

On Liberty of Thought and Discussion

John Stuart Mill rests his argument against censorship on two plausible premises. The first is that humans are fallible. That is, we are always capable of getting things wrong and we can never be entirely sure that we have anything right. In the past, people have been convinced that the Earth does not move, that the pharaohs were gods and that Newton's physics provides the final truth about gravity. We cannot know which of our present certainties future generations will reject. Mill's second premise is that we are corrigible. Experience and critical discussion can improve our opinions. Being fallible, we can never be sure that any particular change of mind takes us closer to the truth—experience may have misled us, or we may have made some error of logic. But the only way to correct such mistakes is yet more experience and critical discussion. Our best hope of improving our opinions is to make them public, so that others may show us our errors.

Mill laid out his argument for freedom of expression in the second section of *On Liberty* ('liberty of thought and discussion'). The core of his argument is that censorship prevents us from correcting errors by critical discussion. If a forbidden opinion is true, we lose the opportunity to learn of its truth. If a forbidden opinion is false, we lose the opportunity to remind ourselves why it is false. The role of his second premise (that we are corrigible) is obvious. If it were not possible to correct false opinions by discussion, there would be little point in insisting on the freedom to try. Note, Mill need not claim that free criticism will always lead towards the truth. All he needs to claim is that free discussion is our best hope of correcting error. He appeals to his first premise (that we are fallible) explicitly in the rest of this section, where he elaborates and defends his simple dilemma. For example, he considers the suggestion that freedom of expression is a good thing provided it does not extend to criticism of the fundamental orthodoxies on which society depends for its good order. Mill replies that the more important an orthodoxy is, the more vital is the need to test it. When legislators try to put a doctrine beyond criticism, they effectively claim to know, infallibly, that it is true. Since we are fallible, this cannot be justified. All silencing of discussion is, he says, an assumption of infallibility. A little later, Mill addresses the thought that an orthodoxy might be too *useful* to endanger with criticism, quite aside from whether it is true. No false belief, he insists, can be really useful. Therefore, to claim to know that a belief is useful without allowing it to be tested, is in effect to claim to know, infallibly, that it is true.

He adds a plausible development of the second horn of his dilemma: truths become stale for lack of opposition. In the early days of a religion (or any other movement), its teaching is vivid and urgent because the believers must defend it against the established powers and doctrines of the day. However, if the new religion joins the ranks of established powers and doctrines, it becomes something learned by rote and practised mechanically. Therefore, defenders of orthodoxies should welcome opposition, to keep their own creeds fresh and active.

Nowadays, those who wish to protect religious doctrines from criticism make an argument that has more to do with the tender feelings of the believer than the truth or falsity of the doctrine. The standard position among those who would limit our freedom to criticise religious doctrines and activities is that they welcome reasonable criticism. What they object to, and would like the law to prevent, is offensive or abusive mockery of their faith. This position was already familiar in Mill's day. Mill argues against legal protection from offensive criticism on several grounds. First, he observes that any vigorous and effective criticism, when passionately put, will seem intemperate to its target. It is painful to have the logical deficiencies of one's most cherished convictions publicly exposed. We cannot outlaw criticism merely because it hurts. (Notice: Mill's 'harm principle' says that the government may interfere with one person's liberty *only* to prevent harm to another. It does *not* say that the government must always intervene to prevent one from harming another.) Second, he claims that it is very difficult to prove that a case or a party has been misrepresented. Mill does not elaborate this point in *On Liberty*, but we can look to an earlier work on 'Law of Libel and Liberty of the Press' (*Westminster Review*, III, 1825; *On Liberty* was published in 1859). There, he argues that all criticism is to some degree offensive. To make a criticism is to make some sort of accusation. Even the most temperate, scholarly criticism involves accusing someone of overlooking something important, getting some fact wrong or making a logical mistake. Therefore, to ban every criticism that includes some element of invective opens the way for a ban on all criticism. For this reason, Mill held that a law that tried to distinguish between temperate criticism and offensive abuse would be arbitrary, and that judges would exploit this arbitrariness in the service of the powerful. Returning to *On Liberty*, he argues, third, that a law against offensive criticism would favour the politically powerful against the weak. A member of a marginal group who vilifies an established orthodoxy would risk prosecution, while someone who vilifies the marginal group on behalf of the established opinion would receive praise for showing a proper zeal. In any case, intemperate language is unproductive for defenders of minority opinions, because they have to put on a show of reasonableness in order to get a hearing at all. Putting these last two points together: a law against offensive criticism would tell only against defenders of minority opinions, who are already motivated to appear moderate and reasonable. For these reasons, Mill argues that the law should not attempt to regulate controversies.

Notice that Mill argues for the freedom to express *opinions*. His case depends on the fact that opinions may be true or false. What then of art? If we think that a work of art is a roundabout way of saying something, then works of art fall within the scope of Mill's argument. However, this is a rather crude and implausible view of art. Works of art do not normally have clear messages that we can treat as statements and examine like opinions. Nevertheless, those works of art that have attracted violent attempts at suppression in recent years do seem to have had something to say. *The Satanic Verses* is (amongst other things) a meditation on geographical displacement and cultural hybridisation; *Behzti* is about power relations in the Sikh community; Theo van Gogh's film *Submission* makes a similar point about Islam; the Danish cartoon that caused the most fuss was the one that suggested a connection between Islam and suicide terrorism; *Jerry Springer the Opera* seems to argue for the contemporary relevance of Biblical

stories. These works are part of the discussion about religion, and consequently deserve the protection of Mill's argument, even though they do not have unambiguous messages and are not true in the manner of a factual statement or false in the manner of a lie.

Mill's argument does not really make a case for free expression for its own sake, but rather argues for free discussion (as the title of the relevant section of *On Liberty* suggests). The benefits he points to do not come from free expression alone. At Speakers' Corner in Hyde Park, everyone has the right to stand on a box and speak, and many do. No ideas are tested, no doctrines are examined, because there is no discussion, but only a cacophony of speech-making. Mill certainly defends the free speech of Hyde Park corner, because such freedom of expression is a necessary condition for free discussion, but it is not sufficient. The professions that live by testing ideas all have some formal rules that stipulate who may speak, when, and how, precisely to avoid the unproductive chaos of Speakers' Corner. Parliament, the law courts and academic conferences all have rules of procedure and evidence to prevent disputants from shouting each other down, lying, changing the subject, abusing each other or otherwise poisoning the wells of debate. The details vary among these cases, but they share two important characteristics. One is that they must be well-informed. Parliamentarians can demand information from the Government, and consider it a serious offence against the spirit of the place if these demands are not satisfied. Law courts can insist on receiving the information they need. Academics and scientists consider it a scandal to hide or destroy awkward evidence. The other is that the presiding power is absolute. The speaker of the Commons has unruly parliamentarians ejected by the Sergeant at Arms, who carries his sword about to make this very point. Judges have the last word in their courts. The authority that binds academics is rather more diffuse, but editors, examiners and chairs of appointment committees are the absolute sovereigns of their small kingdoms. This sovereignty of the chair is necessary to prevent the debating-procedure from becoming the object of the dispute. To see the point, observe how in fragile or newly-constituted states, the formation of a government is often held up by wrangling over the process for forming a government.

There is therefore a tension in Mill's position. His argument for liberty of expression is in fact an argument for liberty of discussion. The proper conclusion of his argument is not merely that we should have a right to express ourselves— the existence of Speakers' Corner guarantees that right. Rather, we should be able to express our convictions in a forum where they will be taken seriously and criticised fairly. But to offer this as a matter of right, the state would have to give society as a whole the character of a debating society, law court or parliamentary assembly. The first requirement (that of free access to information) presents no problem for Mill's liberalism. For example, Mill would surely welcome a stronger freedom of information act that made it more difficult for public and private institutions to hide their sins behind the cloaks of 'national security' and 'commercial confidentiality' respectively. The problem arises from the second requirement. An effective debating forum must have a sovereign presiding authority, to play the role of speaker, chair or judge. As we have seen, Mill thought that the law should not attempt to regulate debate, because such regulation would allow the powerful to silence the weak. But without such regulation, liberty of discussion cannot be

guaranteed. This tension is not Mill's alone. For example, on the one hand the laws of libel as they currently operate in England make it easy for rich people to bully newspapers and magazines. But if the libel laws were weakened, editors would print even more salacious distortions and lies than they currently do. On the other hand, the Press Complaints Commission is an industry body and does nothing to check the natural preference of newspapers for profit over responsible reporting. But if a government agency (Off-Hack?) took over the job, it would come under pressure to force newspapers to report on the government as the government would wish to be reported on.

We might hope to take refuge in another of Mill's principles: variety. Mill favoured variety in all things for two reasons. First, the greater the variety of experience and opinion can be brought to bear on a question, the more likely we are to find the correct answer. Second, Mill valued individuality for its own sake, and a culture that encourages diversity in lifestyles is less likely to stifle or crush individuality. Mill united these two thoughts in his phrase 'experiments in living'. We might take inspiration from the example of academia, where there are many forums, presided over by many (largely benign) despots. An academic who finds himself excluded as a crank from one forum can take his thoughts to another, where they might find constructive criticism. In fact, this differentiation of academia into many sub-sub-specialisms tends to reduce confrontations between opposing world-views and in the worst cases produces conclaves of true believers. The real problem, however, is that to ensure a diversity of forums in society at large, the government would have to take powers that it would inevitably abuse. If, for example, it took powers to prevent a single company or individual from controlling too many of the major news outlets, it (or a successor administration) would inevitably use those powers with an eye on its own benefit. A large media group that criticised the government severely might find itself judged to be too large. In any case, increasing the number of media companies does not necessarily increase the diversity of perspectives.

In the final paragraph of the section of *On Liberty* dedicated to freedom of discussion, having argued that the government should not attempt to regulate public debate, Mill expresses his confidence that there are many controversialists who try to deal fairly with their opponents. Before we considered the alternatives, this might have seemed like a feeble piety. Mill's argument for liberty of discussion suggests that we have a right to express our opinions in a well-regulated forum. When we have a right to something, we usually demand that there be a robust mechanism to ensure that we get whatever it is. We do not expect to rely on the willingness of others to respect our right. Indeed, the chief point of a right is that you still have it even if you have made yourself so unpopular that the majority would prefer not to give you whatever it is that your right guarantees. However, a robust mechanism to ensure our right to free discussion would put greater, perhaps excessive, power into the hands of government. For this good Millian reason, the goodwill of controversialists may be our best, indeed our only hope for true liberty of discussion.