult is an *unwarranted* form of censorship: the harm done by restricting freedom of speech is far greater than the good done by eliminating insult. In fact, I question what good would be done--do we want a society full of people who cannot withstand any offense? Some women may still be socialized to accept the power and authority of men (all men, any man); but if such a woman does not outgrow that and become an independent mature adult--*she* should pay the price of her immaturity, not the rest of us. The law should not protect her immaturity at our expense, at the expense of our freedom. Yes, the law protects the weak--when the weakness is beyond their control. (Back to control...) I value my freedom of speech and accept the risk--in fact, request the right--to be offended. Offense, while it can damage, can also stimulate, challenge, and lead to growth.

Having dismissed insult, psychological assault, as legally non-reprehensible, leads then to dismissing threat of psychological assault as equally non-reprehensible. Speaking of emotional coercion--perhaps threat rather than insult--Gaylin suggests that resistance such as mine to considering emotional coercion to be just as binding as physical coercion is because "one likes to think of himself as a logical individual under the control of intellect rather than emotion" (Gaylin 458). Yes, that is how I like to think of myself; and I don't think the view is entirely mistaken. And actually, there are other alternatives to Gaylin's false dichotomy: I am usually under the control of my intellect which receives and carefully considers input from my emotions.

Having dealt with both aspects of the verbal, insult and threat, I move on now to the implicit. Notwithstanding the dependence of the status of the implicit on that of the verbal (see note 1), further analysis may be helpful.

I have elsewhere advocated a performative standard as a solution to the problems of implied consent. Given that the values and norms are different for men than for women and given that we are neither accustomed nor socialized to giving (or requesting) explicit consent for sex, it is essential to be clear about the 'signals of implied consent' (Tchen 1524). It is also almost impossible: the signals, ranging from mere presence to attire to a gesture to a look, are ambiguous and variably sent/received--some men assume mere presence in their apartment means 'yes', some do not; some women intend a certain outfit to mean 'yes', some do not. Even on the few occasions when consent may be given or withheld explicitly, men may understand 'no' to mean 'yes'. And indeed, given the socialization discussed earlier, a woman *may* mean 'yes' when she says 'no'. [11] As Radin puts it,

'Just say no' as the standard for determining whether rape has occurred is both under- and over-inclusive. It is under-inclusive because women who haven't found their voices mean 'no' and are unable to say it; and it is over-inclusive because, like it or not, the way sexuality has been constituted in a culture of male dominance, the male understanding that 'no' means 'yes' was often, and may still sometimes be, correct. (225)

However, as Estrich points out, "the 'no means yes' philosophy ... affords sexual enjoyment to those women who desire it but will not say so--at the cost of violating the integrity of all those women who say 'no' and mean it" (372). This is the minefield when 'group membership' is

'mandatory'--if there is no room for individual subjectivity, serious errors will be made.

Perhaps the solution is some recognition of the interface between the societal context and the individual's context, both of which may be variously sexist. But this is a very complex solution--perhaps impossible. Using a performative standard is, I think, a better solution.

In the legal sphere, one is generally held accountable for what one does (behavioural acts), not what one thinks (mental acts). Person A may *want* to kill Person B; A may *think about* killing B; but until A *actually does* kill B, no crime has been committed. Actions (at least utterances of the word 'yes') are discrete and so the line can be clear: 'did she or did she not say 'yes'?' And the question *is* just that: 'did she *say* 'yes'?', not 'did she *mean* 'yes'?' [11] The action is important *not* as an expression of a mental state, to be encoded by the sender and decoded by the receiver, but as an action in and of itself.

As with consent, so with threat. That is, a threat is not a threat unless it is spoken, unless it is explicit. So when a professor says 'would you like to go out for dinner?' s/he should be understood to mean just that. If and when that professor gives the student an 'F' (if that student refused the invitation), and if that 'F' does not seem justified on the basis of the student's academic performance, *then*, and only then, has something reprehensible been done. This would certainly be consistent with the forementioned fact that in the legal sphere, one is generally held accountable for what one does (behavioural acts), not what one thinks (mental acts)--i.e., even if the professor *was* thinking 'if you refuse, I'll fail you', until s/he does, s/he should not be held legally accountable.

Likewise for the proverbial swimsuit calendar in the supervisor's office. If and when the supervisor fails to promote an employee of the same sex as the calendar models, and such denial of promotion does not seem warranted given that employee's work performance, then and only then has something reprehensible been done. Yes, the swimsuit calendar may offend some. But, as I have suggested earlier, the right to be offended is surely the flip side of the right to freedom of speech.

So, questions of classification aside (are the verbal and the implicit forms of violence?) and questions of morality aside (are they morally reprehensible?), my conclusions are as follows. First, psychological assault should not be legally reprehensible because (a) unlike physical assault, injury is not certain--since we, to a large degree, control our thoughts and feelings, psychological injury is, to a large degree, 'voluntary' (and while such voluntariness seems to be correlated to sex, it is not caused by sex; furthermore, correlation seems to be with relative power rather than with sex per se; in either case, separate standards are therefore unnecessary), and (b) the loss of freedom of speech is not worth the dubious gain of protecting people from offense.

Second, since insult (psychological assault) is not reprehensible, threat (of psychological assault) is not reprehensible. Third, just as the verbal--whether insult or threat [12]--should not be legally reprehensible until it becomes manifested in a physical action, so too the implicit should not be legally reprehensible until it's manifested in a physical action.

[1] It's important to note that the question 'can the *implicit* be considered a form of violence?' is dependent on the question 'can the *verbal* be considered a form of violence?' because only verbal expressions can be implied: words can be implied by actions (a punch may imply 'I don't like you') but actions cannot be implied by words.

When a professor says 'would you like to go out for dinner?' s/he may be implying 'if you refuse my invitation, I'll fail you'--that is, a further verbal, not physical, expression is implied. True, the verbal expression may *promise* a certain physical action (the writing of an 'F' beside the student's name) but the *action itself* cannot be implied. To give another example, I cannot imply a punch: I can only imply that I *will* punch you; I can only imply the promise, the threat, the verbal expression.

Therefore, if we say that the verbal cannot be considered violence, then whether the implicit can be so is already answered. However, if we say that the verbal *can* be considered violence, then whether the implicit can also be so becomes important: is the verbal violence only when it's explicit or can implied words also be violence?

[2] While dictionaries define force to include mental power, my guess is that the legal definition is that of physical power; if not, then assault as currently defined in the *Criminal Code*--"applying force intentionally to another person"--would cover emotional assault; that charges of emotional assault are not commonly laid may indicate a limited use of the *Code* or, more likely, a stipulation that the force be physical.

[3] Prohibited grounds are the following: race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offense, marital status, family status, receipt of public assistance, and handicap.

[4] A full treatment of the soundness of the mind-body distinction is beyond the scope of this paper. Certainly we should, if we compartmentalize at all, make distinctions within the psychological realm and separate emotional harm from cognitive harm (by the latter, I have in mind 'cult brainwashing'--which seems to focus on ideology--though of course an emotional element is requisite as well...). In this paper, I will restrict my attention to the emotional aspect of non-bodily harm.

[5] Life (of the 'soul' or some mental aspect) after death (of the body) has not been proven.

[6] Yes, of course, I've opened a can of worms with this one, assuming a specific relation between the mind, the soul, the brain --and the body...

[7] The relation between that psychological strength and maturity is interesting: perhaps that's why the term 'emotional abuse' originated in the social services field that concerned itself with the welfare of children. However, the term 'verbal abuse' seems quite prevalent in the social services field that concerns itself with the welfare of women (women's shelters, for example). Have we committed the patronizing lumping together of 'women and children' in our enthusiasm to care for each other?

[8] I am assuming that a psychological cause has a psychological effect and that a physical cause

has a physical effect; this is, of course, not entirely true.

[9] I suggest that the verbal has a far greater effect on children, whose egos are still forming; 'verbal abuse', therefore, should (continue to?) be legally reprehensible when directed toward children.

[10] ¹Though I am beginning to wonder if the prevalence of the 'no means yes' response is grossly exaggerated, if not completely fabricated, by men (for men).

[11] Of course she could have said 'yes' under coercion. I'm not denying the significance of coercion: threats of physical violence are already legally reprehensible (see my catalogue of the *Criminal Code* earlier) and it is not my intent, in this paper, to contest the merit of that practice.

[12] Recall that I have restricted my discussion to threat of *psychological* injury; the *Criminal Code* already deals with threat of *physical* injury.

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