

REVISITING MILL ON FREE SPEECH

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Abstract. Mill's defense of free speech is the product of a long British tradition of defending religious and political toleration. It is also a reassertion of the importance of individual autonomy of how free speech is an integral part of individual wellbeing as well as its crucial role in a democratic society.

Key words: Autonomy, democracy, harm, 'hate' speech, infallibility.

Why do we need the return trip?

Western Civilization is unique and great for its dissenting character. But, that source of uniqueness can become pathological. There are pathological conditions that spring from the uncontrolled exercise of the intellectual virtues that make the West unique and admirable.

It is useful but not sufficient to identify the intellectual roots of Western self-destruction. The specific ideas are always housed within specific institutional settings (economic, political, legal, cultural). Moreover, there are external non-ideological environmental factors that contribute to or undermine the career of ideas within those settings. That is why those ideas must be seen in their historical (time and place) setting.

Let me give an example of what I mean. Western civilization prioritizes dissent or self-critique. As Locke, Milton, and J.S. Mill put it, self-improvement and self-confidence depend on rigorous Socratic self-examination. We need periodic reminders of who we are and how we got here – the evolution of our thought.

Modern universities, for example, were designed and supported both publicly and privately to fulfill the role of understanding, preserving, critiquing and disseminating to future leaders in all walks of life our intellectual heritage. Some years ago, I was teaching in a university in which one student organization had invited a controversial speaker to address the faculty and student body. I went to

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the meeting both for edification and the opportunity to raise politely some pertinent objections. A second student group which opposed the speaker disrupted the meeting. When several of the faculty, including myself, asked the then Dean to restore order, the Dean refused. His reason for the refusal was that students had a right of free speech to disrupt speech with which they disagreed! I knew then that sending the Dean a copy of the relevant passages of Mill's *On Liberty* was not enough.

Mill's discussion of free speech did not take place in an intellectual vacuum.¹ Nor was it an attempt to respond to a puzzle in a professional journal. The roots of his discussion are in the Protestant Reformation and beyond. Mill contextualizes his discussion of free speech as follows.

First, the classical legacy of Greek philosophy was epitomized in Socrates who insisted that the unexamined life was not worth living, that we need to retrieve the foundations of our thinking, that any opinion needed to be supported by reasons or evidence, and that every opinion could only be both understood and defended by rebutting objections to it. Mill considered himself part of this inheritance. To be rational was to engage in the systematic clash of beliefs.

Second, Mill rejected the Roman Catholic notion that the clash be limited to or is the exclusive privilege of members of the Church hierarchy, and by extension to a political hierarchy.

Third, Mill understood the Renaissance, the Protestant Reformation, and German romanticism as successive and successful triumphs of the notion of individual freedom and responsibility.

Fourth, he believed that he was living in an age that was increasingly secular and whose larger (ultimate, encompassing) normative framework was not primarily religion but political democracy (Tocqueville).

Fifth, with regard to the Reformation, he believed that the arguments for individual religious freedom and responsibility were still central and viable. At the same time, the arguments for freedom of religious belief could be extended to freedom of political and social beliefs. In this, he was the successor of Hobbes, Milton, and Locke.

Hobbes, for example, did allow for individuals to maintain their own religious beliefs as long as they outwardly expressed those of the state. The important logical point here is that disagreement must take place in a context where some agreement was presumed.

Milton (Hobbes' secretary) published *Areopagitica* in 1644 linking religious and political liberty.² He reminded Parliament that civil liberty thrived on constructive criticism, that political unity is achieved through a consensus that respects variety of opinion; that charitable and compassionate means be used to win and regain the weak and the misled. Mill's four arguments against censorship are restatements of Milton.³ It is worth stressing that Milton pointed out how censorship inevitably

¹ John Stuart Mill, *On Liberty*, CW XVIII, Toronto, University of Toronto Press, 1977.

² Milton, J., *Areopagitica*, Indianapolis, Liberty Fund, Inc., [1644] 1999.

³ Nicholas Capaldi, John Stuart Mill, Cambridge, Cambridge University Press, 2004, pp. 289–292.

assumed infallibility because at some level censors had to be chosen/appointed by some method that merely begged the question.

Locke's essay on *Toleration* was composed in 1685, in response to Louis XIV of France's revoking the *Edict of Nantes* that had guaranteed religious toleration for French Protestants. Locke's argument for religious toleration is that we should tolerate other Christian sects because they subscribe to the view that religious conviction must be voluntary and internal to achieve salvation. Whatever other disagreements they had, all Christian sects shared the fundamental belief about the need for individuals to subscribe voluntarily to any religious doctrine. Salvation was not possible unless the cosmic order was embraced voluntarily. This is the universal truth that allowed them to agree on how to disagree. Christianity is a religion that has the internal intellectual resources to be self-critical.⁴

Religious freedom continued to be an issue in Mill's time. *On Liberty* was published in 1859 but religious freedom amongst Catholics (was) became an issue when Papal Infallibility was declared in 1869 at the First Vatican Council under Pope Pius IX. Opposition in England was expressed strenuously by Gladstone, in more muted fashion by Cardinal Newman but famously by Lord Acton when proclaimed that "***Power tends to corrupt, and absolute power corrupts absolutely.***"⁵

Sixth, what Mill proposed was that this argument and this universal truth about human nature applied to more than just religious diversity. Democracy, like Christianity, has the internal intellectual resources to be self-critical. In fact, free speech is an integral part of democracy. A democratic society needed free speech for two reasons: to defend itself from internal and external critics/enemies, and to maintain its own specific integrity.

Seventh, democratic societies were vulnerable to a specific and unique form of self-destruction. A tyrannical majority (or even a tyranny of those who claimed to speak on behalf of the majority) could put an end to the freedom of discussion by placing certain beliefs beyond the pale of discussion. In modern democratic societies we all have become aware of how editors/journalists/electronic social media can distort the truth not only by what they say but by what they will prevent from being said.

Eighth, Mill qualified his argument in favor of free speech by (a) distinguishing between speech (advocating or inciting to riot is part of an action) and action (the latter was not free but circumscribed), by (b) insisting that the freedom was confined to adults, and (c) that it applied only to mature societies that understood, cherished, and exhibited the benefits of free and open discussion.

⁴ John Locke, *A Letter Concerning Toleration*. James Tully (ed.), Indianapolis, Hackett, [1689] 1983.

⁵ John Emerich Edward Dalberg Acton, Letter to Bishop Mandell Creighton, April 5, 1887 Transcript of, published in *Historical Essays and Studies*, edited by J.N. Figgis and R.V. Laurence London, Macmillan, 1907.

Without these conditions, the best we could hope for was benevolent despotism (Charlemagne, Akbar).

In today's world, it has been alleged that there is something called "hate speech." My understanding is that "hate speech" is speech, gestures, conduct, writing, or displays that incite **violence** or **prejudicial** actions against a group or individuals on the basis of their membership in the group, or that **disparage** or **intimidate** a group or individuals on the basis of their membership in the group.

Based upon what I have said above about J.S. Mill, I think he would agree that inciting violence against a group or individual is inconsistent with the defense of free speech. However, if a group is inciting violence, e.g. preventing someone from speaking, or carrying a sign saying "From the River to the Sea" (in the context of the present Islamic-Israeli conflict) then we are justified in preventing that group (I assume this is 'prejudicial' action) from demonstrating or speaking. Of course, if you disagree with my assessment of the aforementioned sign, then we should have a free and open debate about it in another context.

However, and more importantly, speech that **disparages** a group is and should be free. For example, a speech condemning traffickers, child pornographers or pederasts does or can disparage a group. The 'disparaged' group is and should be free to respond.

More to the point, advocates of "hate speech" often have in mind that some people are either offended or intimidated or fearful of responding to certain forms of speech. They apparently did not internalize the childhood rhyme that "sticks and stones will break my bones but words shall never hurt me" (a 19th-century English-language children's rhyme. The rhyme is used as a defense against name-calling and verbal bullying, intended to increase resiliency, avoid physical retaliation, and/or to remain calm and indifferent.)

There are five fundamental objections to the whole idea of "hate speech." First, those who are retarded in the art of disputation need education. It is valuable and important to identify fallacious reasoning such as *ad hominem* and *ad baculum*. This is only possible in educational systems (universities) that recognize academic freedom, promote engaging in such discussions, reading the classics on free speech like Mill, and disavowing indoctrination. This would be especially true in publicly supported educational institutions but not wholly private ones. Rhetoric is an indispensable feature of persuasive speech, but it is a two-edged sword.

I would suggest that this has implications for immigration. It is not sufficient to inform potential citizens that free speech is, for example, guaranteed by the U.S. Constitution. The Constitution can be amended. Coming from other cultures, they, may need to be educated in the history and theory behind the principle otherwise it may appear to them as offensive or becomes a dead and potentially eliminable dogma.

Second, there is no way to distinguish between 'being offended' and 'taking offense'. Invoking the concept of hate speech would become a weapon to silence

anyone else. All communication would grind to a halt. I hereby announce that I am ‘offended’ by the “hate speech” claim.

Third, if we do not live or no longer live in a society that benefits from free and open discussion then any form of despotism is permissible. History shows that opponents of free speech democracy invariably favor and promote despotism.

Liberty of thought is for the sake of clarifying action not reaching definitive truths. What justifies our acting is that we have engaged in ruthless self-examination. What justifies a representative or parliamentary body in acting is not that all have been instructed, but that all have through their representatives had an opportunity to engage in self-examination. It is precisely because Mill’s emphasis is upon internal moral transformation that he eschews all utopian schemes and rejects dangerous schemes of external tyranny such as Comte’s. Comte had argued that the right of free inquiry leads to anarchy and that since it was no longer necessary in sciences like astronomy, it would soon not be necessary anywhere.

Mill understands, and must understand consistent with his other beliefs, the need for free and open discussion in an absolute sense.⁶ Any disagreement about anything, including free speech itself, needs a free and open discussion, and a periodic reminder as well.

Fourth, the suggestion that free speech be limited is a feature of the transition from or conflict between classical liberalism and modern liberalism or progressivism. For classical liberals like Mill, individuals need to achieve internal freedom on their own; for modern liberals/progressive, the state needs to remove external constraints (hate speech) on achieving internal liberation.⁷ In a society based on democracy, this amounts to allowing the majority or those who speak in the name of the majority to decide what the rest of us will hear or read.

We all know that invoking the concept of “hate speech” in an argument is a rhetorical ploy to prevent the critical discussion of suspect doctrines (e.g. ‘systemic racism’) that may then pass for the unimpeachable background consensus. Progressives have suggested that some free speech, e.g., “hate speech”, can ‘harm’ people, and Mill limits liberty when it harms others. This is a serious misrepresentation of Mill’s position on ‘harm’. Mill is quite clear on this. First, you are innocent until proven guilty, and in this context that means you do not have to show that your speech is harmless. The onus is on others to show that your speech can ‘harm’ others. Second, even if this were the case, not only must the proponent of limiting

⁶ Daniel Jacobson, Mill on Free Speech in *A Companion to Mill*, Macleod, C. and Miller, D.E. (eds.), Chichester, Wiley Blackwell, 2017, pp. 440–453.

⁷ On August 25th, the EU’s Digital Services Act (DSA) came into force. It will fund a permanent European Commission taskforce on disinformation with a “crisis-management mechanism,” so that the Commission can immediately oblige platforms to remove content. The existence of A “crisis” is determined not by an independent body, or even by the European Parliament, but by the Commission itself. Laurie Wastell, The EU’s Orwellian Internet Censorship Regime, <https://europeanconservative.com/articles/commentary/the-eus-orwellian-internet-censorship-regime/>, 2023.

liberty show the harm but the proponent must also show that the limitation is not causing a greater harm. Third, limiting the opportunity for someone to exercise autonomy is, for Mill, the greatest of all harms. Denying someone the opportunity to weigh the arguments pro and con is, in effect the assumption of infallibility, paternalistic, condescending, and the greatest harm that can be inflicted upon them, to say nothing about the democratic process itself.

Fifth, free speech is not only a procedural norm but a substantive norm. This is why it was a central concern in the Protestant Reformation. As a substantive norm it is an integral part of individual wellbeing; as a procedural norm it is socially useful. As such, it cannot be confused with or overridden by other norms like "equality of outcome." In *On Liberty*, Mill reminds us that having the freedom to challenge the status quo is an indispensable means to all material and moral progress, and individual autonomy is achievable only through self-critique.