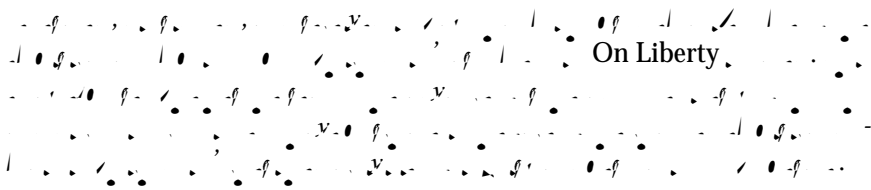


Is John Stuart Mill's *On Liberty* Obsolete?

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On Liberty, 1859



Without a doubt, the most widely read and closely studied argument for the freedom of speech ever written appears in John Stuart Mill's *On Liberty*. Marking in 1959 the centennial of the essay's publication, Isaiah Berlin opined that Mill's "words are today alive and relevant to our own problems; whereas the works of James Mill, and of Buckle and Comte and Spencer, remain huge, half-forgotten hulks in the river of nineteenth-century thought."¹

puzzled him directly, and not through spectacles provided by any orthodoxy.... One of the symptoms of this kind of three-dimensional, rounded, authentic quality is that we feel sure that we can tell where he would have stood on the issues of our day.... Surely Berlin's "day" was the middle of the twentieth century. My question is wheth

er sixty-five years later he plausibly could have maintained Mill's contemporaneity in the face of the various ways that digital technology has altered the dynamics of human belief formation and persuasion.

To address this question, I identify the distinctive concerns, assumptions, concepts, objectives, and derivations that have given Mill's argument its preeminence for a century and a half. Then I canvass the changes wrought by digital technology in how speakers formulate their messages and generate attention to them, and how audiences notice, receive, and potentially act on such messages. Finally, I assess whether, in the light of such changes, *On Liberty* remains an instructive resource for thinking about what Mill terms "the liberty of thought and discussion" and its cognate liberties.³

A striking feature of *On Liberty* is its emphasis on the supreme importance of high-quality opinion formation throughout the population in order to advance the well-being of society. Mill's study of modern history convinced him that the key variable determining which societies in what eras flourished and which stagnated was the quality of their public opinion: what their "average human beings," not just their "great thinkers," believed and acted upon.⁷ And the feature of public opinion that matters most in shaping the course of a society, he found, is whether its "errors are corrigible." "The whole strength and value of human judgment" depends, he says, "on the one property, that it can be set right when it is wrong."⁸ The open mind is the key, individually and collectively. That is why freedom of opinion deserves special treatment.

Unlike many theories of free speech, Mill's argument is not concerned only with the limits of governmental authority; "compulsion and control" of speakers by private actors is also his subject, at least when those private actors add up to "society" or "public opinion." In fact, he says that the private regulation of opinion amounts to "a social tyranny more formidable than many kinds of political oppression" because "it leaves fewer means of escape, penetrating much more deeply into the details of life, and enslaving the soul itself."⁹

Mill's "freedom of opinion" encompasses more than simply a privilege to hold opinions privately, resist inquiries about them, and be free from having to affirm publicly sentiments that one does not entertain. Crucially, in light of the importance he attaches to public opinion, he argues also for the "absolute" freedom to express and publish one's opinions. He concedes that the latter freedom "may seem to fall under a different principle, since it belongs to that part of the conduct of an individual which concerns other people." Nevertheless, the freedom to express and publish opinions "being almost of as much importance as the liberty of thought itself, and resting in great part on the same reasons, is practically inseparable from it."¹⁰

At first pass, this seems like a non sequitur. Certainly, as a matter of practical classification, it is not difficult to differentiate silently holding an opinion from communicating it to others. Normatively, why aren't the two kinds of acts different in light of the importance Mill attaches, in four different chapters of *On Liberty*, to whether a person's conduct affects others? What then is the source of this "practical" inseparability?

Mill apparently considered holding an opinion and expressing it to be activities that are inevitably bound up with each other. We need to be able to express our opinions to know if we really hold them. And communicating an opinion to others often helps to determine its final formulation, even in the absence of feedback. In those regards, Mill's phrase "thought and discussion" refers to a single activity rather than two distinct activities with separate claims to the highest level of protection.

That still does not explain why the integrated activity of thought and discussion should be immune from being regulated in order to prevent harm. Clearly, the act of forming opinions about matters of general interest, including by testing them on others, is for Mill a qualitatively different endeavor from acts of communication that do not amount to “thought and discussion.” In his scheme, the latter communications do not receive the same level of protection that is extended to freedom of opinion, but rather are subject to limitation when they harm other individuals or the society as a whole and the general welfare would be advanced by the limitation. Only the liberty of thought and discussion receives “absolute” protection without regard to the harm it may cause. The reason is that Mill considers thought and discussion as he narrowly defines it to be uniquely valuable.

In chapter two, Mill presents his justly famous extended arguments for safeguarding the absolute freedom to hold and express opinions. Near the end of the chapter, he summarizes the four arguments he has developed:

1. The first argument is that the freedom of opinion is essential to the progress of the human race. 2. The second argument is that the freedom of opinion is essential to the happiness of the human race. 3. The third argument is that the freedom of opinion is essential to the stability of the human race. 4. The fourth argument is that the freedom of opinion is essential to the justice of the human race.

public opinion, by means of its contribution to human well-being and development.¹²

As Canadian political theorist Richard Vernon notes about chapter two: “The word ‘discussion’ is frequently used in the chapter, as is the word ‘opinion.’ . . . Nowhere does he speak of freedom of expression, and he uses the word ‘expression’ only in the phrase ‘expression of opinion.’” According to Vernon, the argument “is plausible only if we suppose that the items exchanged in the critical pro-

transaction-facilitating nature, are protected under his general liberty principle, but only case-by-case when the price is right.

One way to avoid counting the cost of a potentially protected activity is to designate it a natural right. This course Mill explicitly disavows. He describes his argument as based on utility, albeit “utility in the largest sense, grounded on the permanent interests of man as a progressive being.”¹⁹ But even a “progressive” utilitarian is committed to counting the cost. Therefore, the best explanation for Mill’s failure in chapter two to address the costs of unregulated thought and discussion is to read him as operating in that chapter— though not necessarily in the rest of *On Liberty*— at a categorical level. That would mark him as what is now known as a “rule utilitarian.”²⁰ Mill’s claim is that, as a general matter, the benefits that flow from “absolute” freedom for the subset of communication that qualifies as “thought and discussion” outweigh the harms caused by that subset.

Two examples presented by Mill at the outset of chapter three illustrate this point. The first is that of a speaker who delivers the opinion that “corn dealers are starvers of the poor . . . simply circulated through the press.” In example two, the identical message is “delivered orally to an excited mob assembled before the house of a corn dealer.” Mill states that the speaker communicating via the press in example one is engaged in “thought and discussion” absolutely protected by virtue of the arguments developed in chapter two. Not so for the speaker in the second example. Mill describes that hypothetical on-the-scene firebrand as engaging in a communication that amounts to “a positive instigation to some mischievous act,” a form of speech not included within chapter two’s coverage.²¹ Here Mill is making a functional characterization of the speaker’s activity rather than an empirical assessment of its likely harmful consequences. This comports with the fact that for example one, in which he finds thought and discussion to be involved, he never considers how publication in the press might greatly increase the harm-causing potential of the message by hugely expanding its audience. It is epistemic function rather than potential harm that determines whether a communication amounts to thought and discussion.

Mill’s argument in chapter two is perhaps most notable for his claim that the circulation even of invalid opinions serves an epistemic function:

. . . the vitality of our convictions is central to Mill’s argument in chapter two. He urges his readers to seek a “lively apprehension of the truth which they nominally recognize, so that it may penetrate the feelings and acquire a real

mastery over the conduct.” The point of discussion is to form “that living belief which regulates conduct.”²³ We must be open to challenge because “complete liberty of contradicting and disproving our opinion is the very condition which justifies us in assuming its truth for purposes of action.”²⁴

So which, if any, of the ideas that have accounted for _____’ impact retain their significance today in the face of the sea change in methods of communication and persuasion that has occurred since Mill wrote? Among those ideas are:

1. Power can rightfully be exercised by society over its members in order to prevent them from harming others, but not to prevent them from harming themselves.
2. A modern society’s capacity to adapt and advance depends on its having a public opinion that is “corrigible” in the light of evidence, experience, private reflection, and public discussion.

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of generating, spreading, judging, and moving on from ideas and information. This technology-driven speed-up in the pace of creation and distribution increases the sheer volume of ideas and information audiences must process, which in turn makes the competition among speakers for audience attention more important and more intense. Surely such conditions tempt speakers to resort to exaggeration and simplification to gain and hold audience attention, very likely more than the speakers of Mill's time were so tempted. With technologies such as content algorithms and artificial intelligence now available to serve the cause of capturing and keeping audience attention, Mill's calls for depth of understanding, care of formulation, and unbending sincerity on the part of speakers may seem dated.

The sheer volume of ideas and "information" (including false claims of fact) available to contemporary audiences runs the risk of generating audience despair about processing and understanding it. This is not to suggest that the audiences of Mill's day felt confident about their intake. Audiences always need help in the form of intermediaries. And in fact, digital technology creates the possibility of much greater access to trustworthy help for audience members who desire it than has ever existed before. Nevertheless, many audiences today fail to avail themselves of that form of intermediation and settle instead for partisan, inexperienced intermediation from within their online "silos."

By all indications, expert intermediation counts for less in the way most persons come to their beliefs today than was true in the past, certainly in Berlin's day and probably in Mill's as well. The dominant form of intermediation in the digital age is the prioritization practices of the companies that control the key content delivery links of the internet. Because data collected from audience attention can be used or sold to facilitate targeted advertising, click-maximizing digital intermediaries do not select for expertise, accuracy, perspective, coherence, or appreciation of complexity in deciding which content to feature. The dominant intermediaries of earlier eras such as publishers had their own profit-driven priorities, but those were far less in conflict with the function of improving audience understanding.

Intermediation aside, that today's audiences have greater control over their intakes than was true of Mill's audiences may well make persuasion more difficult to achieve. Thanks to digital technology, audiences can more easily engineer confirmation bias to strengthen their preexisting beliefs. They also can more thoroughly shield themselves from the strongest challenges to those beliefs because they have so many choices of what to let in. Mill's audiences no doubt sought confirmation bias in their choice of associates, but they had fewer intake options for acquiring basic information about events and opinions beyond their immediate circle, and thus as a practical matter had to let in accounts that might cut against their prior understandings.

tion. When he criticizes private regulation in *Journal of Law, Economics, & Organization*, he employs such termi-

terms. From his uncharacteristic failure in chapter two to worry about the harm side of the equation, it is fair to assume that he found the comparison to be lopsided, not really in need of explanation.

Throughout *On Liberty*, Mill treats knowledge of a general sort “on all subjects, practical or speculative, scientific, moral, or theological” to be the quintessential public good. Because he contends that even wrong opinions provide positive epistemic value in the search for such knowledge, increasing the speed and range at which dangerous ideas on general subjects can be spread and acted upon is not likely to change Mill’s comparison of benefits and harms given the fundamentality of the benefits in play. To conclude that his argument is obsolete on its own terms, one would almost certainly have to demonstrate that the extraordinary val-

way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it.”³⁴ This suggests that his notion of autonomy, if he embraces one at all, is limited to assertions of freedom that do not risk impairing the capacity of others to pursue their own good. Protecting one’s private thoughts, physical being, personal space, and dignity are examples. In contrast, the freedom to express opinions about matters of general interest, even when doing so can cause significant harm to others, does not fall within any conception of autonomy that can plausibly be attributed to Mill.

That is why chapter two of *On Liberty* consists entirely of a detailed utilitarian argument about how epistemic enlightenment serves individual and communal well-being. Among the desired consequences that form the heart of Mill’s argument in chapter two for the transcendent value of the liberty of thought and discussion are a high level of collective energy, societal adaptability to changing circumstances, and broad investment in the search to find and harness new knowledge. Even though a large element of Mill’s notion of collective well-being consists of the aggregation of individual experiences of well-being, consequences relating to larger societal forces and structures play a prominent role in his utilitarian analysis because he thinks that individual flourishing depends not only on personal choice but also the resources provided by one’s environment.

This matters in that an argument from consequences, unlike an argument resting wholly on autonomy, can acknowledge a diminution in the independence of individual belief formation due to changes wrought by digital technology, count it as a cost, and yet find such diminution not to be conclusive. The net impact

tected domain of thought and discussion. However, other corruptions cannot be bracketed so readily. Distraction and flooding can be accomplished not only by

Those two sentences would fit perfectly in chapter three of

A third idea at the heart of Mill's public opinion-based case for the liberty of thought and discussion is the ideal of the open mind: "In the case of any person whose judgment is really deserving of confidence, how has it become so? Because he has kept his mind open to criticism of his opinions and conduct."³⁶ It is not an exaggeration to say that the concept of "corrugibility of belief" is the key to Mill's argument not only in chapter two but in chapter three as well. He emphasizes the value of confronting and truly understanding opposing views, even when such exposure does not lead to an immediate change of mind.³⁷ What exposure to criticism does entail is an active relationship with one's beliefs, which can strengthen motivation to act on them but also increase the capacity to alter them in the light of new experiences or further reflection. Cognitive dynamism is Mill's prescription for a utility-maximizing public opinion.

Despite the ways that digital technology has broadened and intensified public discussion, we might well wonder whether such energizing is having perverse consequences when it comes to the corrugibility of beliefs. Is Mill's ideal of the open mind sustainable in a world of fastusimpat wel(nP & e)TJETEMC compJE(8ilief)5 (s, whic

As we know, when he published *On Liberty*, twenty-three years later, those concerns did not prevent Mill from prioritizing thought and discussion and exalting the open mind. His faith in the power of societies to adapt survived the disappointment he felt about opinion formation in his own time. We miss much about Mill if we fail to account for his forward-looking temperament.

Certainly, a utilitarian, especially one whose measuring rod is “the permanent interests of man as a progressive being,” needs to be forward-looking in the sense of not assuming that current patterns of belief formation that bear on societal well-being constitute the inevitable future.³⁹ If the corrigibility of belief is as important as Mill claims it is, and if keeping alive the ideal of the open mind is a way to help revitalize the active holding of unfrozen opinions, or even just preserve what corrigibility of belief remains in the digital age, *On Liberty* has something to say to contemporary readers.

In that regard, despite six subsequent decades of evolution in the processes of

endnotes

¹ Vincent Blasi, John S. Long, Michael E. Long, "The Role of the Law in the Development of the Law," *Journal of Law and Economics*, 1998.

