

John Stuart Mill on Freedom of Discussion *Will Cartwright*

In the West the freedom to say what you like, to criticise the authorities, and to discuss ideas openly and without fear, is agreed to be of fundamental importance. What there is less agreement about is when this freedom may be properly curtailed. It may seem surprising, then, that Mill devotes most of his famous account of these matters in *On Liberty*¹ to explaining why freedom of discussion is important and very little of it to what may seem the more pressing matter of when this freedom may be limited. But there are reasons for this apparent imbalance in Mill's discussion which are worth noticing.

Though freedom of discussion was widely accepted even in Mill's own day, he thinks that the arguments for it are not widely appreciated, something that is no doubt still true, and he holds, as he makes clear in chapter II, that one should not have beliefs without knowing the reasons for them. Moreover these arguments for free discussion have a wider relevance to issues of liberty, for Mill holds that these arguments, suitably adapted, are also arguments for freedom of action.²

There is a third reason for Mill's emphasis on the arguments for free discussion and for freedom generally. He thinks that freedom is increasingly threatened, not so much by the law as by an oppressive public opinion, in England at least.³ Curbing this threat requires a widespread appreciation of why freedom of discussion and other freedoms are important. And the character of Mill's arguments for free discussion is instructive in this context. They do not particularly emphasise the predicament of those who have been forcibly silenced. Thus we do not hear about the peculiar frustrations of being prohibited from expressing one's view of the world and exploring it with others. Nor do we hear about the individual's right to free speech. As a utilitarian Mill rejects the idea of natural rights, and emphasises that society as a whole, not just the silenced individual, loses by the repression of free discussion. But this means that the social majority, which is the source of the oppressive public opinion that Mill fears, also loses by repression. And it is the case, as we will see, that Mill's detailed arguments emphasise that silencing people is in one way or another counterproductive, not just for society generally, but for the silencers in particular. One cannot help feeling that an important part of Mill's aim is to persuade those occasionally inclined to curb free discussion, who will surely sometimes include Mill's own civilised readers, and therefore us, that such curbs are self-defeating.

So Mill has his reasons for devoting so much of his discussion to the case for a freedom that we all ostensibly believe in already. The reason why, in contrast, he has so little to say about the limits to this freedom, dealing with them in the first paragraph of chapter III, is perhaps in part because his position on this is apparently very simple. However it is fair to add that Mill elaborates this issue, with reference to freedom more generally, later in *On Liberty*.⁴

Mill's Case for Liberty of Discussion

Mill sets out his arguments for freedom of speech in chapter II of *On Liberty*. They are linked by a common concern with truth. The general idea is that truth is a casualty of the suppression of free discussion. In effect there are three arguments that are attached to three possible scenarios.

In the first you are to imagine that a majority who share a certain view seek to silence the minority who disagree. You are further to suppose that the majority view is false, as it happens, and the minority view is true. Mill argues that in these circumstances it is disastrous to silence the minority, disastrous for the *majority*, that is, because there is now no means of releasing it from its belief in a falsehood. If however the minority remains free to express its doubts about the majority view, then there is a chance that the majority will be brought to see the falsity of its view. This is a powerful argument.

The second scenario is the same as the first except that this time the majority view is true and the minority view false. Here a concern for truth might seem to support silencing the minority since its view is false. Suppressing falsehoods presumably supports truth. However Mill ingeniously denies this. He argues that if the majority silences its opponents, it will never have to defend its belief and over time will forget the arguments for it. But to have a belief without knowing the reasons for it is no way to hold a belief according to Mill. The belief may be true, but it is held as a prejudice. As well as losing its grasp of the arguments for its belief, Mill adds that the majority will in due course even lose a sense of the real meaning and substance of its belief. What earlier may have been a vital belief will be reduced in time to a series of phrases retained by rote. The belief will be held as a dead dogma rather than as a living truth. Finally, beliefs held like this are extremely vulnerable to serious opposition when it is eventually encountered. They are more likely to collapse because their supporters do not know how to defend them or even what they really mean. Mill thinks history repeatedly demonstrates this process at work and offers Christianity as an illustrative example. By Christianity Mill means the ethical core of the religion rather than its full apparatus of metaphysical beliefs, and he seems to think this ethical core is true. But by suppressing opposition to it over the centuries Christians have ironically weakened rather than strengthened Christian belief, and Mill thinks this explains the decline of Christianity in the modern world. Truth is, after all, a casualty of the suppression of falsehood.

Mill's third scenario involves both parties of opinion, majority and minority, having a portion of the truth but not the whole of it. He regards this as the most common of the three scenarios, and his argument here is very simple. To enlarge its grasp of the truth the majority must allow the minority to express its partially truthful view. These three scenarios exhaust for Mill the possible permutations on the distribution of truth, and he holds that in each case the search for truth is best served by allowing free discussion.

Assessment of Mill's Case

The first and third of Mill's arguments are the most persuasive. If the majority view is wholly or partially false, then allowing critical discussion surely enhances the chances

of truth replacing error. But if the majority view is already true, as in the second argument, allowing critical discussion does involve risk. In the rough and tumble of public debate people may be seduced away from truth to false ideas. What Mill does in this argument is to draw attention to the risks to truth involved in the opposite strategy of silencing criticism. But the balance of risks here makes this argument less persuasive than the other two.

This difficulty is compounded by the fact that majorities will always think that they are in the second scenario. They, like anyone else, will always take their beliefs to be true. Thinking a belief true is a condition of having it. So majorities will always take themselves to be in that one of the three scenarios where the case for allowing critical discussion is weakest. But Mill has another argument in chapter II which can be used to bolster his position at this point. He says that majorities, or anyone else for that matter, can never be entirely certain that their beliefs are true. They may always turn out to be false or partly false, in which case they will fall into scenarios 1 or 3 where the case for free discussion is powerful. Mill evidently supposes that this consideration ought to act as a powerful brake upon the temptation to silence dissent.

Mill's defence of free discussion in terms of truth invites further questions on a number of points. First he has in mind discussion on a wide variety of issues, both theoretical and practical, such as scientific, religious, political and moral matters. But there is philosophical controversy about the applicability of the notion of truth to some of these issues. Many philosophers have held that moral judgements, and evaluative judgements generally, cannot be said to be true or false, but are in some sense or other inherently subjective. If this is correct, then free discussion about moral and other evaluative matters cannot be justified in terms of truth. A quite different justification will be required.

Secondly, is it really true, as Mill supposes, that we can never be certain that our beliefs are true? His position is that we can never have the degree of certainty that would warrant silencing criticism of our beliefs. That would be to claim infallibility for ourselves. If however we allow our beliefs to be criticised but no persuasive criticism is forthcoming, that gives us sufficient certainty to warrant our acting upon the beliefs, according to Mill. But this certainty precisely depends upon the belief continuing to be open to criticism. So the certainty requisite for action falls short of the certainty requisite for silencing criticism.

However consider my belief that $9 \times 9 = 81$ or my belief that I am writing this on a sunny day in the Suffolk countryside. Can I not be entirely certain that these beliefs are true? It is hard to believe that they could really turn out to be false, or that my certainty is only warranted if they remain open to criticism.⁵ But even if in the case of these beliefs there is judged to be sufficient certainty to justify curtailment of discussion, what would be the point of such curtailment? These are not the kind of cases where people are tempted to silence criticism. When we come to the political, moral and religious cases where that temptation is real, then it is much more plausible to think, with Mill, that we cannot have certainty of the sort required to justify the curtailment of debate. For in these cases there are always considerations on both sides of the argument which have to be balanced. So it seems that when we have the sort of certainty that might warrant the suppression of criticism, we have no interest in such suppression; and when we have the interest, we lack the certainty.

But consider the following case where interest and, arguably, certainty come together. Suppose that the majority of Germans in the 1930s, observing the rise of Hitler and attending carefully to what he said and wrote, had concluded that his political vision was clearly false and very dangerous. This is arguably a case where the majority's certainty that it is right and he is wrong is of an order that would warrant silencing him. For it does not seem remotely credible to suppose that his view might turn out to be true and the majority's view turn out to be false. Silencing him might still be the wrong thing to do in these circumstances because it might make his views more attractive. But if it would be wrong, it would not be so because the majority could not be certain that it was right, as Mill supposes.

The Limits of Freedom of Discussion

Mill uses an example to illustrate when free speech may properly be curbed.⁶ He says that one ought to be free to attack corn dealers in the press as starvers of the poor, but that one should not be free to make the same attack orally to an excited mob outside a corn dealer's house. Even though the words used may be identical, the alteration of the circumstances in which they are uttered makes all the difference in Mill's view.

For in front of the excited crowd the words constitute 'a positive instigation to some mischievous act'.⁷

The principle embodied in this example is that one should be free to say what one likes unless one's saying it causes harm. This limitation on free speech, the only one acknowledged by Mill, commands very wide support, but only because the limitation as stated is so general. Once we get beyond this general formula into the more particular questions raised by it, agreement becomes much harder to reach.

First, what is harm? If the corn dealer is injured, or his house damaged, by the irate crowd, that is clearly harm. Rather differently, if someone's reputation is damaged by the propagation of falsehoods about him, that is also harm. It is the prevention of this harm which justifies the curtailment of free speech by the law of libel and slander. If we pass beyond these clear examples of harm to search for a more general account of it, it is plausible to understand it as a setback to the interests of a person. This means that understanding harm requires us to develop an account of what a person's interests are, which is no easy undertaking.

Secondly, how serious are the various sorts of harm? To curb free discussion to avoid harm involves sacrificing something of great value, and this can only be warranted if the harm to be avoided is grave enough. Mill makes it clear in chapter V, for this reason, that while harm is always a necessary condition of curbing liberty, it is not always a sufficient one. The harms threatened in the corn dealer case are at the graver end of the spectrum, but other harms are much less serious. All this means that we need, not merely an account of a person's interests, interference with which constitutes harm, but also an estimate of the value of those various interests.

Thirdly, how likely to occur must the harm be before it is proper to curtail free speech? Notice that in the case of the corn dealer the harms in question are very likely to occur and will be immediate. This is unlikely to be an accidental feature of Mill's

example. It is indicative of the view that free speech is so valuable that it should not be limited to avoid merely speculative harm.

Mill's position on the limits of free speech is at once simple and complex. It is simple in so far as the avoidance of harm is the only limit he allows, but complex in so far as the application of this limit requires controversial judgements on a range of issues.

One thing that seems clear about Mill's position is that he does not think it proper to prevent words being uttered because people will be offended by them. One might regard offending people as a way of harming them or, even if one rejected this, one might still think that avoiding offence was an independent ground for curbing free speech, over and above the harm principle. But it is clear that Mill rejects both these options. Underlying this rejection, I think, is the judgement that since people are offended by so many things, curbing freedom of speech on this ground will deeply and unacceptably compromise that freedom.

Some examples will help to test out the claims of offence as a ground of interference. Consider the law of blasphemy which makes it a crime to attack Christianity in indecent or offensive terms likely to shock and outrage the feelings of Christians. The rationale for this intrusion into free speech is clearly the avoidance of offence, but there is widespread opposition to this rarely used law. Compare this with the crime of inciting racial hatred which involves the use of abusive or insulting words calculated to stir up racial hatred. Many of those who oppose the law of blasphemy favour this law. This is an inconsistent position if the purpose of this law is to stop people being offended by insulting attacks on them in virtue of their racial or ethnic character. If one is going to protect people from racial offence, why not from religious offence? However this overlooks the fact that the racial law speaks of inciting hatred, which the law of blasphemy does not, and one could argue that hatred is calculated to lead to harm in the form of racial attacks. That harm rather than offence is the rationale of the law receives support from the fact that the law on this matter is part of the Public Order Act 1986. This way of justifying the law would make the common position, of support for it and opposition to the blasphemy law, consistent.

The two examples just discussed might be read as suggesting that Mill was right to reject offence as a ground of interference. But consider now other examples which might be thought to suggest otherwise.

In 1988 the writer Salman Rushdie published a novel called *The Satanic Verses* in which some of the characters think, say and dream things about Islam which caused immense offence to Muslims. The repercussions were extraordinary and global. There were demonstrations in Britain and across the world; the book was burned in public; demands were made for the banning of the novel; bookshops selling it were firebombed; some of those associated with the publication of the novel, and its translation into other languages, were assassinated; and finally, and famously, the Iranian religious authorities placed Rushdie under a fatwa which required devout Muslims to try to kill him. This unprecedented literary furore divided non-Muslim opinion in this country. Some thought it of overriding importance to reassert the freedom of the artist to express himself. Others were impressed by the degree of hurt in the Muslim community and thought that even artists must accept some constraints on their freedom of expression.

In exploring the latter view the two earlier examples become relevant again. During the controversy some Muslims applied to the courts to have Rushdie charged with the crime of blasphemy. The problem for the applicants was that the law of blasphemy only applies to Christianity and the courts decided that they did not have the power to extend it to Islam. Only Parliament could do that. As explained above, this way of limiting, or trying to limit, Rushdie's freedom to express himself in effect endorses offence as a limit on that freedom. But there is an alternative way of limiting his freedom which does not have to rest on offence. We could make it a crime to incite people to religious hatred, to parallel the existing crime of inciting to racial hatred. And the justification for this new crime, as for the existing one, would be that hatred is liable to lead to people getting harmed. Thus those who think that the Rushdie case shows the need for some restriction on freedom of expression can argue for it without abandoning Mill's position. They can argue for it in terms of harm rather than offence. But many will think this a false basis for the restriction and that the real issue is the offence to Muslims. They will hold that when the offence is this wide and deep and has to do with the ridiculing of a person's basic beliefs, then freedom of expression can properly be limited. This is, of course, to declare Mill's position inadequate.

A further, and interestingly different, example is that it is illegal in Germany and elsewhere to deny the occurrence of the Holocaust, the systematic attempt by the Nazis to eliminate the Jews and others.⁸ Whereas the three previous cases involve insulting attacks on a person's basic beliefs or racial character, this one has to do with simply denying the occurrence of an event. Despite the difference the natural justification for this restriction is that denial of the Holocaust, by Germans in particular, is deeply offensive to the survivors of the event and their descendants. There are perhaps other considerations involved in this case. The identity of modern Germany is inextricably connected with the moral catastrophe from which it emerged. It defines itself against that calamity. For Germans to deny the Holocaust is to deny the central event in that calamity and, in a way, is to subvert the moral identity of the new Germany. Whether these further considerations are adequate reason for interfering with free expression is another question.

As a final example, consider freedom of expression with respect to pornography. In 1977 the government established a committee under the chairmanship of the philosopher Bernard Williams, to investigate what constraints there should be on the depiction of sex and violence in various media. Its report is instructive.⁹ The committee thought that its remit raised fundamental issues concerning freedom of expression, and that in consequence it had initially to decide the grounds on which this freedom could be properly limited.

First the committee accepted the harm principle. If pornography causes harm, then society can properly ban it. However, after reviewing the evidence on this controversial question, the committee concluded that it has not been proven that pornography does cause harm, though equally they thought that it has not been disproven.

Secondly, despite the well-known liberal inclinations of its chairman, the committee went further and endorsed offence as a ground of interference. If there is controversy

about whether pornography causes harm, there is none about whether it offends people – it clearly offends many. But, the committee thought, this does not entitle society to ban pornography, but only to constrain it in order to avoid offence. So the committee recommended that pornographic magazines should be sold in specially designated shops rather than being available in newsagents where they will give offence; that pornographic films be given explicit ratings that will warn off the sensitive, and so on. By such means the committee sought to spare people offence while at the same time maintaining the freedom to produce and consume pornography, thus minimising the intrusion into freedom of expression.

After reflection on this array of cases, some will conclude that Mill's position is too minimal and that offence should be admitted as a constraint on free expression, in some cases at least. They can point out, as the Williams committee did, that the avoidance of offence need not involve the curtailing of free expression since it can often be accomplished by advance warnings to the sensitive about the nature of the material. Others will draw the contrary conclusion, with Mill, that the admission of offence will be too damaging to free expression. They may think it preferable to approach the problem from the other end, so that, rather than curbing free expression, we try to create a climate in which people are less susceptible to offence. At one time Christians in this country would have been outraged by the mere denial that God exists. Indeed there was a time when such denial counted as blasphemy. Happily both Christians and the law are now different. We should encourage similar developments elsewhere, it may be said. This is an important point, but it has its limits. A society entirely beyond shock and offence is one that we have good reason not to want, because such a society probably cares about very little.

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¹ Published in 1859; see especially ch II. The views of Mill discussed in this essay are to be found in ch II unless otherwise indicated.

² Ch I last paragraph and ch III first paragraph.

³ Ch I.

⁴ Ch IV and V.

⁵ In the case of the second belief the problem of epistemological scepticism needs to be addressed.

⁶ Ch III first paragraph.

⁷ Ibid.

⁸ Amongst the other countries where it is illegal are France and Austria. A proposal from Brussels to make it illegal in all countries of the European Union is being opposed by Britain, despite the fact that in 1997 Mr Blair said there was a 'very strong case' for a Holocaust-denial law in Britain.

⁹ Obscenity and Film Censorship. An Abridgement of the Williams Report. (Cambridge University Press 1981.)