

J.S. Mill: Speech, Harm, and Progress

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*To my mother,
To best friends,
To mental health,
And to COVID-19.*

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Introduction

When I first decided to write on J.S. Mill, I had rather a basic, if not uninformed, understanding of his thought. Like many other students, I had the usual lectures about unrestricted freedom of speech and the marketplace of ideas in *On Liberty*. I absorbed these ideas uncritically, not having realised that Mill himself never even used the phrase *marketplace of ideas*.¹ Then one night while in a dream, I was reliving a lecture I sat on Mill, and something about the dominant view of Mill's position on freedom of speech seemed suspect. I was not sure what it was, but I thought surely such an intelligent man raised on the Classics would not be so naïve to really think total freedom of speech, or rather, the survival of the best idea in a competitive marketplace, was tenable yet alone the ideal. Thinking of events occurring in the United States under the Trump administration as well as growing populism in Europe and their relation to the spread of misinformation and disinformation, I started to question whether liberalism and freedom of speech were mutually compatible. This really perturbed me.

For the next few weeks, I found myself thinking more and more about Mill and reading some literature on him. Needless to say, trying to find secondary literature on Mill and freedom of speech without any direction is like going to a bar and ordering, "a beer" without specifying any particular beer. Similarly, the interpretations on Mill are vast and what one searches for will dictate which interpretation they will find. Yet I could not find any specific paper that answered my questions sufficiently: did Mill really allow unrestricted freedom of speech, were liberalism and freedom of speech compatible, and if so, how?

¹ The phrase was coined by US Supreme Court Justice William J. Brennan and famously popularised by Justice Oliver Wendell Holmes. See: Blocher, 'Institutions in the Marketplace of Ideas' n3.

What I found was that many of the dominant views on Mill were uncharitable, if not complete misunderstandings. In reading Mill, I discovered an author that is not only very relevant for contemporary American and European politics, but one who shares similar concerns as me. Above all, the Mill I was reading was not the Mill advocating for total freedom of speech. Rather, Mill's notion of freedom of speech, freedom of expression, and free speech (these terms I will use interchangeably) were nuanced. There were different levels of free of speech and what was allowed and not allowed was dependent completely on context. I found a Mill that did not advocate for unrestricted freedom of speech as envisioned in the marketplace of ideas, but rather a freedom to act upon one's opinions and convictions so long as those opinions were still debateable and did not harm others' interests. By expressing oneself while still respecting others, I found that Mill believed that human society would develop into an even better society

In short, I discovered a Mill that is very much a liberal rather than libertarian, and with views on developing liberty that demands people act upon their convictions and participate in governance as a duty to society rather than be left alone. By viewing Mill in this lens, I hope to provide an interpretation showing how freedom of speech is part of an overarching notion of "progress". By viewing Mill in such light, I show that Mill does, in fact, allow for restrictions on speech.

To do so, I begin section two by discussing Mill's views on how history progresses and develops. Crucially, human development is not possible with cooperation, or read in more despotic terms, without obedience. By learning to put aside their individual desires (i.e., obey order), people are able to cooperate and accomplish more together than what is possible by

themselves. Such cooperation leads to progress, which causes society to go through developmental stages.

Section three breaks off from discussing historical development and focuses upon what free speech means according to Mill. Crucially, section three focuses upon speech with epistemic properties especially speech that is partially right and partially wrong. This speech is of importance because it is this kind of speech that is often normative, e.g., whether owning guns are bad. This kind of speech is fundamentally different than “guns are bad” because such a claim is nonsensical. Guns in themselves do not have an inherent epistemological value. By focusing on speech that can be partially right and wrong, Mill is able to argue for free speech as being part of man’s progressive development.

In section four, I discuss arguably the most contentious part of *On Liberty*: the harm principle. Much early interpretation considers the harm principle inconsistent with Mill’s utilitarianism while later interpretations think that they are compatible. My own interpretation follows in the later, revisionist, interpretations. Crucially the harm principle is used not as a device restricting what can and cannot be done, but rather, is used as a device to deliberate on whether an action interferes with one’s interests and, if so, should society interfere in some form? By looking at harm in this context, we can look at free speech and harm in a similar vein.

Having discussed the role speech and the harm principle play when seen through the lens of man as a progressive being, I next choose to focus on deliberation, specifically the interplay between deliberation and democracy. By now focusing on how Mill treats deliberation, I can argue against the *marketplace of ideas*. To do so, I bring in contemporary notions of deliberative democracy and show how they can shine light upon what Mill’s

positions. In doing so, I show that Mill is concerned with making sure all groups in society are not only able to have their voices heard but are able to arrange their lives in social experiments aimed at the greater good. This in turn leads to man progressing even further.

Section 2 History and Progress

Though *On Liberty* is a rather short essay, it is necessary to place it within a larger context.

Crucial to *On Liberty* is Mill's view of history and progress, namely the undercurrent of thought that views history as progressive and teleological. For Mill, this means that society will eventually reach a utopic state. In *On Liberty's* introduction, Mill says that liberty "has divided mankind, almost from the remotest ages; but in the stage of progress into which the more civilised portions of the species have now entered, it presents itself under new conditions, and requires a different and more fundamental treatment."² This is then followed by a short developmental history of liberty. Interestingly, Mill restricts liberty only to those who are capable of benefiting from free and equal discussion. For everyone else, despotism is a more than suitable form of governance.³

Immediately apparent is that people must socially develop to sustain liberty. Until this condition is met, liberty is not a given. Such a view is one that is, by definition, progressive: people develop in their capacity to handle and sustain liberty *as history marches forward*. Yet how does history develop in order to sustain liberty? This section deals with Mill's idea of history and how it develops, his use of developmental stages. Lastly, these developmental stages much eventually reach a *telos*, or an end. For Mill, man's social progress will eventually

² Mill, 'On Liberty', 217.

³ Mill, 224.

terminate in a utopic state. Though not discussed directly by Mill, such a state is implied in all four books in the *Principles of Political Economy*, especially the section on the stationary state in Book IV.⁴

Section 2.2 Civilising the Barbarians

To better understand the context and role *On Liberty* plays within Mill's larger thought, one must first consider what he means by civilisation. According to Mill, people often call a country civilised if it is thought to be "more improved; more eminent in the best characteristics of Man and Society; farther advanced in the road to perfection; happier, noble, wiser."⁵ However a civilised country can also refer to a nation that has "that kind of improvement only, which distinguished a wealthy and powerful nation from savages or barbarians."⁶ Mill unequivocally states that he is not concerned with civilisation as meaning improvement, but rather with civilisation being the converse of barbarism, which Mill defines as "the savage life".⁷ Thus, a civilisation means the opposite of barbarism.

Yet simply stating that *civilisation is not barbarism* does not tell us what constitutes either *civilisation* or *barbarism*. We must refer to the characteristics that Mill says are inherent in civilisation:

"We accordingly call a people civilized, where the arrangements of society, for protecting the persons and property of its members, are sufficiently perfect to maintain peace among them; *i.e.* to induce the bulk of the community to rely for their security

⁴ Mill, 'Principles of Political Economy', 752–58.

⁵ Mill, 'Civilization', 119.

⁶ Mill, 119.

⁷ Mill, 120.

mainly upon social arrangements, and renounce for the most part, and in ordinary circumstances, the vindication of their interests (whether in the way of aggression or defence) by their individual strength or courage.”⁸

What we can see here is that the civilised are collective in nature while the barbaric are individualistic. In order to have social arrangements that not only maintain peace but are also able to perform dispute resolution requires the cooperation of various individuals. Such cooperation requires the giving up of individual interests for the wider collective interests. Thus it follows that cooperation is civilisation’s defining feature and that civilisation is completely devoid of barbarism.⁹

Cooperation’s role in the development of civilisation cannot be understated. Without cooperation, there simply would not be any form of organisation. For example, Mill says that neither enterprises and corporate bodies nor disciplined armies capable of waging successful war would exist.¹⁰ However, cooperation is not something that is naturally found in human behaviour; rather, it is cultivated. “Co-operation [sic], like other difficult things, can be learnt only by practice: and to be capable of it in great things, a people must be gradually trained to it in small.”¹¹ Two things in cooperation’s constitution readily stand out: discipline and habituation.¹²

How, then, does man go from barbarian to a cooperating member of civilised society? According to Mill, cooperation cannot exist without obedience. Thus, in order for barbarians to

⁸ Mill, 119.

⁹ Mill, 122.

¹⁰ Mill, 123.

¹¹ Mill, 123.

¹² Mill makes this same point in ‘Principles of Political Economy’, 708.

renounce their individual interests, they must learn how to obey. Who they obey could be a despot, a democratically elected government, or even a foreign imperial power, but without obedience civilisation simply cannot exist nor sustain itself. However learning obedience does not happen overnight. It requires “centuries of time, and an entire change of circumstances, to discipline them [the barbarians] into regular obedience.”¹³ Such obedience is another way for Mill to say that order is a constituent characteristic of civilisation.¹⁴ In other words for society to have order, it must have obedience by its members (i.e., discipline), and in order to acclimatise the barbarians to such obedience, they must be trained to accept orders (i.e., habituation).

Yet simply having a group of barbarians following orders could hardly be considered civilisation. It would be hard to argue that simply having a base level of cooperation is the prerequisite feature of being civilised. Rather the standard of being civilised is the continual stripping away of individualism and the growing importance of collectivity. This process, which requires ever increasing amounts of obedience, is the notion called *progress*. In fact, Mill says that order and progress are practically the same thing.¹⁵ One way of looking at this is to see order and progress as two sides of a coin. For instance, Mill says that order is a requirement for government, but it is not, in itself, the point of government. Rather, order exists so that government can accomplish some other end. “Order, thus understood, expresses, doubtless, an indispensable attribute of government” and “means the preservation of peace, by the cessation of private violence.”¹⁶ By setting up order in such a manner, Mill is able to define the

¹³ Mill, ‘Considerations on Representative Government’, 377.

¹⁴ Mill, 384.

¹⁵ Mill, 385.

¹⁶ Mill, 385.

relationship between order and progress as follows: “Order as the preservation of all kinds and amounts of good which already exist, and Progress as consisting in the increase of them.”¹⁷

It becomes apparent that the real benefit of obedience and cooperation is handling conflict resolution through collective means (e.g. a judiciary) instead of individually. Thus in order to progress from barbarism to civilisation, barbarians must first allow society as a whole to adjudicate disputes between individuals. With this in mind, Mill is able to claim three prerequisites for a permanent political society:

1. All members of society are trained to subordinate their impulses and desires for the ends of society.
2. All members of society have agreed to hold something so dear that they will never question it, such the military, laws and ancient liberties, or for more advanced societies, liberty and equality.
3. All members of society consider themselves as part of the same in-group.¹⁸

As we have already seen, the first condition is a reiteration of obedience, and it says that people cooperate together to promote some end of society. For Mill, who was an avowed utilitarian, this would be considered happiness.¹⁹ But how does one work for some abstract end of happiness? This is where the second condition comes into play. At first glance, it seems similar to Rawls’ veil of ignorance, whereby people are ignorant of the society they will inhabit, so they agree to a set of principles that promote equality and liberty to the benefit of the least

¹⁷ Mill, 385.

¹⁸ Mill, ‘Coleridge’, 133.

¹⁹ Mill, ‘Utilitarianism’, 210.

advantaged.²⁰ However, this is not the case for Mill. Rather what is held dearly is something which ultimately promotes the ends of society, irrespective of any kind of social contract. Ultimately, what promotes the ends of a specific society is dependent upon how that society is organized; different societies will choose different mechanisms to promote those ends. It is only by agreeing upon what those ends are members of society are able to band together and work in unison. This agreed upon thing binds individuals together as a group. This naturally leads to condition three, which can only be accomplished if the first two prerequisites are fulfilled.²¹

If we take these conditions further, we can claim that they direct man with the sole aim to promote a progression toward a societal state of happiness. For example, Mill claims that not only is man a social animal by nature, but that he has a drive to be in some kind of social unit. As a result, a “society of human beings, except in the relation of master and slave, is manifestly impossible on any other footing than that the interests of all are to be consulted.”²² The reasoning for this is because only by consulting everyone can there be cooperation, and it is through this cooperation that members of a society identify with each other.²³ Thus, it is impossible to live with someone you are unable to cooperate with, and by the necessity of survival, your goals become their goals. It can then be said that Mill’s view of progress is a “teleology of progress.”²⁴

²⁰ Rawls, *A Theory of Justice*.

²¹ Similarly, Smart argues that Mill supports the right to self-determination only when such autonomy promotes progress. See: Smart, ‘Mill and Nationalism. National Character, Social Progress and the Spirit of Achievement’.

²² Mill, ‘Utilitarianism’, 231.

²³ Mill, 232.

²⁴ Gibbins, ‘J.S. Mill, Liberalism, and Progress’.

Section 2.3 Mill's Conception of History

For as much as Mill discusses the separation between barbarism and civilisation, he never does quite manage to delineate the intermediate steps that transforms the barbaric into the civilised.²⁵ Jahn claims that Mill “reconstructs the history of humankind as a history of cultural or civilisational development with, broadly four stages: savagism, slavery, barbarism and, finally, modern civilisation.”²⁶ Interestingly, the four stages outlined by Jahn correspond with the four-stage theory developed by Scottish conjectural historians.²⁷ Yet Mill did not adopt such a view, preferring rather to divide societies between savage and civilised.²⁸ This is arguably because Mill was under the influence of his father, James Mill,²⁹ who, despite speaking of the stages of civilisation in the manner of a Scottish historian, did not actually adopt the four-stage model.³⁰

Thus Jahn is mistaken in the view that Mill divides civilisational development into four stages, not least because as we have already seen, savagism and barbarism are the same thing. However Jahn is in recognising that Mill conceives of a developmental history that develops in stages and that progression from stage to the next is not automatic; it is possible for a society to regress a stage.³¹ Furthermore, if a society were to progress to the next stage, then it must make the conscious effort to do so either by having enlightened leadership or by being ruled by

²⁵ Jahn, ‘Barbarian Thoughts: Imperialism in the Philosophy of John Stuart Mill’.

²⁶ Jahn, 603.

²⁷ Pitts, *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France*.

²⁸ Pitts, 133.

²⁹ James Mill was heavily influenced by Dugald Stewart who was the first to create the dichotomy between barbarous and civilised. See: Kawana, ‘John Stuart Mill’s Projected Science of Society: 1827-1848’, 30.

³⁰ Pitts, *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France*, 130.

³¹ Jahn, ‘Barbarian Thoughts: Imperialism in the Philosophy of John Stuart Mill’, 603.

an external, but culturally superior government (i.e., colonial rule).³² Of course, such rule is only possible if it is despotic. As Mill says, “there is nothing for them [mankind] but implicit obedience to an Akbar or Charlemagne, if there are so fortunate as to find one.”³³ Though such a view may seem illiberal, it is one that is advantageous “to a people, carrying them rapidly through the stages of progress, and clearing away obstacles to improvement which might have lasted indefinitely if the subject population had been left unassisted to its native tendencies and chances.”³⁴ What can then be seen is that liberalism as an idea is something that not only comes later in society’s developmental history, but that despotism is a necessary precursor.³⁵

Though it seems odd to think of despotic rule as having value, for Mill it very much can have the effect of improving a society to be able to have the capacity to cooperate in a much more developed stage of development. In this way, rather than having a specific four-stage development, Mill is able to provide for a multitude of stages that allow for discrete changes.³⁶ Such a view is argued to have been a reproduction,³⁷ of James Mill’s conception of history,³⁷ which divides people on a scale from barbarous to civilised.³⁸ However this alone is not what defines Mill’s conception of history. Rather one must turn to later influences: Carlyle, de Saint-Simon, Comte, and even the later thought of James Mill.

³² Jahn, 603.

³³ Mill, ‘On Liberty’, 254.

³⁴ Mill, ‘Considerations on Representative Government’, 419.

³⁵ On the tension between liberty and moral development, see: Tunick, ‘Tolerant Imperialism: John Stuart Mill’s Defense of British Rule in India’.

³⁶ Marwah, ‘Complicating Barbarism and Civilization: Mill’s Complex Sociology of Human Development’, 349.

³⁷ Marwah, 349.

³⁸ James Mill develops a notion of progress by contrasting civilised Europeans to non-Europeans, namely Asians. On the development of James Mill notion of progress, see: Chapter 5 in Chen, ‘James Mill’s History of British India in Its Intellectual History’. For a general account of Scottish historians’ notions of progress applied to India, see: Rendall, ‘Scottish Orientalism: From Robertson to James Mill’.

What unites these thinkers is the combination of humans undergoing stages of development that ends in some final stage with utopic features. Carlyle, de Saint-Simon, and Comte, believed that human society would naturally and inevitably evolve into a higher stage featuring some version of collectivist thought.³⁹ Similarly, James Mill located society's catalyst to a higher developmental stage in religion; he believed that religion was part of man's social development, and thus he proposed the creation of a utilitarian state religion as a means of educating the masses to further progress.⁴⁰

For Carlyle, historical stages progressed and are created by the actions of great men.⁴¹ Unlike Carlyle who shied away from positivism, Saint-Simon and Comte were fully positivist in outlook and attempted to create a science of society.⁴² Like John Mill, all three agreed that religion served a purpose in progressing man forward. For Carlyle, it was true religious belief that was useful because it fostered a sense of community amongst members of society; true belief in the form of religious movements enabled higher developmental societies to emerge and to replace the old.⁴³ For Saint-Simon, it meant transforming Christianity into an industrial theology that focuses upon an 'earthly happiness' instead of the afterlife.⁴⁴ For Comte, it meant surpassing his mentor, Saint-Simon, and instead transforming religion itself into a religion of man that is based upon scientific laws.⁴⁵

³⁹ Montgomery, 'John Stuart Mill and the Utopian Tradition', 21n2.

⁴⁰ Plassart, 'JAMES MILL, THE SCOTTISH ENLIGHTENMENT AND THE PROBLEM OF CIVIL RELIGION'.

⁴¹ Carlyle, *On Heroes, Hero-Worship, and the Heroic in History*.

⁴² Pickering, 'Auguste Comte and the Saint-Simonians'.

⁴³ Currie, 'Carlyle and the Utility of Religion'.

⁴⁴ Musso, 'Religion and Political Economy in Saint-Simon'.

⁴⁵ Maureen, 'Saint-Simon and Comte: The Religion of Progress'.

For the development of Mill's historical stage-theory, it was Comte and the Saint-Simonian school that caught his attention in 1829 and 1830, having "greatly struck [him] with the connected view which they for the first time presented to me, of the natural order of human progress; and especially their division of history into organic periods and critical periods."⁴⁶ The organic period, Mill tells us, is when mankind "accept with firm conviction some positive creed, containing more or less of truth and of adaptation to the needs of humanity."⁴⁷ This creed leads humanity to create progress into a higher developmental state of civilisation to which the creed becomes superfluous because society outgrows it. Once this happens, "a period follows of criticism and negation, in which mankind lose their old convictions without acquiring any new ones except the conviction that the old are false."⁴⁸ Mill humorously remarks that he found the Saint-Simonian school's views much more agreeable than Carlyle due to Carlyle's temperament.⁴⁹

Nonetheless, Mill says that it was Comte who he found to be the best among the Saint-Simonians, especially his social science-pegged developmental stage-theory that was divided into three stages: the theological, the metaphysical, and the positive.⁵⁰ In short, man progresses from the theological to the metaphysical and finally to the positive.

These stages do not themselves form the society, but the mode of thought of society. The first stage, the theological, was characterised by phenomena being understood as supernatural beings in themselves.⁵¹ This mode of thought later transformed itself into the

⁴⁶ 'Autobiography', 171.

⁴⁷ Mill, 171.

⁴⁸ Mill, 171.

⁴⁹ Mill, 172.

⁵⁰ Mill, 172.

⁵¹ Mill, 'Auguste Comte and Positivism', 268.

metaphysical by further abstracting itself by no longer considering phenomena as supernatural beings, but rather as the actions and will of supernatural beings.⁵² Eventually society abstracts phenomena further, considering them to be confirming to the laws of nature and thus entering the positive stage.⁵³ What drives the change from one stage to the next is that observation, specifically observation, can ascertain the causes of phenomena and discover truth. In this way, progress is intertwined human reason, especially that of science.⁵⁴ Thus, “the main agent of progress for mankind is intellectual development.”⁵⁵

After Mill’s introduction to Comte, we see a further development. In 1831, Mill published a series of newspaper articles, *Spirit of the Age*, in *The Examiner*. Crucial to *Spirit of the Age* is the notion that society exists in either one of two states: the natural and the transitional.⁵⁶ Already we see the parallel with the Saint-Simonian school’s organic and critical periods. However, unlike the Saint-Simonian’s two stage model, Mill’s two states of society are specifically about society’s leaders. The natural state is when those who manage society’s material interests are the most capable of governing society. The transitional state is when, due to changes in society, there are other people who are more capable of governing than those currently in power. For the transitional state to occur, fundamental change in society’s social structures must occur. To make this relatable for today, it would be comparable to our current political leaders not knowing how to effectively manage climate change, competition law in the digital age, as well as data privacy. For Mill’s time, these changes related to the changing social

⁵² Mill, 273.

⁵³ Mill, 274.

⁵⁴ Mill, 270.

⁵⁵ Mill, 315.

⁵⁶ Mill, ‘Spirit of the Age, III [Part 1]’, 252.

conditions led by industrialisation. These changes showed the limitations of the then-political class, which were Parliament and the Church of England.⁵⁷

Nonetheless, the transitional state of society very well parallels the Saint-Simonian's critical stage. Mill agrees with the Saint-Simonians that man has outgrown the old creeds, but disagrees on the point of man being unable to acquire new convictions.⁵⁸ Rather, Mill claims that it is possible for man to acquire new convictions, and to do so requires the use of discussion because only through discussion are people able to question and discuss opinions and thereby create new truths.⁵⁹ Of course, this line of thought is later reiterated in *On Liberty*: "Complete liberty of contradicting and disproving our opinion, is the very condition which justifies us in assuming its truth for purposes of action; and no other terms can a being with human faculties have any rational assurance of being right."⁶⁰ And with this, we can also see Comte's influence of linking progress to human intellect.

Interestingly, Mill does not endorse the idea that progress needs to be in conflict with established creed. Rather progress occurs within the framework of the Saint-Simonian's organic stage if it allows for such progress.⁶¹ Thus not only does development occur within the confines of society's established creed, but in the process, it slowly makes those who are most fit to govern less fit to rule while making those excluded from power more able to govern. Essentially progress covertly subverts society's power structures.⁶² If we compare this to *On Liberty*, we see that Mill begins his text by stating that "the struggle between Liberty and Authority is the

⁵⁷ Capaldi, *John Stuart Mill: A Biography*, 133.

⁵⁸ Mill, 'Spirit of the Age, I', 230.

⁵⁹ Mill, 233–34.

⁶⁰ Mill, 'On Liberty', 231.

⁶¹ Mill, 'Spirit of the Age, III [Part 1]', 252.

⁶² Mill, 255.

most conspicuous feature in the portions of history with which we are earliest familiar”⁶³ followed by a short account of liberty, defining it as the “protection against the tyranny of the political rulers.”⁶⁴ With this, we can claim that liberty’s struggle is a developmental stage within Mills’ thought, and is itself borne out of progress.

Section 2.4 Progressing to Utopia

In a parliamentary speech, Mill defined Utopia as “something too good to be practicable,”⁶⁵ a charge he was familiar with since he was seen as being a utopian.⁶⁶ This accusation was hardly surprising. As Montgomery notes, a substantial portion of the *Principles of Political Economy* discussed the perfection of society.⁶⁷ Of note to highlight in the *Principles*, is the rather short chapter discussing the stationary state,⁶⁸ which we can interpret as a sort of utopic or ideal state. In contrast to other portions of the *Principles* that discuss society’s economic progress, here Mill discusses whether constant economic progress is desirable.

First, though Mill claims that an economically progressive state is not undesirable, he holds reservations about constant economic progress. He writes:

“I confess I am not charmed with the ideal life held out by those who think that the normal state of human beings is that of struggling to get on; that the trampling, crushing, elbowing, and treading on each other’s heels, which form the existing type of

⁶³ Mill, ‘On Liberty’, 217.

⁶⁴ Mill, 217.

⁶⁵ ‘The State of Ireland’, 248.

⁶⁶ 248.

⁶⁷ Montgomery, ‘John Stuart Mill and the Utopian Tradition’, 19.

⁶⁸ Mill, ‘Principles of Political Economy’, Bk. IV, Ch. VI: Of the Stationary State.

social life, are the most desirable lot of human kind, or anything but the disagreeable symptoms of one of the phases of industrial progress.”⁶⁹

Here we already see Mill hinting at a different future. Constant toil is hardly a desirable life for the one who is forced to toil. Let us not forget that in the 19th century, most were living in the basest slum conditions. For example, in *Oliver Twist*, Charles Dickens describes a street in London as “very narrow and muddy, and the air was impregnated with filthy odours,” and full of debauchery from the ever-present bars and drunks who “were positively wallowing in filth.”⁷⁰ Yet while the lower classes had an obviously rough life, the middle classes too had a life that was far from ideal. As Kahan notes, the 19th century had a homogenised set of values that emphasised mediocrity and desire for wealth.⁷¹ Kahan claims that Mill understood this to mean that the majority of people did not have a life outside of work, and consequently, they only possessed materialistic pleasures at the expense of real pleasures.⁷²

In contrast, Mill says that “the best state for human nature is that in which, while no one is poor, no one desires to be richer, nor has any reason to fear being thrust back, by the efforts of others to push themselves forward.”⁷³ His motives are clear: by focusing on something other than economic progress, people can “cultivate freely the graces of life,”⁷⁴ or in other words, continually develop their characters—something which was otherwise lacking in 19th century society. To achieve this, Mill says that a fair distribution of property and a fair judiciary is

⁶⁹ Mill, 745.

⁷⁰ Dickens, *Oliver Twist*, 39.

⁷¹ Kahan, *Aristocratic Liberalism*, 45.

⁷² Kahan, 45.

⁷³ Mill, ‘Principles of Political Economy’, 754.

⁷⁴ Mill, 755.

required: “a system of legislation favouring equality of fortunes, so far as is consistent with the just claim of the individual to the fruits, whether great or small, of his or her own industry.”⁷⁵

Of course, the only way to have a sizable amount of societal wealth that can be fairly distributed first requires the creation of such wealth. This means that while living conditions during industrial growth are hardly desirable, industrial growth is nonetheless a necessary stage in development to reach the stationary state. One way to make sense of this is to contrast it with Rawls. As stated earlier, Rawls argues that just principles are to be created before a society is constituted.⁷⁶ In contrast, Mill applies such principles after society progresses to a state that is able to maintain just and fair institutions.⁷⁷

In this way, the utopic, stationary state is an ideal that society can aim toward without having to have the exact conditions pre-defined. Unlike Rawls, who constructs the ideal state first, Mill is aware that societies differ in their characteristics.⁷⁸ What might promote the stationary state in one society may be different in another society. This is not to say that justice is relative, rather the manner in how it is applied and reached can vary depending upon the society in question.⁷⁹ This does not take away the notion of a utopic end, but rather shows that there are different ways of reaching the ideal stationary state which promotes the features that lead man toward to utopia:

“a well-paid and affluent body of labourers; no enormous fortunes, except what were earned and accumulated during a single lifetime; but a much larger body of persons

⁷⁵ Mill, 755.

⁷⁶ c.f. section 2.2

⁷⁷ Rawls, *A Theory of Justice*.

⁷⁸ Valladão de Mattos, ‘John Stuart Mill, Socialism, and His Liberal Utopia: An Application of His View of Social Institutions’, 98.

⁷⁹ van Holthoon, *The Road to Utopia: A Study of John Stuart Mill’s Social Thought*, 69.

than at present, not only exempt from the coarser toils, but with sufficient leisure, both physical and mental, from mechanical details, to cultivate freely the graces of life, and afford examples of them to the classes less favourably circumstanced for their growth”⁸⁰

In stark contrast to Dickens’ description of London, Mill’s utopia paints a society that has equality. Labourers are equals in terms of wealth. Further they are affluent and earn enough to have a work-life balance. Unlike 19th Century Britain and contemporary society, Mill’s utopia has mechanism in to prevent intergenerational wealth. We also see a suggestion at education—that the elite are to be guides for the lower classes.

According to Montgomery, such characteristics are shared by utopian thought.⁸¹ These characteristics are the idea that an ideal society is possible, societal ills can be overcome through education, people can be moulded by education and social conditioning, and such people will put the right people in power. Though I have actively tried to avoid discussion of Mill and education, we have already seen that Mill subscribes to a belief of social conditioning via obedience and habituation. Further we have already seen that Mill is concerned with creating a state that can handle the rigours of liberty, and such a state requires an educated populace.⁸²

Section 2.5 Concluding Remarks

In Section 2, we have explored the distinction between barbarism and civilisation. That civilisation is the opposite of barbarism. We have also seen that the transformation from

⁸⁰ Mill, ‘Principles of Political Economy’, 755.

⁸¹ Montgomery, ‘John Stuart Mill and the Utopian Tradition’.

⁸² On Mill’s view of education transforming people to become capable of sustaining liberty, see Donner, ‘John Stuart Mill on Education and Democracy’.

barbarian to civilised requires cooperation, obedience, and habituation. All three together conditions people to create in-groups and put the 'greater good' above their own interests. This act allows for and is the driver behind social progress.

Having ascertained how civilisation and social progress become possible, we then had to discern how progress actually works. Crucial for Mill's theory of history are developmental stages. Social progress moves in social stages. It is thus gradual. Of note are the St. Simonian organic and critical periods, or in more Millian terms, the natural and transitional states of society. In the natural society, society's current leaders are the ones most fit to lead. In the transitional state, society's leaders are not the most fit to lead. Other members of society are more fit.

Lastly, the eventual progression of stages will terminate at some future utopic stationary state. Notably, this society is not only just, but also social institutions are designed to foster a more equitable society than has ever existed. However, I have intentionally avoided discussing in specific detail on how such a society might look like because it is outside the scope of this paper. Nonetheless such a society is probably based upon a property-owning democracy that is socialist in nature.⁸³

Section 3 The Harm and Liberty Principles

Up to now, I have focused upon the relation between *On Liberty* and Mill's views on history and progress. Yet I have yet to discuss *On Liberty*'s central thesis itself: the principle of liberty,

⁸³ On Property and Mill, see Medearis, 'Labor, Democracy, Utility, and Mill's Critique of Private Property'. On Mill being a socialist, see Kurer, 'J.S. Mill and Utopian Socialism'.; Sarvasy, 'A Reconsideration of the Development and Structure of John Stuart Mill's Socialism'. Claeys, 'Justice, Independence, and Industrial Democracy: The Development of John Stuart Mill's Views on Socialism'.

otherwise known as the harm principle.⁸⁴ This principle, which is found in the opening chapter of *On Liberty*, states:

“the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others.”⁸⁵

Two major interpretations exist, the traditional and revisionist, of which I will argue along revisionist interpretations in order to offer an account of harm that accommodates deliberation in order to keep man as a progressive being.

Section 3.2 Traditionalism vs. Revisionism

According to John Gray,⁸⁶ the older traditional theory thinks that Mill’s priority for liberty is inconsistent with his utilitarianism. The traditionalist argument is along the following lines:

1. We are not supposed to violate an individuals’ moral rights.
2. Utilitarianism is equivalent to maximising happiness.
3. Maximising happiness can include violating an individual’s moral rights.
4. Therefore utilitarianism is incompatible with the first premise.

For traditionalists, the harm principle is incoherent as a sub-principle of the principle of utility.

Furthermore, even if the harm and utility principles could be reconciled, further problems emerge within Mill’s idea of self-regarding and other-regarding actions. Gray says that this is incoherent. Quoting Fitzgerald James, Gray says that making this distinction is similar to making

⁸⁴ Brown, ‘The Harm Principle’.

⁸⁵ Mill, ‘On Liberty’, 223.

⁸⁶ Gray, ‘Mill: A Bibliographical Essay’.

a distinction between whether an act happens in space or time: every act happens in both space and time just how every act affects both ourselves and others.

However Fitzgerald James received his first rebuttal more than half a century later. J.C. Rees interpreted Mill as making a distinction between actions that merely affect others and actions that affect others' interests. These interests are also narrowly defined as rights.⁸⁷ According to Gray, these interests are those that relate to utility and are grounded on the permanent interests of man as a progressive being. To violate these interests would commit harm.

Section 3.3 Defining Harm

Although the concept of harm is *On Liberty's* central thesis, Mill unfortunately failed to define the term itself. As a result, there have been many interpretations of what constitutes harm in *On Liberty*, including:

“injury to the vital interests of others,’ where these comprise the interests in autonomy in security; actions that ‘violate or threaten imminent violation of those important interests of others in which they have a right;’ violation of vital interests of others and not . . . less weighty matters;’ ‘prejudice to fundamental interests;’ ‘perceptible damage experienced against one’s wishes.’”⁸⁸

Turner says that these interpretations can be divided between rights-based and vital-interest based interpretations. However, rather than adopt one of these interpretations, Turner instead claims that the harm principle “is merely an antipaternalism principle, concerned with

⁸⁷ Another way of looking at this: protecting one’s right is protecting one’s interest.

⁸⁸ Turner, “‘Harm’ and Mill’s Harm Principle’, 300.

allocating decisional authority between society and the individual on the basis of what sorts of reasons are in play.”⁸⁹ He thus rejects both the traditional and revisionist accounts of the harm principle.

In his double pronged attack, Turner first argues against the rights-violation view, which states that the harm principle “may interfere with one’s action only if the act meets the threshold of threatening someone else’s rights, and this threshold is what is involved by the phrase ‘harm to others.’”⁹⁰ Accordingly, the rights-based view concerns two things:

1. Harm is a broad term. It needs to be restricted otherwise almost anything can be a legitimate concern.
2. Mill advocates for this interpretation in *Utilitarianism*. Here he restricts external (social) sanctions to cases of rights violation.

To argue against 1, Turner says that harm is intentionally a broad term. To show this, he cites the number of times *harm* has been used in a wide variety of Mill’s works. This leads Turner to claim that:

1. *Harm* should be regarded as a general term for bad consequence, and
2. There isn’t any reason to believe that *harm* implies a bad effect of a certain kind or of a certain degree of intensity.⁹¹

To support this, Turner appeals to Mill’s defence of liberty; the harm principle is not Mill’s whole defence of liberty—the defence is contingent upon society have a jurisdiction that is compelled to accept certain reprimands such as allowing individualism rather than restricting

⁸⁹ Turner, 310.

⁹⁰ Turner, 302.

⁹¹ Turner, 130.

society's jurisdiction altogether. Thus, not only is harm a general term, but the usage of harm is actually a preventative measure against paternalism.

As far as I am aware, this approach is innovative. Rather than treat the harm principle as a specific problem, Turner contextualises it within its historical background. He notes that Mill was targeting the Church, which was advocating for paternalism in order to save souls. Such a view has textual support. In *On Liberty* last two defences for freedom of speech attack Christianity itself,⁹² while Hamburger discusses the overall anti-Church theme.⁹³

There are considerable advantages to viewing the harm principle as an anti-paternalistic principle. First, banning certain forms of harm, such as 'offence' becomes impermissible. Secondly, discussions about using societal interference are forced to err on the side of caution, i.e., individual liberty needs to be preferred. For example, one way to think about this is to consider societal attitudes toward pornography.⁹⁴ When taking the harm principle into account, a Millian account of limiting pornography can only be valid as long as pornography can be shown to cause harm that is more than just offensive or some other minor harm. The onus on whether to allow or disallow pornography rests not upon porn advocates but rather those who wish to use societal interference.

For the rights-based interpretation's second claim, Turner turns his attention to the source for a rights-based approach, *Utilitarianism*, where Mill defines rights as anything a person has a claim upon. By having a claim upon x, a person can push a claim onto society to

⁹² 'On Liberty', 256–59.

⁹³ Hamburger, 'Religion and On Liberty'.

⁹⁴ On whether pornography is free speech, see section 3.3. On normative claims about pornography, see section 4.3. On whether child pornography is harmful, see section 3.4.

protect their claim on *x* by either legal enforcement or public opinion. Mill defines these kind of rights are “perfect moral obligations”.

In contrast, “imperfect” moral obligations only state that we have a duty to someone in general, but that this duty does not give someone a claim to push society for enforcement. As a result, the rights-based interpretation claims that since a rights-holder has a claim on society to protect their right (perfect moral obligation), it follows that imperfect moral obligations are only subjected to internal compulsion (i.e., non-societal compulsion) such as feeling guilty or shame.

Turner claims this this argument is not sound. First, Mill says that having an obligation to someone can be exacted by society like a debt, and secondly, Mill rejects legal coercion for imperfect obligations. Thus all that can be gathered from this is that Mill is not discussing the limits of society’s jurisdiction but rather he is discussing proper justification for society interfering in particular situations.⁹⁵ Thus the harm principle’s role is not to delineate whether or not society can interfere in an action. Rather the harm principle role is merely to trigger the question on whether society can interfere. It is human deliberation that ultimately decides whether interference is warranted.⁹⁶

Turner then argues against the perceptive damage interpretation, which states that harm is:

⁹⁵ Turner, “‘Harm’ and Mill’s Harm Principle’, 305.

⁹⁶ I find this interpretation apt because Mill is neither an Act nor Rule Utilitarian. For more on what kind of utilitarian Mill is, see Miller, ‘John Stuart Mill’s Moral, Social, and Political Philosophy’; Shaw, ‘Mill and Modern Utilitarianism’.

“perceptible damage suffered against one’s wishes ... including physical injury, (not excepting death), forcible confinement, financial loss, damage to reputation, broken promises (contractual or otherwise), and so on,” with the exclusion of “emotional effects on others’ feelings not occasioned by perceptible violation”⁹⁷

Hence, “the harm principle denies society the authority to regulate actions that cause nothing more than mere dislike or emotional distress in others and so itself secures a significant set of actions from social interference.”⁹⁸ Turner finds fault in this because such a view does not distinguish between merely being critical of someone’s actions, i.e. “mere dislike” and actual emotional distress.

To make this clearer, let us suppose two scenarios:

1. Let us assume that I am a male, and that I live in a house with seven females. We have one toilet. Every time that I use the toilet, I leave the seat up. The females begin to resent me because they hate it when the toilet seat is left up.
2. I tell my Jewish mother on her deathbed that I will purchase a newspaper advertisement stating how happy I am that she will die, and that I will place an image of Hitler in her urn.

The perceptible damage interpretation says that these actions can only be restricted if they fail recognised social norms.⁹⁹ Since there is not a standard for what these social norms are, it follows that there is also not a standard to regulate such conduct. Thus, if stating my intentions to my dying mother causes her emotional distress, then perceptible damage was not created.

⁹⁷ Turner, “‘Harm’ and Mill’s Harm Principle”, 310.

⁹⁸ Turner, 310.

⁹⁹ Turner, 315.

If, however, I have violated a social convention, then there ought to be a standard for such behaviour. If such a standard exists, Turner states that “it will be possible to characterize most of any action that causes offense or emotional distress as causing perceptible damage.”¹⁰⁰ Of course, this problem can be rectified by expanding the notion of harm, followed by reinterpreting what the harm principle aims to do: to open to debate whether society has jurisdiction to intervene. In these two scenarios, society would not be able to intervene to prevent such behaviour because though they cause offence, to ban such actions would open a Pandora’s box to banning many types of offensive behaviour.

However, what is left out here is whether such offensive speech has another intent: to mischaracterise or misrepresent. It is one thing to share my joy of someone’s death, no matter how bad of taste it is, but it is another to misrepresent my mother as a horrible witch who abducts innocent children when she is not. The gravity of such misrepresentation openly falls under the harm principle and becomes an issue of societal debate: are libel and slander acceptable modes of expression? Only by expanding the notion of harm to be allowed to debate whether there ought to be interference are we able to ascertain whether disrespectful conduct is merely done in bad taste or is intentionally trying to cause some form of harm.

Section 3.4 Mill and Rights

As can be seen in the previous section, rights-based approaches to Mill are very prominent. Further, these approaches continue to spawn new accounts in reaction to the current accounts.

¹⁰⁰ Turner, 315.

Jacobson takes the rights-approach and modifies it.¹⁰¹ He claims that *On Liberty* is not only about the harm principle but about another principle: the Doctrine of Liberty (DL).

Jacobson defines DL as “the quintessentially liberal claim that there should exist a substantial sphere within which the individual is free from social coercion.”¹⁰² However it is not readily apparent to how this differs much from the harm principle. Jacobson defines the harm principle as the implication “that the harmfulness of an action (to nonconsenting others) *does* provide good reason, albeit not always sufficient reason, for society to interfere with it.”¹⁰³

Yet I am skeptical about Jacobson’s intentions, namely, what is his intention in separating the doctrine of liberty from the harm principle? I suspect it is to construct his rights-based account by making a distinction in a very traditional reading of Mill’s argument. He cites this argument as follows:

1. Mill asserts the harm principle. Harmful acts may be subject to coercion.
2. Harmless actions are self-regarding actions. These are never subject to coercion.
3. Harmless self-regarding actions are never to be subject to coercion.
4. Therefore we have a right to harmless actions.

Jacobson puts emphasis on the third premise because this is the class of actions that comprise his doctrine of liberty. He says the statements one and two statements are false because “Mill advocates a form of liberal on which individuals have certain basic rights, including the right to free speech.”¹⁰⁴ As a result, Jacobson comes to a conclusion similar to Turner:

¹⁰¹ Jacobson, ‘Mill on Liberty, Speech, and the Free Society’.

¹⁰² Jacobson, 276.

¹⁰³ Jacobson, 276.

¹⁰⁴ Jacobson, 277.

1. The harm principle is not really a harm principle at all but rather an anti-moralism and anti-paternalism principle, and
2. The harm principle is not meant to support the doctrine of liberty.

The first problem with this reading is that while the harm principle may be a form of anti-moralism and anti-paternalism, the doctrine of liberty presupposes a notion of rights that simply is not supported by the text. It is one thing to claim that people have rights in society, and it is another thing to liken some rights to basic liberties. Jacobson's claim of individuals having certain basic rights leads to the question of whether individuals have certain basic rights.

To make this clearer, does Jacobson mean that every individual in a free society happens to share a certain set of basic rights or does he intend to say that individuals have natural liberties? I am under the impression that he means the latter. Jacobson writes, "These rights are constitutive of Mill's free society—an ideal founded on his conception of the prerequisites for human flourishing."¹⁰⁵ Though not directly stated, these sound an awful lot like the natural liberties decided beforehand to create Rawls' ideal society.¹⁰⁶

Mill is very clear about his view toward natural liberties. He says that "society is not founded on a contract."¹⁰⁷ Jacobson himself notes this. He admits that Mill disavows natural rights, yet Jacobson continues to stress that Mill "expressly adopts the strong conception of rights."¹⁰⁸ Furthermore, these rights are never to be interfered with because they protect actions that are necessary for the development and exercises of individuality.

¹⁰⁵ Jacobson, 278.

¹⁰⁶ Rawls, *A Theory of Justice*.

¹⁰⁷ 'On Liberty', 276.

¹⁰⁸ Jacobson, 'Mill on Liberty, Speech, and the Free Society', 291.

Jacobson elucidates this by saying that certain modes of living take away the necessary development of others in themselves, i.e. thus while being an alcoholic may not violate another person's rights, being an assassin or paedophile or slave-owner do violate others by prohibiting their development and exercise of individuality. Yet what makes this complicated is Jacobson's next assertion to link Mill to a form of liberalism associated with capitalism:

“since the life of a capitalist does not necessarily violate the rights of others, it constitutes a permissible way of life. While this means that capitalism as such cannot be prohibited, it does not imply that ‘capitalist acts between consenting adults’—to borrow a phrase from Robert Nozick—are within the sphere of liberty” (p.295).

At first glance this seems correct. But if this is correct, then how is this any different than being a paedophile? While being an assassin means murdering others for payment, and being a slave-owner means that you must own another person and thus control their development (hence slave-ownership being impermissible under the harm principle), being a paedophile does not necessarily mean that one is abusing children.

There is a clear distinction between having an identity because of actions committed and having an identity that is not defined by such action, i.e. the paedophile is still a paedophile irrespective of him acting upon paedophilic desires. For example, someone is an assassin if and only if she has murdered someone for payment. Someone is a slave-owner if and only if she owns another person as property. The assassin chose to be an assassin; the slave-owner chose to be a slave-owner. The paedophile did not choose to be a paedophile, i.e. they did not choose to be sexually attracted to children no more than the heterosexual chooses to be attracted to the opposite sex.

To make this clearer, someone can be a paedophile if they have performed sexual activity with a child, but this action in itself is not a sufficient reason to be a paedophile. For example, if you had sex with a child because I put a gun to your head and ordered you to, does that make you a paedophile? The necessary and only condition that makes someone a paedophile is if that person has sexual attraction to children. As a result, being a paedophile, like being a capitalist, is not harmful in itself. Therefore, the life of a paedophile is similarly protected.

Yet the problem with this line of thought is that it ignores the obvious issue on hand. Do we as a society want to protect the paedophile's liberty? This situation is exactly the kind of situation covered by the harm principle rather than the doctrine of liberty. The harm principle allows us to ask whether some forms of paedophilic behaviour are considered harmless. If paedophilic behaviour is harmless, then are these behaviours permissible?

To give a concrete example of paedophilic behaviour, let's look at child pornography. While no one would disagree that creating child pornography is harmful, what is the consensus on distribution? If it were the case that distributing child pornography to paedophiles prevented future acts of sexual abuse, does it mean society has a right to intervene in this distribution? Further is watching child-pornography considered self-regarding or other-regarding, especially when taking into account that you do not need to harm a child every time such a video is copied and distributed (i.e. the video only needs to be created once in order for distribution).

For this argument I will put forward that watching a child pornographic video is as harmless as buying a pair of shoes with the caveat that the shoes are made using sweatshop labour and that both the buyer and seller are ignorant of the shoe's provenance. Further, it should be noted that viewing child pornography in itself does not constitute harmful behaviour otherwise police

combing through the Internet would be committing harm in order to stop harm. Thus, we can accept the argument that it is the *creation* of child pornography that involves direct harm rather than indirect harm caused by distribution and viewership (such as to the child's psychological well-being). But let us get around the question of indirect harm and suppose that the child depicted in the video is already deceased (and therefore can no longer suffer any kind of harm). The question becomes: is watching child pornography that depicts a now-deceased child harmful? The answer is no. The child is deceased. Therefore, the child cannot suffer any kind of harm.

This, however, may not be the only kind of harm involving child pornography. It could very well be the case that by watching child pornography, paedophiles are likelier to commit sexual abuse against children. Or it could actually be the case that watching such videos mitigate the risk of paedophiles acting upon their inclinations or may not have any effect whatsoever. These additional considerations, though, are not allowed under Jacobson's doctrine of liberty, which expressly prohibits interfering with a paedophile's non-harmful viewership of child pornography. Under the harm principle, we can consider whether child pornography so vile because it is the product of harm that it should never be allowed? Whether we should be pragmatic and accept that past harm creating child pornography cannot be righted, however, currently existing child pornography can be used to prevent future harm? As Brown correctly notes, "the role of the Principle is to introduce the relevant of such considerations, not to settle their weight. To reach conclusions about the legitimacy of social control, we need to look at the circumstances of each case."¹⁰⁹

¹⁰⁹ Brown, 'The Harm Principle', 416.

Of course, this discussion could have been avoided had Jacobson chosen to try and define what constitutes harm. By creating a doctrine of liberty to secure humanity a basic set of rights through a new principle instead a reading via the harm principle, Jacobson has secured the inalienable right to freedom of expression as a negative liberty, i.e. government and society are *not* allowed to interfere with one's behaviour under any circumstance. Yet one obvious problem to that is our paedophile example. In this case, society ought to deliberate whether to interfere in specific paedophilic behaviour. For example, if viewing child pornography (or by extension other forms of violent pornography) is harmless, and perhaps even beneficial (such as possibly lowering the number of sexual assaults),¹¹⁰ then perhaps society ought not to intervene or only intervene in a situation whereby videos distribution is regulated in order to increase the paedophile's welfare while preventing harm against children.¹¹¹

Section 3.5 Concluding Remarks

As we can see, the traditionalist argument is unnecessarily harsh and does not do justice to Mill's harm principle. Rather, an alternative reading of Mill is required. This reading ought not only to be charitable but should also take into account Mill's overall philosophical project that considers man a progressive being. More specifically, this means that the harm principle should be seen as one that promotes man's interests as being progressive, and to do otherwise, would be committing harm. Seen in this light, criticisms that the harm principle is incoherent collapse. Furthermore, the traditional view that the distinction between self-regarding and other-regarding actions likewise collapse. Instead of understanding the harm principle as a

¹¹⁰ A recent meta-analysis study found that an increase availability in pornography leads to reduced sexual aggression. See Ferguson and Hartley, 'Pornography and Sexual Aggression'.

¹¹¹ On indecency and harm, see section 4.5.

proscriptive rule that creates a set of rights that can never be violated, it is more useful to understand the harm principle as a mechanism that triggers debate. When seen in this light, the harm principle becomes a mechanism that supports an environment that focuses on being respectful and charitable to interlocutors. The end result is that individuality can be respected and fostered to support the development of man as a progressive being.

Section 4 Mill and Freedom of Speech

As we have seen, liberty is restricted to those who can sustain free speech and discussion.

Crucial to understanding *On Liberty* is first defining what Mill considers to be free speech. At first glance, this seems relatively straight forward. Free speech generally means freedom to express whatever one wishes in spoken, written, and other forms, such as actions. However, this is not how free speech is conceived of in *On Liberty*. Mill limits free speech specifically to opinions that have a truth-value, i.e., is the opinion true, false, or somewhere in between?

When considering how Mill views freedom of speech, it is important to distinguish between his notion and what we currently consider to be free speech. For example, protected speech today (such as the broadcasting and publication of misleading news) are allowed under our notion of free speech, but this would not necessarily be covered by Mill's conception. This nuance allows Mill to avoid potential conflicts in his theory because does not argue for unrestricted free speech. In doing so, Mill is able to separate useful speech for public debate from speech that is harmful, and he is able to situate free speech within his larger idea of progress.

Section 4.2 What is Considered Free Speech

In understanding *On Liberty*, of vital importance is the concept of freedom of expression. As stated in this paper's introduction, I have used freedom of speech (free speech) and freedom of expression are used interchangeably. However, the terms are actually very restricted. What then does Mill consider to be free speech?

Mill begins *On Liberty* chapter II by discussing society silencing people for expressing an opinion that is disagreeable. Of course, expressing an opinion does not have to involve a physical speech act. An opinion can be expressed by publishing it in a printed publication, such as newspapers and magazines, or on the Internet, such as a weblog. Mill says that publishing opinions is so closely linked to freedom to think whatever you want, that it is practically inseparable from it.¹¹² It would seem that the presence of an opinion is required for expression.

Yet if the presence of an opinion is required, this may restrict some form of expression. For example, while some statues and paintings can express both acceptable and offensive, such as "the king is great," or lauding homosexual love in a homophobic country, other acts do not express any opinion at all: burning a country's flag at an anti-war rally can express an opinion, but burning a flag for the mere sake of satiating pyromania does not. Moreover, free speech debates often inevitably involve the discussion of pornography. Is pornography, which aims solely are sexual arousal, covered under freedom speech?

In our discussion to define freedom of speech within Millian thought, pornography offers the distinction needed for what is covered under free speech. In today's society, porn is considered free speech in spite of it being considered a form of "art or literature which

¹¹² 'On Liberty', 225.

explicitly depicts sexual activity or arousal in a manner having little or no artistic or literary value.”¹¹³ Yet the literature on Mill and pornography do not concern pornography as a form of free speech. Rather the literature concerns whether pornography is harmful, and if it is, then it should not be allowed.¹¹⁴

This is because pornography was not the kind of expression Mill had in mind while writing *On Liberty*. This is not due to the lack of pornography in Mill’s time, but rather pornography is not created with the intention to convey information; its sole purpose is sexual arousal.

While it has been suggested that Mill’s failure to discuss pornography and free speech may be a defect in his argument,¹¹⁵ I put forward that pornography is simply outside the scope of the applicability of his free speech principle. Rather, Mill is concerned with speech that have a truth value. To be more precise, he is concerned with the expression of opinions and whether or not the opinion being expressed is true or false. Thus, “pornography *qua* pornography cannot be regarded as an expression of opinion.”¹¹⁶

As Richard Vernon correctly observes:

“The title of *On Liberty*’s second chapter is ‘Of the Liberty of Thought and Discussion.’

The word ‘discussion’ is frequently used in the chapter, as is the word ‘opinion.’ Mill also speaks of ‘free discussion,’ ‘freedom of opinion,’ and ‘liberty of the press.’ No where does he speak of expression, and he uses the word ‘expression’ only in the phrase

¹¹³ Berger, *Freedom, Rights, and Pornography: A Collection of Papers by Fred R. Berger*, 133.

¹¹⁴ Dyzenhaus, ‘John Stuart Mill and the Harm of Pornography’; Skipper, ‘Mill and Pornography’; McGlynn and Ward, ‘Would John Stuart Mill Have Regulated Pornography?’; Cowen, ‘Millian Liberalism and Extreme Pornography’.

¹¹⁵ Ryan, ‘Mill in a Liberal Landscape’, 507.

¹¹⁶ O’Rourke, *John Stuart Mill and Freedom of Expression: The Genesis of a Theory*, 140.

‘expression of opinion.’ ‘Discussion’ and ‘opinion’ are words much narrower than ‘expression’ in their scope of reference.”¹¹⁷

In other words, Mill is not concerned with whether or not pornography is harmful so much as he is concerned with the debate society has about pornography being harmful. For example, are the statements “pornography is harmful” and “pornography is beneficial” true or false? Thus, free expression is limited to the expression of opinions that can be either true or false. Further, the opinions’ truth values are vital for there to be argument and discussion.

Section 4.3 True and False Speech

On Liberty chapter II famously defends free speech. In particular, it defends the free speech of true and false opinions. Furthermore, the free speech defended is actually the free speech of a minority. It is assumed that most people in society believe in an opinion, *x*, but there exists a minority group that believes in *y*. The chapter is divided into three sections. The first part says that if a dissenting opinion (opinion *y*) is true but *x* is false, then society loses the opportunity to be corrected unless there is free speech. The second part says that even if *y* is false and *x* is true, then society is improved because people who believe in opinion *x* now have a stronger belief in *x* because they had to defend *x*. Finally, the third part synthesises the first two parts. This section says that opposing opinions are rarely in a true-false dichotomy. Rather opinions are rarely 100% true or 100%, but a partially true and partially wrong. As a result, the clashing of partially true opinions leads to discussion that leads to the creation of new opinions and forms of knowledge that are truer.

¹¹⁷ Vernon, ‘John Stuart Mill and Pornography: Beyond the Harm Principle’, 662.

If we compare this to *A System of Logic*, Mill notes that while scientific statements deal with facts, normative statements do not deal with what is but what should be. Despite this, normative statements still contain some kind of fact. These normative statements need to be defended with argument, and when the supporting statements are put together, an art of life (or body of doctrine) is formed.¹¹⁸ As we can see, the normative statements are the opinions spoken of in *On Liberty*. Furthermore, when the opinions are put together, a body of doctrine, such as the societally approved opinion *x* or the dissenting opinion *y*, is formed. Furthermore this body of doctrine is “a joint result of the laws of nature disclosed by science, and of the general principles of what has been called Teleology, or the Doctrine of Ends.”¹¹⁹

Of course, readily apparent is the idea of free speech being teleological. As we already have seen in section 2, Mill’s teleology aims at happiness. Thus we can see that free speech promotes progress by aiming at happiness. Furthermore, we see that normative statements correspond to scientific results. It can be discerned that the free speech of opinions concerns opinions for statements that are not yet verified by science, i.e. what is being debated is something that is still open to debate. There does not yet exist inconclusive proof that opinions *x* or *y* are either true or false.

How then does discussing opinions *x* and *y* lead to truth? In *Coleridge*, Mill speaks of “antagonistic” modes of thought that both capture the truth, yet never the whole truth regarding human conduct and knowledge. These antagonistic modes of thought “are as

¹¹⁸ ‘A System of Logic’, 122.

¹¹⁹ 949.

necessary to one another in speculation as mutually checking powers are in a political constitution.”¹²⁰ Thus to speculate one must have discussion.

As Macleod shows, Mill believes that our engagement with the world is not only sensible but also discursive. We do not gain knowledge of the world only by sense perceptions, but through discussion of said sense perceptions. We need discussion in order to make sense and interpret the world.¹²¹ Furthermore the creation of knowledge via discussion necessarily “involves the ability to account for one’s belief in terms of reasons: justification of a proposition consists not in an extra piece of information to be acquired, but a capacity made explicit in the social process of giving account to others for one’s belief.”¹²²

Interestingly, this means that seeking knowledge is not only about truth. Discussion to ascertain truth is part of a developmental stage to ascertain the requisite truth needed for the specific society in question. This means that the truth discovered may not necessarily be the whole truth, but the partial truth needed to progress to the next developmental stage. Mill writes that “even progress, which ought to superadd, for the most part only substitutes, one partial and incomplete truth for another; improvement consisting chiefly in this, that the new fragment of truth is more wanted, more adapted to the needs of the time, than that which it displaces.”¹²³

As we can see, there is a direct interest in whether an opinion is true or false. As Macleod claims, this is chiefly an epistemic argument.¹²⁴ As a result, this takes free speech

¹²⁰ ‘Coleridge’, 122.

¹²¹ Macleod, ‘Mill on the Liberty of Thought and Discussion’.

¹²² Macleod, 7.

¹²³ ‘On Liberty’, 252.

¹²⁴ Macleod, ‘Mill on the Liberty of Thought and Discussion’.

outside the auspices of the harm principle and instead appeals to the value of knowledge. If we re-examine our pornography example, we see that it becomes immediately clear that Mill is not interested in pornography as free speech because pornography does not have a truth-value. However normative claims about pornography *do* have value because they are either true or false. By linking free speech to the value of knowledge, Mill is able to avoid the problems caused by the tension between the harm principle and free speech.

Section 4.4 The Relation Between Harm and Free Speech

For a text that begins with the harm principle followed by a defence of freedom of expression that does not explicitly refer to the harm principle, one must ask then, what is the relationship between the harm principle and that of freedom of expression? If we recall from section 3, Mill states “that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self protection. That the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others.”¹²⁵ Two passages come to mind:

1. “Undoubtedly the manner of asserting an opinion, even though it be a true one, may be very objectionable, and may justly incur censure. By the principal offences of the kind are such as it is mostly impossible, unless by accidental self-betrayal, to bring home conviction. The gravest of them is, to argue sophistically, to suppress facts or arguments, to misstate the elements of the case, or misrepresent the opposite opinion. But all this, even to the most aggravated degree, is so continually done in perfect good faith, by persons who are not considered, and in many other respects may not deserve

¹²⁵ Mill, ‘On Liberty’, 223.

to be considered, ignorant or incompetent, that it is rarely possible on adequate grounds conscientiously to stamp the misrepresentation as morally culpable; and still less could law presume to interfere with this kind of controversial misconduct. With regard to what is commonly meant by intemperate discussion namely invective, sarcasm, personality, and the like, the denunciation of these weapons would deserve more sympathy if it were ever proposed to interdict them equally to both sides.”¹²⁶

2. “No one pretends that actions should be as free as opinions. On the contrary, even opinions lose their immunity, when the circumstances in which they are expressed are such as to constitute their expression a positive instigation to some mischievous act. An opinion that corn-dealers are starvers of the poor, or that private property is robbery, ought to be unmolested when simply circulated through the press, but may justly incur punishment when delivered orally to an excited mob assembled before the house of a corn-dealer, or when handed about among the same mob in the form of a placard.”¹²⁷

Comparing these two passages shows that there is clear division between expressing oneself for the sole purpose of expressing oneself in debate and expressing oneself with the intention to cause harm. Though Mill does not formulate the intention behind an action as a criterion for invoking the harm principle, the meaning is very clear. One’s intentions, if proven to be bad intentions, can be interfered with. Mill writes: “the liberty of the individual must be thus far limited; he must not make himself a nuisance to other people.”¹²⁸ As a contemporary reader we are automatically tempted to read ‘nuisance’ as meaning someone who is obnoxious, however,

¹²⁶ Mill, 258.

¹²⁷ Mill, 260.

¹²⁸ Mill, 260.

the word nuisance is much broader; it encompasses the ideas of injury, hurt, and harm. Further in a legal sense, it refers to something that is harmful or offensive to the general public (e.g. urinating or defecating in public).

As stated earlier in this paper, Mill's *On Liberty* covers offensiveness when regarding speech. It's perfectly acceptable to shun offensive people but to actively try and turn others against such an offensive person or to interfere in their speech in general is not allowed under any circumstance. But such prohibition concerns, first, speech that has a truth value, and second, speech that is done in a sort of debate. This is why in the first passage above, if I upfront berate my opponents while arguing sophistically against them, though such actions may be considered offensive, there still is no reason to restrict how I behave (with the exception that such rules of conduct are enforced upon all participants of a debate).

Yet offensiveness is a spectrum. What one finds offensive another may find cheeky. And another may find truly revolting. However, what exactly is Mill's position on an offense that is so unpleasant that it arouses disgust? Unfortunately, Mill is largely silent on this, and his comment on indecency is of no help either. Mill writes:

"There are many acts which, being directly injurious only to the agents themselves, ought not to be legally interdicted, but which, if done publicly, are a violation of good manners, and coming thus within the category of offences against others, may rightfully be prohibited. Of this kind are offences against decency; on which it is unnecessary to dwell, the rather as they are only connected indirectly with our subject, the objection to

publicity being equally strong in the case of many actions not in themselves
condemnable, nor supposed to be so.”¹²⁹

This passage, known as the indecency policy,¹³⁰ seems to go directly against the harm principle. Yet I am not so sure if it is incompatible with Mill’s position as some philosophers assert.¹³¹ Following Ten, an act’s offensiveness is enough to place it within the public realm, however the expanded notion of harm outlined in this paper requires us to ask, first, whether or not intervention is needed, and second, if it is, then what kind of intervention.¹³² When we take indecency and compare it with the two passages at the beginning of this section, we can see that the indecency lies in how an action is performed.

For example, Mill says that one should not be punished simply for being drunk, but to be drunk while a soldier on duty is a totally different matter.¹³³ Mill then gives another drunk situation in which he once again reiterates that drunkenness cannot be interfered with except under specific conditions, such as a person who becomes violent while drunk. In this light, I do not think the emphasis is upon good manners and decency, but rather on publicity. Mill is largely writing for a 19th century audience that very much believed in behaving publicly with good manners. Mill is able to argue against drunkenness in specific contexts without resorting to a moralistic argument such as the American temperance movement which he is much critical of.¹³⁴ By linking the violation of a societal obligation to decency, Mill is able to write for the

¹²⁹ Mill, 295–96.

¹³⁰ Wolff, ‘Mill, Indecency and the Liberty Principle’.

¹³¹ Conway, ‘Law, Liberty and Indecency’, 140; Gray, *Mill on Liberty: A Defence*, 102.

¹³² Ten, *Mill On Liberty*.

¹³³ Mill, ‘On Liberty’, 282.

¹³⁴ Mill, 287.

dominant English temperament, or disposition, of intolerance: “which at all times abides in the middle classes of this country.”¹³⁵

Such a reading may seem implausible except that Mill was a master of obscuring what he really meant.¹³⁶ It thus offers a way around the indecency problem. Yet this reading does not say anything about actions that cause utter disgust. It is not that these do not fall under ‘decency’ standards, but rather disgusting acts are not covered by this passage. Mill on the whole, only allows moral reprobation when there is a breach of duty to others. If there is not a breach of duty to others, there simply cannot be any reprobation.¹³⁷

Yet as Hamburger notes,¹³⁸ Mill directly contradicts this: “a person may suffer very severe penalties at the hands of others, for faults which directly concern only himself.”¹³⁹

At first glance this does seem very contradicting, however, the wider paragraph shows that self-regarding action that is done due to “depravation of taste” renders the agent as “a subject of distaste, or, in extreme cases, even of contempt.”¹⁴⁰ For Mill, the disgust and associated penalties inflicted upon the agent in question are natural and “spontaneous consequences of the faults themselves, not because they are purposely inflicted on him for the sake of punishment.”¹⁴¹ As a result, Mill does allow one not to seek this specific person’s company.

¹³⁵ Mill, 240.

¹³⁶ Hamburger, ‘Mill’s Rhetoric’.

¹³⁷ Mill, ‘On Liberty’, 279.

¹³⁸ Hamburger, *John Stuart Mill on Liberty and Control*, 170.

¹³⁹ Mill, ‘On Liberty’, 278.

¹⁴⁰ Mill, 278.

¹⁴¹ Mill, 278.

This is much different than his claim just two paragraphs later in chapter four. For someone who has violated a societal obligation, Mill says that “if he displeases us, we may express our distaste, and we may stand aloof from a person as well as from a thing that displeases us; but we shall not therefore feel called on to make his life uncomfortable.”¹⁴² I would call cautioning others against a depraved individual part of making his life uncomfortable. This aside, the depraved individual’s actions do not fall under the harm principle while the individual who violates a societal obligation does. However since the depraved action rouses such natural emotion that is spontaneous, one has the right to exercise their individuality that may seem to restrict the depraved person’s individuality. For example, Mill says that “we have a right, and it may be our duty, to caution others against him, if we think his example or conversation likely to have a pernicious effect on those with whom he associates.”¹⁴³ Thus it seems the indecency problem does not rest upon the harm principle at all but rather upon naturalistic reasons.

In thinking of depraved action, one does not need to think of something truly vile, such as bestiality. A much more common example is masturbation. Someone masturbating in the privacy of their home is much different than masturbating in public. Yet I will argue here that the masturbation in public, rather than in private, can be restricted not based upon the harm principle but based upon disgust and its negative effect. The negative effect this action could have upon others is that it promotes or normalises behaviour that encourages one to pursue

¹⁴² Mill, 279.

¹⁴³ Mill, 278.

“animal pleasures at the expense of those of feeling and intellect.”¹⁴⁴ For Mill, who is concerned with the self-development of individuality, intellect is a requirement for man’s self-cultivation.

Yet this kind of reaction, the kind in which if we saw a random stranger on the street masturbating in full day light, is not the same kind of disgust we might feel toward a person who uses a specific racial epithet to refer to African-Americans. The first is that masturbation involves only oneself. However, using an epithet by nature requires other people—whether it is in a debate or a deliberate attempt to harass African-Americans. Using the epithet requires that the other person understands that it is an offensive word, and that this word can be offensive or even reclaimed to be a point of pride (e.g. geek, queer, and slut). Seeing someone masturbate in public, on the other hand, automatically arouses disgust by the nature of the act itself. Having disgust at the action is not an understanding that it is either wrong or good—the natural feeling of disgust is enough to warrant the invocation of the harm principle in the specific act against public masturbation. As we recall, the harm principle merely triggers a debate on such action warrants restriction. From this we can claim that some acts seemingly self-regarding, yet they are actually detrimental to other peoples’ development of individuality. For Mill, the development of individuality is *the* necessary component of well-being.¹⁴⁵

This distinction between self-regarding and other-regarding paedophilic behaviour can be compared to freedom of speech. Let us notice that the freedom of speech does not necessarily involve others. Rather freedom of speech runs on scale of self-regarding to other-regarding. For example:

¹⁴⁴ Mill, 278.

¹⁴⁵ Mill, 261.

1. I can express my opinion in my personal journal for my eyes alone;
2. I can express my opinion in a magazine for a like-minded audience;
3. Or I can express my opinion in a nationally televised debate.

All of these have various levels of sociability. Not every single situation involves others. Let us take our paedophile situation and analogise it to something that could happen in the expression of opinion: the thought that African-Americans are lazy.

In the first situation, I can express only to myself either mentally, by speaking to myself at home where no one else can hear me, or in a private journal, that African-Americans are lazy. Such expression does not constitute harm because it will never be other-regarding.

The second situation involves others who share similar views. For example, if I wish to publish an article on expressing the opinion that African-Americans are lazy in a magazine distributed only to Ku Klux Klan members through the postal system, then the harm principle is still not violated. While other-regarding and while offensive, the opinion states that African-Americans are lazy. Whether that is true or not is another matter which we will discuss more in detail in a moment.

In the third example, if I were to express the same opinion in a nationally televised debated, I could very well face backlash. Yet even then the harm principle is not violated except under specific circumstances. Since the television recording is being broadcasted to every single person in the country, then tact of style is required. How I express “African-Americans are lazy” can be received differently by different groups. Some can take it offensively and some may agree with the opinion.

By showing these examples, I wish to draw attention to the fact that society has an increasingly right of interference as one goes from self-regarding to other-regarding. Namely, while the harm principle allows freedom of expression, it also takes into account the circumstances in which an opinion is expressed. While deplorable, I fail to see the harm in expressing the view that African-Americans are lazy in the Ku Klux Klan magazine. While such a view, or even the magazine itself, may seem to be in violation of the harm principle, I argue that it is not because opinions in themselves, however offensive, do not constitute harm. Merely stating an opinion does not infringe upon someone else's right or interest. However, if we were to prevent people from acting upon and expressing their opinions, even incendiary ones, would be a clear violation of the harm principle. Mill states that "if we were never act upon our opinions, because those opinions may be wrong, we should leave all our interests uncared for, and all our duties unperformed."¹⁴⁶

Yet it seems strange that society ought to tolerate obviously incendiary behaviour; one way to look at this is that society protects one's right to express herself, however, individuals themselves may not need to personally tolerate it. Rather than prohibit expressing racial epithets, Mill allows for public disapproval.¹⁴⁷ This does not mean cancelling someone; rather Mill intends it to be one is allowed avoid interacting with such a person without making their life unbearable. Only when such speech threatens the interest of others, such as inciting a crowd of white supremacists to attack minorities, would interference be possible. Mill says that

¹⁴⁶ Mill, 230.

¹⁴⁷ Mill, 279.

such speech, even if incendiary, can only face moral reproach as long as there is undeniable evidence. Otherwise, we are to assume such speech was conducted “in perfect good faith.”¹⁴⁸

While I am not personally convinced on Mill’s point, his generous position on speech is to promote individual development; the idea is that by the freedom to express opinions, irrespective of offensiveness, will lead people to refine their argument or to change their argument in the face of a better argument. Crucially, this deliberation is part of exercising and refining the mental faculties that develop a person. For Mill, it was personal. As he recounts in his *Autobiography*, Mill was raised without a belief in Christianity. At the time, such a lack of belief was highly contentious, and Mill was taught to keep his beliefs to himself. People with lack of belief were silenced and if they expressed their views, often found themselves losing their livelihood and means of subsistence. Often, they would be excluded “from some sphere of usefulness peculiarly suitable to the capacities of the individual.”¹⁴⁹

I do however see the harm that is created when a political leader mischaracterises a racial group in order to stigmatise them as a class of people, and I think Mill would be in agreement. Mill says, “Undoubtedly the *manner* of asserting an opinion, even though it be a true one, may be very objectionable, and may justly incur a severe censure”¹⁵⁰ (emphasis mine). Here Mill seems concerned with using language that attacks an opponent, such as an ad hominem argument. He says, “the worst offence of this kind which can be committed by a polemic, is to stigmatise those who hold the contrary opinion as bad and immoral men.”¹⁵¹

¹⁴⁸ Mill, 258.

¹⁴⁹ Mill, ‘Autobiography’, 46–47.

¹⁵⁰ Mill, ‘On Liberty’, 258.

¹⁵¹ Mill, 259.

Mill's concern is in *how* something is said, not *what* is said. In the Ku Klux Klan magazine, I am not attacking an enemy; I am expressing a view to other like-minded people. However to do so on national television in an emotionally charged setting is different. Mill again emphasises this when says "For the interest, therefore, of truth and justice, it is far more important to restrain this employment of vituperative language."¹⁵² More importantly, what can see in these examples that one moves from uttering an opinion to oneself, sharing an opinion with likeminded people, and sharing an opinion in an arena that invites debate.

Thus, we can say that it is the manner in which one says that Mill rightfully says can be restricted. In his corn-dealer example, Mill does not deny that opining that corn-dealers are starvers of the poor is harmless or harmful. Rather what triggers interference by society is the manner in which one states corn-dealers are starvers of the poor, such as shouting "corn-dealers are starvers of the poor" to an excited mob outside the door of a corn-dealer.¹⁵³ What we can see here is that there is not necessarily a harm principle that prohibits any expression of speech. Rather, what matters is the manner in which harm is conducted. As we have already seen, a generous reading of harm is required to understand Mill's obtuse writing style.¹⁵⁴

Thus if the manner in which expression is conducted can be interfered with, how and what can the interference look like? A good starting point is trade, which Mill discusses in chapter 5 of *On Liberty*. Though trade in itself is always social, there is no prohibition to engage in trade *just as there is no prohibition on freedom of expression*. Like freedom of expression, there are different levels of sociability in trade. As a society, we treat children operating

¹⁵² Mill, 259.

¹⁵³ Mill, 260.

¹⁵⁴ Hamburger, 'Mill's Rhetoric'.

lemonade stands and teenagers mowing lawns differently than the CEO of Fortune 500 companies. This need not be based upon age, but rather the nature in which the business is conducted. In California, home bakers can sell their goods directly to the public with standards that are different than those for a professional bakery. Further confounding this are schools and other groups who, operating without permits, host bake sales to raise money for their respective causes. What we can see here is that society draws a distinction in the manner of how things are done. Society does not interfere with student and church group bake sales not because everyone has a right to conduct trade, rather *there is no practical reason to have intervention*. It would simply be onerous and impractical to require the five-year-old lemonade entrepreneur or the fifteen-year-old raising money for their school play to apply for the requisite permits and licences.

In this light it seems hard to justify that Mill is prescribing rights. Rather it seems that the harm principle does exactly what is meant to—opening up debate on whether or not societal intervention is justified. In some cases, societal force is completely warranted and in other cases it seems absurd *depending upon the circumstance*. However, though Mill attacks natural liberties, the harm principle does in some cases create create a ‘sphere’ of liberty that cannot be interfered with no matter what.¹⁵⁵

Yet we ought not to understand that sphere in terms of Jacobson’s doctrine of liberty. Another way of looking at this is to consider this as a small sphere among many spheres of liberties. For example, being able to share and debate one’s opinions in a civil manner is something that cannot be violated. This spheres of liberty approach is discussed by Hansson,

¹⁵⁵ Hansson, ‘Mill’s Circle(s) of Liberty’.

who says that spheres of liberties correspond to three principles: the harm principle, the principle of individual liberty, and the free trade principle. For our discussion, the first two spheres are relevant.¹⁵⁶ The harm principle is the very small circle of action society may not interfere with is action that concerns that person only. To interfere, even for an agent's own good, is not allowed, and the only arguments of acceptable interference are for the sake of others (excluding the agent). Hansson shows this by giving Mill's example of a gambler with no dependents or creditors. Wasting money gambling when not having any obligations to others is thus not action to be interfered with. However wasting money gambling when one owes creditors or has a family to support does call for interference.

Yet unlike Jacobson, who argues that speech is never to be interfered with as a right, Hansson offers an alternative response: Mill's assertion that people are free to form and express their opinion without reserve is not an absolute principle because opinions can lose their immunity depending upon context. Thus Mill "puts forward his defence of freedom of expression in the form of an argument to which he assigns so much weight that it takes very strong arguments to outweigh it."¹⁵⁷ This puts freedom of expression under the principle of individual liberty, which means that "the value of promoting individual liberty can be outweighed by other considerations, but these considerations have to be important in order to outweigh liberty."¹⁵⁸ Thus, what matters is how freedom of expression is performed rather than freedom of expression being part of an overall doctrine of basic rights.

¹⁵⁶ Hansson, 747.

¹⁵⁷ Hansson, 739.

¹⁵⁸ Hansson, 739.

Seeing that the harm principle serves a very specific purpose—that of allowing society to discuss to allow certain kinds of harms—the next question to consider is how should society assent or dissent to interference? As Brown notes, “it is impossible to reduce a theory of liberty to a manageable set of rules.”¹⁵⁹ He says that Mill was a student of practical reason, meaning that he deliberated on the questions what one should do individually and what one should do as a group. Both questions, though different, are related and both take in into account a wide variety of factors that are contingent upon the special details and circumstances at hand. By doing such deliberation, such as with our paedophile scenario in section 2.4, the agent(s) deliberating will use “provisions of law, convention, and social expectations, and to commonly accepted moral attitudes, because his respect for common attitudes is grounded in a belief that people’s judgements often reflect an assessment of utilities.”¹⁶⁰ Setting the stage, for such deliberation, will be discussed in the next section.

Section 4.5 Concluding Remarks

Understanding free speech in terms of whether opinion *x* and *y* are true or false is vital to understanding Mill’s conception of free speech. By judging opinions based upon their value of knowledge, Mill is able to link free speech to his notion of progress. Free speech then becomes yet another stage in Mill’s developmental stage-theory that will eventually progress to the stationary state. By doing so, Mill avoids the potential problems within his free speech theory if he had justified it using the harm principle.

¹⁵⁹ Brown, ‘The Harm Principle’, 417.

¹⁶⁰ Brown, 417.

Section 5 Mill and Deliberative Democracy

As we have seen, John Stuart Mill's defence of free speech is often characterised as being devoid of restrictions, i.e. that anything goes. Yet often overlooked is that his form of argument or debate involves a peculiar set of rules that rest upon cooperation. As we have seen in section two, cooperation is another way of saying people are obedient to order. In other words, this cooperation is the giving up of individual interests for the wider collective interests, i.e., the greater good. Furthermore, we have seen that cooperation is what separates the civilised man from the barbarian.

When thinking about cooperation as a form of obedience within the context of speech, one certain example stands out: a debate.¹⁶¹ To achieve the objective of a debate (the collective interest), people adhere to specific rules (order). Since Mill restricts being allowed to freely express and to debate one's opinion to civilised people, it can be inferred that debates are a form of cooperation that are reserved for the civilised. If we take this line of thought further, it can be seen that debate is restricted to people already in a state of society that can be used to propel it to the next developmental stage until society ultimately it reaches its zenith: the utopic state.

This section deals not with the lack of speech regulations in Mill's philosophy. Rather it is intended to situate Mill's notion of free speech with his notion of progress. By focusing on how Mill's defence of liberty interact with notions of democracy, I build up the case that Mill

¹⁶¹ For the purposes of this paper, debates are another way of saying discussion. It is assumed that debates aim at some truth and that debate participants are willing to strengthen and/or modify their views in face of stronger competing claims. For more on Mill and discussion, see section 4.3.

can offer insight to tackling today's information problem while promoting progress, i.e., still aiming toward society's next developmental stage rather than regressing.

Section 5.2 What is Deliberative Democracy

Deliberative democracy can broadly be defined by four characteristics:

1. asking both citizens and their representatives to appealing to reasons that are everyone agrees to be fair;
2. that reasons are comprehensible to everyone;
3. that discussion leads to binding decisions;
4. and that the decisions made continue to be discussed and are open to be changed in light of new circumstances.¹⁶²

It should not be surprising that this seems similar to Mills position on free speech. As Gutmann and Thompson note, John Stuart Mill "is rightly considered one of the sources of deliberative democracy."¹⁶³ Yet as Chambers remarks, "the relationship between Mill's philosophy and deliberative democracy is somewhat ambiguous"¹⁶⁴ because Mill's form of deliberative democracy appears in different forms in two places: *On Liberty* and *Considerations on Representative Government*. In *On Liberty*, the way Mill discusses allowing freedom of speech makes it appear that he is advocating for an equal public participation by all members of society. Yet in *Considerations on Representative Government*, Mill seems to give priority to those who can participate in discussion only to those capable of debate. For example, he argues

¹⁶² Gutmann and Thompson, *Why Deliberative Democracy?*

¹⁶³ Gutmann and Thompson, 9.

¹⁶⁴ Chambers, 'The Philosophic Origins of Deliberative Ideals', 60.

for plural voting that gives more votes to the intelligent over the less intelligent.¹⁶⁵ To reconcile this difference, I suggest that we understand *On Liberty* and *Considerations on Representative Government* within his larger framework of society moving in developmental stages.

As one could probably surmise from the title of *Considerations on Representative Government*, Mill considers representative government to be the ideal form of governance because governance “is vested in the entire aggregate of the community; every citizen not only having a voice in the exercise of that ultimate sovereignty, but being, at least occasionally, called on to take an actual part in the government, by the personal discharge of some public function, local or general.”¹⁶⁶ This would not be problematic if it did not seem to contradict his support of plural voting, or the idea of giving some people more votes than others. For Mill, he wanted those more intelligent to have more influence because equal voting would mean that ignorant people would be entitled to the same political power as those who are knowledgeable.¹⁶⁷

However, I do not necessarily see this as being anti-equality. While *On Representative Government* does discuss the ideal form of governance, it also discusses governance in the context and language of 19th century Britain. As we have already seen, universal education was a political issue that had both supporters and opponents, and we already have seen that Mill supported education for everyone.¹⁶⁸ Thus, while Mill for the time advocates giving the educated a larger voice than the uneducated, in the utopic world, all of society would be

¹⁶⁵ Mill, ‘Considerations on Representative Government’, 474.

¹⁶⁶ Mill, 404.

¹⁶⁷ Mill, 478.

¹⁶⁸ See section 2.4

educated thereby making the tension between equality of participation and plural voting redundant.¹⁶⁹

When we view education and competence in regard to 19th century Britain, it becomes immediately apparent that Mill's contemporary society was hardly near the developmental stage needed to sustain a society where everyone could participate in deliberation as equals. Thus, Mill was not against the idea of citizen assemblies or ordinary citizens having a say on legislative agendas as some would claim.¹⁷⁰ Rather, Mill would welcome such debate so long as society reached the developmental stage that could sustain such deliberation.

What we can see is that Mill very much supportive of equal participation; while if this applies to Mill universally will always be up for debate, we can agree that Mill was supportive of deliberative democracy when the society in question was in a developmental stage that could support debate. Further, if we recall our earlier discussion on true and false speech,¹⁷¹ we can further infer that deliberation for Mill would involve discourse that inherently contains an epistemic criteria of truth. Although epistemic concerns were ignored in earlier theories of deliberative democracy, as Landemore notes, recent scholarship has brought truth-concerns to the fore.¹⁷² For us, this provides an avenue to explore Mill's applicability to today's disinformation problem.

¹⁶⁹ While my claim is in regard to a hypothetical utopia, both Thompson and Miller discuss arguments that reconcile this tension by rightfully building upon Mill's commitment to participation and competence. See Thompson, *John Stuart Mill and Representative Government*; Miller, 'J.S. Mill on Plural Voting, Competence and Participation'.

¹⁷⁰ Gutmann and Thompson, *Why Deliberative Democracy?*, 60.

¹⁷¹ See section 4.3

¹⁷² Landemore, 'Beyond the Fact of Disagreement?'

Section 5.3 Classifying Mill as a Deliberative Democrat or Epistemic Liberal

At its core, epistemic theories of democracy involve notions of truth pooled from a multitude of people, and as a result, lead to reliable decision-making because people are able to make judgments upon the pooled information.¹⁷³ Epistemic theories of democracy can include forms of deliberative democracy as well as epistemic liberalism. Following Hayek, epistemic liberals believe that the free market coupled with minimal government is superior in making use of knowledge that is dispersed across many individuals throughout society when compared to other forms of governance, such as a central deliberation committee.¹⁷⁴

Landemore considers Mill to be an epistemic liberal rather than a epistemic democrat because although Mill advocates for rule by an elite, he also happens to acknowledge that the societal-wide deliberation of issues has epistemic value.¹⁷⁵ The distinction between being a epistemically-inclined democrat and an epistemic liberal is that epistemic democrats focus on decision making procedures that help us reach “correct” political decisions while epistemic liberals reject such procedures because they view citizens as continually modifying their behaviour because they are acting upon their ever-changing knowledge.¹⁷⁶

I hold reservations on the view that Mill is an epistemic liberal. Rather I put forward that Mill is, in general, not only epistemically inclined as a thinker, but that he is also a democratically inclined thinker under certain conditions. First, I will discuss Landemore’s reservations on considering Mill a deliberative democrat. After, I will discuss qualities that Mill

¹⁷³ Goodin and Spiekermann, *An Epistemic Theory of Democracy*, 1–4; Schwartzberg, ‘Epistemic Democracy and Its Challenges’.

¹⁷⁴ Hayek, ‘The Use of Knowledge in Society’.

¹⁷⁵ Landemore, *Democratic Reason*, 76; Schwartzberg, ‘Epistemic Democracy and Its Challenges’, 193.

¹⁷⁶ Cerovac, ‘Epistemic Liberalism’, 88–89.

shares with epistemic liberalism but point out that this semblance is merely coincidental; rather Mill is very much a democratically-inclined epistemic thinker.

Though Landemore considers Mill to be an epistemic liberal, she is still charitable toward Mill; she acknowledges that *On Liberty* may qualify Mill as an epistemic democrat because Mill argues against censoring minority views upon the basis of “the interests of the group in its search for truth” rather than protecting intrinsic rights.¹⁷⁷ However, Landemore notes two caveats to considering Mill an epistemic democrat. The first is that Mill leaves out deliberation to societies that are not advanced enough. In this case, Mill is not an epistemic democrat but rather an epistemic thinker; he can only be qualified as an epistemic democrat when discussing advanced societies.

The second caveat is that Mill puts restrictions upon the democratically elected assembly in *Considerations*; the assembly can deliberate but not write the actual law. That is reserved for a committee of experts. Leaving a central committee of experts to make law seems to be in direct opposition to epistemic liberalism, since not neither legislative experts nor the elected assembly will know all information about society. Nonetheless, Landemore is still hesitant to bestow the status of epistemic democrat upon Mill because he does universalise epistemic democracy across all developmental stages, and moreover, he restricts who can be a law maker.

Yet I think Landemore misses a crucial point about Mill. First is that epistemic democracy only came into being in the 1980’s from a conference hosted at the California

¹⁷⁷ Landemore, *Democratic Reason*, 80.

Institute of Technology.¹⁷⁸ Thus the epistemic democracy literature itself is developed in an era and in a country that has strong social institutions to ensure that a democracy's population has the prerequisite skills for deliberation. As we recall, Mill's *Considerations on Representative Government* reflects the governance for his era, i.e., the 19th Century. This was a time where strong social institutions did not yet exist. In contrast, 20th century United States had a strong education system that was accessible and affordable for the public, and American society could sustain forms of direct democracy in even a populous state such as California. It would seem odd to read Mill as meeting (or not meeting) the criteria of epistemic democracy since not only does Mill predate the concept itself, but that there is less of a fear of forms of democracy regressing when education is the rule instead of being the exception. Simply put, Mill's concerns were appropriate for the conditions of his time. Nonetheless, one cannot deny the similarities between forms of epistemic governance and Mill's position.

As Urbinati discusses, a major problem in epistemic democracy is that democracy is based upon opinion, *doxa*.¹⁷⁹ More importantly, opinions need to be communicated to have any value, i.e. listened and heard, and it is through communications of opinions between power structures and citizenry that give legitimacy to government.¹⁸⁰ A problem with this is that not everyone necessarily has political equality in expressing opinion or from having access to other opinions, especially when government replaces *doxa* with knowledge, i.e., *episteme*. As Urbinati correctly notes, "once *episteme* enters the domain of politics, the possibility that political equality gets questioned is in the air because the criterion of competence is intrinsically

¹⁷⁸ Schwartzberg, 'Epistemic Democracy and Its Challenges', 188.

¹⁷⁹ Urbinati, *Democracy Disfigured* ch. 1.

¹⁸⁰ Urbinati, 27.

inegalitarian”¹⁸¹ because she is drawing attention that deliberative democracy and epistemic democracy differ in a crucial aspect. The latter wants what the former does not: “objective standards for the evaluation of social choices that are above political communication and its procedures.”¹⁸² Interestingly, Urbinati’s definition of epistemic democracy would not align with Mill at all, because for Mill, truth only comes out *through* deliberation. Furthermore, the truth Mill speaks of is not necessarily objectively true or false, but as we have already seen, is partly true and partly false. Mill is more interested with deliberation in reaching decisions that are the best for that society’s specific conditions at that place and time instead of being focused on what is objectively true; otherwise, there would be no need for debate if truth and falsity were already known.

Yet it is still hard to shake off the charge that Mill is an epistemic liberal. Part of this is that central to epistemic liberalism is the idea that “the liberty to act upon one’s knowledge and beliefs is often more important than being at liberty to express them.”¹⁸³ The emphasis upon being able to act upon one’s belief is, according to Tebble, prominent in Mill’s *On Liberty*. For example, as Kelly correctly notes, Mill is concerned with actively engaging in speech and discussion including ideas that are considered uncontroversial. Crucially, “people should not merely have the right to hold and profess beliefs or engage in private enquiry in the security of their studies. Unless people actively profess, defend and argue for their beliefs in the pursuit of knowledge and the task of truth testing cannot take place”¹⁸⁴

¹⁸¹ Urbinati, 83.

¹⁸² Urbinati, 96.

¹⁸³ Tebble, *Epistemic Liberalism*, 3.

¹⁸⁴ Kelly, ‘Liberalism and Epistemic Diversity: Mill’s Sceptical Legacy’, 251.

Of course, this is exactly what Mill says in Book II of *On Liberty*. Mill advocates for liberty of conscience, which includes “liberty of thought and feeling; [and] absolute freedom of opinion and sentiment on all subjects.”¹⁸⁵ Immediately after, Mill says that:

“the liberty of expressing and publishing opinions may seem to fall under a different principle, since it belongs to that part of conduct of an individual which concerns other people; but, 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.”

At first glance, this passage appears merely to advocate for freedom of the press. However, for Mill, the press was important for it leads to the formation and expression of public opinion.¹⁸⁶ In *Civilization*, he says that “the newspaper carries home the voice of many to every individual among them; by the newspaper each learns that others are feeling as he feels, and that if he is ready, he will find them also prepared to act upon what they feel.”¹⁸⁷ The emphasis is upon acting upon one’s own thoughts. Mill is not necessarily advocating for freedom of press so much as he is actually advocating for being able to actively profess beliefs rather than merely holding them. This is no surprise. In the *Principles of Political Economy*, Mill unequivocally states that newspapers are not the most reliable sources of information; they are, however, immensely better than not having information at all. More importantly, they “serve to awaken public spirit, to diffuse variety of ideas among the mass, and to excite thought and reflection in the more intelligent.”¹⁸⁸

¹⁸⁵ Mill, ‘On Liberty’, 225.

¹⁸⁶ Mill, ‘Considerations on Representative Government’, 402.

¹⁸⁷ Mill, ‘Civilization’, 125.

¹⁸⁸ Mill, ‘Principles of Political Economy’, 763–64.

Of course, newspapers are a business. Distributing newspapers requires competing with various newspapers. In this sense, it would seem that Mill would favour less regulations because newspaper operate within a marketplace. Less regulation would mean that more people could act upon their thoughts. In this way Mill would seem to be an epistemic liberal. However Kelly notes that “when Mill applies a market or laissez-faire policy to the political realm it is clear that his concern is primarily a fear of Government as a sectional interest rather than with any epistemological thesis about computation or the technical ability of government to construct policies in the public interest.”¹⁸⁹ Mill, in short, was concerned with the will of the people, whether “the majority, or those who succeed in making themselves accepted as the majority,”¹⁹⁰ dictating what opinions were proper to hold and what was considered to be in the public’s interest. Thus, securing diversity of thought is a safeguard against any form of tyranny by the any group asserting itself as the representative class. In other words, “when Mill appeals to epistemic diversity it is to support political and social diversity and hence freedom. The defence is cast in political rather than epistemological terms.”¹⁹¹

I am inclined to agree with this. First, in chapter three of *On Liberty*, Mill speaks of competition as not only opening up “all objects of ambition” to all social classes, but in doing so, competition chips away at an out-of-touch ruling elite from ignoring the will of the public.¹⁹² This levelling of social status promotes the establishment of a mass public. The voice of the multitude can no longer be ignored, and as a result, “there ceases to be any social support for

¹⁸⁹ Kelly, ‘Liberalism and Epistemic Diversity: Mill’s Sceptical Legacy’, 253.

¹⁹⁰ Mill, ‘On Liberty’, 219.

¹⁹¹ Kelly, ‘Liberalism and Epistemic Diversity: Mill’s Sceptical Legacy’, 225.

¹⁹² Mill, ‘On Liberty’, 275.

nonconformity.”¹⁹³ For Mill, the coalescing of society into a mass was dangerous to liberty. He says that not only is “so great a mass of influences hostile to Individuality,” but that:

“if the claims of Individuality are ever to be asserted, the time is now, while much is still wanting to complete the enforced assimilation. It is only in the earlier stages that any stand can be successfully made against the encroachment. The demand that all other people shall resemble ourselves, grows by what it feeds on. If resistance waits till life is reduced *nearly* to one uniform type, all deviations from that type will come to be considered impious, immoral, even monstrous and contrary to nature. Mankind speedily become unable to conceive diversity, when they have been for some time unaccustomed to see it.”¹⁹⁴

As we can see, Mill is pointing at the idea that diversity of opinion is required not only for liberty, but to develop to a stage of society that is liberal. As we have already discussed in this paper, progress need not respect freedom, or in the words of Mill “the spirit of improvement is not always a spirit of liberty, for it may aim at forcing improvements on an unwilling people.”¹⁹⁵

In contrast to epistemic liberalism which advocates that free markets are epistemically superior to deliberation, Mill is rather ambivalent, possibly even negative toward such a view. It is no surprise that Mill discusses the creation of a public will in terms of competition. In *On Liberty*, the word “competition” appears only three times. The first instance is in a passage advocating for diversity of opinions. The second passage is the aforementioned block quote just discussed. The third instance is discussing competition as driving wages down further and

¹⁹³ Mill, 275.

¹⁹⁴ Mill, 175.

¹⁹⁵ Mill, 272.

further and is thus “a serious offence against all who live by the remuneration of their labour.”¹⁹⁶

Further in chapter five of *On Liberty*, Mill discusses trade. It is here that Mill shows that he does not believe that the free market is epistemically superior to deliberation. First, Mill defines free trade as the system whereby a commodity’s cheapness and quality are best controlled producers and sellers and that the check to maintain standards is left to the buyers who can buy goods from elsewhere.¹⁹⁷ He says that the “doctrine of Free Trade, which rests on grounds different from, though equally solid with, the principle of individual liberty asserted in this Essay.”¹⁹⁸ Yet Mill does not stop there. In fact, he distinguishes free trade from liberty. Mill writes, “As the principle of individual liberty is not involved in the doctrine of Free Trade, so neither is it in most of the questions which arise respecting the limits of that doctrine; as for example, what amounts to public control is admissible for the prevention of fraud by adulteration.”¹⁹⁹

I think that the hesitancy Mill shows in not making free trade and liberty the same is because competition does not necessarily deliver the highest quality good. As Mill notes in *On Socialism*, “Competition is the best security for cheapness, but by no means for quality.”²⁰⁰ He says this because as competition increases, sellers become less dependent upon permanent customers. This plus the increased ability to make money entices sellers to adulterate their products. According to Mill, buyers do not yet know that the cheaper prices are adulterated,

¹⁹⁶ Mill, 304.

¹⁹⁷ Mill, 293.

¹⁹⁸ Mill, 293.

¹⁹⁹ Mill, 293.

²⁰⁰ Mill, ‘Chapters on Socialism’, 731.

and because they choose to buy the cheaper rather than the more expensive unadulterated product, the more expensive, high quality product is at a disadvantage in the marketplace.²⁰¹

If we recall Mill's comments on newspapers being a useful service but hardly a solid source of information, we can see that even for ideas, competition does not necessarily yield high-quality ideas. Interestingly, Mill very well may have hinted at this. In *Chapters on Socialism*, Mill discusses the ideas of Louis Blanc, which do not appear terribly different from Mill's view that increased competition entices people commit acts that are morally questionable. Mill, citing Blanc's *Organisation du Travail*, writes:

“And in all of this, in order to avoid dwelling on truths which have become commonplaces and sound declamatory from their very truth, we would have said nothing of the frightful moral corruption which industry, organized, or more properly speaking disorganized as it is as the present day, has introduced among the middle classes. Everything has become venal, and competition invades even the domain of thought.”²⁰²

Interestingly, Mill uses *Chapters on Socialism* to state many socialist positions that are then often followed by an his objection. Yet in his analysis, Mill does not object to the aforementioned passage. When we take note of his lack of objections to this with his own words that we will be able to see for ourselves how much Mill agrees or disagrees with the cited passages,²⁰³ we can safely assume that Mill agrees that competition can lead to cheapness

²⁰¹ Mill, 731–32.

²⁰² Mill, 719.

²⁰³ Mill, 716.

not only in goods, but also with ideas. If this indeed is the case, then Mill was definitely not an epistemic liberal.

When we compare this to *On Liberty*, especially the section on trade being a social act, we now see similarities between free trade and free speech. First, Mill says, “as the principle of individual liberty is not involved in the doctrine of Free Trade, so neither is it in most of the questions which arise respecting the limits of that doctrine; as for example, what amounts to public control is admissible for the prevention of fraud by adulteration.”²⁰⁴ If we think of deliberately misleading information, i.e. disinformation and fake news, we could in the first instance try to make the claim that such information should be controlled. Yet I would argue that Mill would not take this stance. Rather, I think restricting such ideas would be an infringement not upon the liberty of the peddler of fake news, but rather the person consuming fake news.

One way of looking at this would be to compare the access to fake news to that of Mill’s position regarding government interference and poisons. Mill says that though it is within government’s role to prevent, detect, and punish crime, the preventative part can be abused and infringe upon liberty.²⁰⁵ In the case of poison, some argue for a ban on the sale of poisons to prevent murder. Mill argues that this is not a good enough reason. He says:

“if poisons were never bought or used for any purpose except the commission of murder, it would be right to prohibit their manufacture and sale. They may, however, be

²⁰⁴ Mill, ‘On Liberty’, 293.

²⁰⁵ Mill, 293–94.

wanted not only for innocent but for useful purposes, and restrictions cannot be imposed in the one case without operating in the other.”²⁰⁶

Rather than ban the sale of poisons as a preventative measure, Mill argues that the precaution should be “labelling the drug with some word expressive of its dangerous character, may be enforced without violation of liberty: the buyer cannot wish not to know that the thing he possesses has poisonous qualities.”²⁰⁷

Now, if we were to shift our discussion from disinformation to information that could be either misleading or lower quality, we can see that while some forms of information can be cheap and possibly even dangerous, such information can serve useful purposes. For example, bad quality information can be differentiated by whether it is misinformation or disinformation. In general, both forms of information are misleading and partially or completely false. Yet misinformation is without malice, i.e., it is unintentionally misleading. In contrast, disinformation serves no other purpose than intentionally to mislead and manipulate people through dishonest information.²⁰⁸ By distinguishing these two forms of lower quality forms of information, we can differentiate whether they serve any useful purpose in society.

For misinformation, we can use it as part of deliberative processes in order to tease out truth. It can also be used as a learning tool to train people how to judge information quality and spot when information is not true. Misinformation, then, would serve as an educating element in society, and as a form of habituation to train one’s mental faculties.²⁰⁹ On the other hand,

²⁰⁶ Mill, 294.

²⁰⁷ Mill, 294.

²⁰⁸ Ireton and Posetti, *Journalism, ‘Fake News’ & Disinformation*, 7.

²⁰⁹ See section 2.2 the role of habituation as progressing man to civilisation; see section 2.3 on the ability of being able to disprove information as being the criterium to justify truth.

disinformation does not serve any purpose except to mislead. It is thus a form of fraud by adulterating the truth. Thus, it becomes immediately clear that Mill's notion of liberty handles cheap, low quality information in the following manner: misinformation can be allowed because it can still be used for purposes other than to mislead. In this case, there can be a notice that such information is misleading or may contain factual errors. In contrast, disinformation can be restricted because it does not serve any purpose except to defraud people of the truth.²¹⁰

Section 5.4 Judgment Democracy

In looking at Mill as promoting freedom of speech because it promotes debate and this in turn is good for one's formation of self, a good way of framing Mill's position one that requires citizens to have the skill to make judgments on information. This development is crucial for the formation one's character and the respect for individuality. In this sense, free speech is a form of resistance countering the pernicious effects and inclinations of mass society, e.g., mob rule. Thus, liberty is to be protected because it leads to society progressing to the next developmental stage, and it does so by respecting people while allowing them the freedom to cultivate their interests.

As we notice in *On Liberty*, Mill specifically speaks of groups arguing against each other in a partisan fashion. It is group versus group, with different sides having different goals, interests, and beliefs on what is good. Participants in debate are expected to judge arguments and either strengthen or revise their own views in the face of equally strong and competing

²¹⁰ In some cases, the distinction between misinformation and disinformation is obvious; in other cases, it is not so clear cut. If we recall from sections 3.3 and 3.4, the harm principle can be invoked to deliberate the classification of information as mis- or disinformation, and if so, if restrictions are warranted.

claims. Similarly, judgment democracy views citizens as judging arguments that they consider to be their interests irrespective of the interests' epistemic truth value.²¹¹ Citizens can judge their interests to be aligned with their specific partisan group. Thus, citizens' interests exist irrespective to whether those interests are true or false. Rather "the language of judgement marks our moral and epistemic respect for citizens, rather than indicating that citizens' views should be oriented toward the good or true."²¹² Judgment democracy holds that "individuals' beliefs should derive from deliberation, while emphasising the value of aggregation as a means of affirming each individual's dignity" as well as promoting "mechanisms that produce careful, reflective judgments of individuals."²¹³

While Mill may not have developed a theory of judgment democracy, there are a few prominent features of judgment democracy that can shine light upon Mill's own positions. For example, since judgment democracy focuses upon citizens advancing their perceived interests rather than aiming at the truth, judgement democrats are similar to Mill's partisans in *On Liberty*: they defend their actual or perceived interests through deliberation with the winning argument being the truer or most suitably convenient (read higher quality) argument.

Moreover, judgment democracy is underpinned by a strong principle of equality.²¹⁴ This principle is underpinned by the ideas that everyone has a claim to have their interests served (without anyone's interests having pre-existing priority over others' interests), and that everyone should be considered the best judge of their interests unless there is reason to the

²¹¹ Christiano, *The Rule of the Many*, 74.

²¹² Schwartzberg, 'Epistemic Democracy and Its Challenges', 200.

²¹³ Schwartzberg, 201.

²¹⁴ Dahl, *Democracy and Its Critics*.

contrary. It is here that we find where judgment democracy can show how Mill's defence of deliberation is progressive. By letting people decide what their interests are, and then giving them the claim to have their interests served, what we are really saying is that people are free to live their lives according to their interests without overriding others' interests. When we take this together with deliberation, we see that judgment democracy allows citizens to deliberate on their interests and way of life without appealing to an independent truth; rather it allows them to produce judgments that are reflective.²¹⁵

In comparing this to Mill, we can infer that Mill may have believed there to be an objective truth, even if not yet knowable, but his defence of speech did not rest upon aiming at the objective truth. Rather Mill was concerned with the partial truth most suited for the moment, i.e., the opinion that not only was closest to the truth, but also the opinion that would continue to progress society to the next developmental stage of history. Further, judgment democracy's focus upon citizen's interests and the right to have those interests served sheds a new light upon Mill's defence of liberty: for people to have the right to live their desired ways of life so long as it is not detrimental to the interests of others.²¹⁶

Some lifestyles that are detrimental to others are immediately apparent to our modern ears: husbands should not be allowed to make decisions over their wives. However other examples are not as clear. In the case of children, we often concede that parents have a right to raise children as they see fit both culturally and legally. For example, in the United States parents have the legal right to choose how their children are raised, the education they will

²¹⁵ Schwartzberg, 'Epistemic Democracy and Its Challenges', 201.

²¹⁶ Mill, 'On Liberty', 301.

receive, and in general, parents have control over their children's lives.²¹⁷ In matters of education, this means that parents have the choice to educate their children in a public or state school, in a private school, or more drastically, by home schooling.

In *On Liberty*, Mill speaks out against the notion that parents have absolute and exclusive control over their children. In doing so, he specifically discusses the case of education.²¹⁸ In countering the idea that society cannot interfere with parents' liberty over their children, Mill says that anyone born a citizen should be required and compelled to receive an education of a certain standard so that the child can eventually "perform his part well in life towards others and toward himself."²¹⁹ Yet rather than government decide what the specific education ought to be in order for a child to perform future citizenry duties well, Mill says that government simply ought "to *require* for every child a good education" in order to "save itself the trouble of *providing* one."²²⁰ Thus Mill specifically endorses parents deciding *how* their children are educated albeit that education still must meet a certain minimum standard to support a liberal society. Thus Mill, like judgment democrats, are focused on citizens' rights and having citizen interests (or perceived interests) served as long as those interests are not detrimental to the citizen or overall society at large.

By focusing upon citizens' interests, judgment democracy shares one final feature with Mill: the harm principle. While judgment democracy may not specifically use the term *harm*, as we recall from section 3.3, some revisionists define harm as *harm to others' interests*. While I

²¹⁷ 'Parental Rights Cases to Know'.

²¹⁸ Mill, 'On Liberty', 301.

²¹⁹ Mill, 301–2.

²²⁰ Mill, 302.

may not necessarily subscribe to this view, it is undeniable that Mill often speaks in terms of interests. Yet these interests are not necessarily rights; Mill discusses interests in terms of self-interest, society's interest, and even class interests. The form of interests Mill is concerned with, though, are "the permanent interests of man as a progressive being. Those interests, I contend, authorize the subjection of individual spontaneity to external control, only in respect to those actions of each, which concern the interest of other people."²²¹ By appealing to the interests of man as a progressive being, Mill shares the same concern as judgment democracy: allowing people to pursue their own interests (such interests could differ from individual to individual and group to group) under the rubric that such behaviour is oriented to the overall development of people.

Section 5.5 Experiments of Life and Progress

While Mill advocated for universal education, he did not endorse a "one size fits all" educational system. Mill held reservations about a State endorsed educational system because he believed that it would mould people to all be exactly like each other, i.e., there ultimately would not be any diversity of thought if everyone underwent identical education regimens. If the government were allowed to dictate how everyone is educated, then it would be despotic because government would be able to do to its citizens what it want because it "can mould the opinions and sentiments of the people from their youth upwards."²²²

Yet Mill's concern here is not only about preventing government from being despotic. He is concerned with a society that is coalescing into a mass—a society that is predisposed to

²²¹ Mill, 224.

²²² Mill, 'Principles of Political Economy', 950.

the despotic rule by the majority. In *On Liberty*, Mill says that “an education established and controlled by the State should only exist, if it exists at all, as one among many competing experiments, carried on for the purpose of example and stimulus, to keep up to a certain standard of excellence.”²²³ The key point here is *among many competing experiments*.

Earlier in *On Liberty*, Mill says that since people are imperfect, then there should be different opinions. Likewise, to allow for different opinions, “there should be different experiments of living; that free scope should be given to varieties of character, short of injury to others; and that the worth of different modes of life should be proved practically, when any one thinks fit to try them.”²²⁴ These experiments of living are important for Mill because experiments of living push society to continually progress to the next developmental stage.

In *Chapters on Socialism*, Mill says that the indispensable condition to overcome obstacles to human progress is “that human nature should have the freedom to expand spontaneously in various directions, both in thought and practice.”²²⁵ While Mill was not arguing specifically for freedom of expression in this instance, he was arguing against a very specific form of communism—the idea that private life would be brought under the control of communist associations which would hinder the development of individual character and preferences. If we take this and compare it to *On Liberty*, we likewise see similar concerns. Mill says that “a people, it appears, may be progressive for a certain length of time, and then stop: when does it stop? When it ceases to possess individuality.”²²⁶ Thus we see that individuality

²²³ Mill, ‘On Liberty’, 302.

²²⁴ Mill, 260–61.

²²⁵ Mill, ‘Chapters on Socialism’, 746.

²²⁶ Mill, ‘On Liberty’, 273.

and promoting individuality is important as a safeguard not only for liberty, but to keep society progressing to further stages of development.²²⁷

Once again, we see that Mill is not necessarily an elitist epistemic theorist. By allowing individuality, Mill allows people to debate issues that they believe to be their interests in the overall framework of society's interests. In doing so, people are able to live their lives in experiments of living while society benefits by people possibly discovering new truths. By allowing individuality, people are able to perform "self-authorship."²²⁸ In doing so, all the human faculties, i.e., perception, judgment, discriminative feeling, mental activity, and even moral preference, are used.²²⁹

However, while Mill lauds the development of the individual, we should not forget that his endorsement only goes so far. Mill restricts individuality only to the developmental stage that can sustain democracy. In earlier developmental stages, men were not yet able to control their impulses. However under a democracy, men have developed to a point that individuality can be sustained because most people will not go around causing harm to others. Conversely, Mill now says that there is now a deficiency in individuality under a democracy. In short democracy promotes conformism.²³⁰ As conformism takes hold, individuality expressed as different opinions and different manners of life disappear.

In this sense, Mill has attached significant importance to individuality as not only a bulwark against the negative aspects democracy, but furthermore as a way to keep society

²²⁷ If we recall section 2.2, barbarians have too much individuality; Mill thus restricts individuality to societies that are able to sustain it.

²²⁸ Zakaras, 'John Stuart Mill, Individuality, and Participatory Democracy', 216.

²²⁹ Mill, 'On Liberty', 262.

²³⁰ Mill, 264–65.

progressing to the next developmental stage. In his *Autobiography*, Mill discusses being influenced by Tocqueville:

“he viewed this practical political activity of the individual citizen, not only as one of the most effectual means of training the social feelings and practical intelligence of the people, so important in themselves and so indispensable to good government, but also as the specific counteractive to some of the characteristic infirmities of Democracy.”²³¹

By this, chiefly, Mill upholds the characteristic of individualism as being especially relevant in an increasingly democratic society. Mill’s chief concern is that people generally, i.e. the mass or the public, tend toward mediocrity.²³² To counter that, individuality is offered because it allows some people to be not only original, but to allow the existence of geniuses. For Mill, geniuses behave differently than others, i.e., eccentrically. Mill believes that higher levels of eccentricity in society is proportional to the amount of “genius, mental vigour, and moral courage” in that society.²³³ One can only opine that it is with such originality that allows for the experiments of life that Mill calls for.

In *Autobiography*, Mill discusses that his views were clearly socialist with some reservations. While he was an ardent supporter of democracy, he “dreaded the ignorance and especially the selfishness and brutality of the mass” because they were not educated.²³⁴ Yet these were not elitist thoughts—Mill did believe in educating the public even if by baffling ways of showing support. Earlier in *Autobiography*, he shares his sentiments that he had *hoped* anti-

²³¹ Mill, ‘Autobiography’, 201.

²³² Mill, ‘On Liberty’, 268.

²³³ Mill, 269.

²³⁴ Mill, ‘Autobiography’, 239.

property-owning doctrines would take root within the working and poorer classes so that the higher classes would see that an uneducated mass is far more dangerous than an educated one.²³⁵ This is not to say that he thought an educated mass is not a threat at all; an educated mass was still a threat to an upper class that had specific rights and privileges inherited. Rather, educating the uneducated mass of society would cause the social transformation needed to provide the mass of society with the requisite capacities to direct their attention toward the greater good of man.²³⁶ By having a mass that is educated, able to flex its mental faculties and allow for people to behave with individuality, only then were experiments in life possible. Such experiments included the socialistic experiments, and were in turn, also educative. They served chiefly, according to Mill, “as a most useful education of those who took part in them, by cultivating their capacity of acting upon motives pointing directly to the general good, or making them aware of the defects which render them and others incapable of doing so.”²³⁷

Section 5.5 Concluding Remarks

Rather than ascribe Mill the status of any particular label of democrat or liberal, what we can say for certain is that Mill is an epistemically inclined thinker who is concerned with deliberation. However, we see that Mill’s endorsement of deliberation is restricted to a developmental stage of society that can sustain such liberty. We further see that such deliberation is itself a device used to move society forward to the next developmental stage by respecting individuals and groups to seek out novel lifestyles that conform to their beliefs. In

²³⁵ Mill, 179.

²³⁶ Mill, 240.

²³⁷ Mill, 241.

doing so, they will be able to discover newer truths that will lead society to the next developmental stage.

Section 6 Conclusion

In bring this paper to a close, we can see that Mill did not advocate for unrestricted freedom of speech. We see that his views are not in opposition to a liberal society. Rather we see a though process concerned with human development that promotes happiness. In teasing out how Mill views speech, specifically that of opinions, and in what manner we can act upon our opinions, we see that Mill had a nuanced view that differentiated between where, when, and what is being put forth. Not all speech is up for deliberation. Information that we already know to be true or false is not open for debate. Rather, it is the information that we can still deliberate upon, i.e., that which is partially true and partially false.

By placing Mill's views on speech within his views of man as a progressive being, we see that the harm principle is hardly inconsistent with Mill's utilitarianism. Rather, it directly aims at and promotes the central concern behind it: happiness. Freedom of speech, thus, is a way of securing human individuality, allows for the pursuit of higher pleasures, the respect of others with differing views, and allows for citizens to reach decisions that are best suited for society at that given moment in order to progress.

By situating deliberation within Mill's overall notion of progress, we can see that the mainstream interpretation of Mill and the marketplace of ideas simply does not stand—Mill never once says that free speech can never be restricted. Rather, only speech that is up for debate (i.e., it can be debated if it is right or wrong) is allowed when undergoing deliberation. In

other matters, speech can be restricted when it is intentionally harmful, such as disinformation.

By looking at the harm principle as a mechanism to deliberate and by viewing society as progressing within developmental stages, I hope that I have sufficiently provided a possible resource that we can use to understand better and to solve our current information crisis.

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