

Censorship, Liberty & The Media

Delilah and Chris Caldwell talk freely about the freedom of information for Mill

On the face of it, contemporary society, European, American and further, has easier access to more information and a wider range of opinions than ever before. Yet contrary to appearances, a fair bit of censorship exists – both intentional and unintentional. In *On Liberty*, Mill provides a defense of freedom of thought and discussion which is at odds with the contemporary legal and cultural forces which promote censorship. His arguments and insights from 150 years ago illuminate what is wrong with these cultural and legal forces.

At the end of Chapter 2 of *On Liberty*, Mill provides a striking recapitulation of the main reasons he supports freedom of thought and expression of that thought. He summarizes thirty five pages of argument in the following marvelously clear passage:

First, if any opinion is compelled to silence, that opinion may, for aught we can certainly know, be true. To deny this is to assume our own infallibility.

Secondly, though the silenced opinion be an error, it may, and very commonly does, contain a portion of truth: and since the general or prevailing opinion on any subject is rarely or never the whole truth, it is only by the collision of adverse opinions that the remainder of the truth has any chance of being supplied.

Thirdly, even if the received opinion be not only true, but the whole truth; unless it is suffered to be, and actually is, vigorously and earnestly contested, it will, by most of those who receive it, be held in the manner of a prejudice, with little comprehension or feeling of its rational grounds. And not only this, but, fourthly, the meaning of the doctrine itself will be in danger of being lost or enfeebled, and deprived of its vital effect on the character and conduct: the dogma becoming a mere formal profession, inefficacious for good, but cumbering the ground and preventing the growth of any real and heartfelt conviction from reason or personal experience. (p.50.)

All four of Mill's reasons are clearly driven by his commitment to maximizing good consequences in all actions. Mill's central consideration is that silencing an opinion will have such negative consequences for the pursuit of truth that it makes the silencing of any opinion unjustifiable. These four reasons also provide insights into how our current situation of censorship and freedom of expression should be conceived.

Illegal Speech

In the contemporary world, limits on freedom of speech are justified on grounds of preventing harm to others. At least on the face of it, such a justification is in line with Mill's harm principle and his concern to maximize good consequences and minimize or eliminate harm to others. For example, for quite some time it has been illegal in Germany to deny the Holocaust. In 2005, Germany also made it illegal to celebrate Nazi rule in any way that would disrupt public peace or violate the dignity of the victims. These additional constraints were motivated by the right-wing German National Party (NPD) planning a march marking the 60th anniversary of the end of WWII.

Denials that the Holocaust occurred, or celebrations of Nazi rule, would cause incredible anguish to Holocaust survivors and their loved ones. Hate speech laws are motivated by the same sorts of considerations. If for example these laws actually do

more to promote good consequences than not censoring such speech, then Mill's argument against censorship would be wrong, and his own commitment to utilitarianism would instead echo contemporary legal forces in justifying censorship.

In any case, cultural forces in the developed world could be described as promoting unintentional censorship of opinions and information. Western intellectual habits currently include declining newspaper readership, as well as a decline in reading generally. We're more likely to utilize new forms of technology to access information: we use Wikipedia to find information online; we read blogs written by freelance journalists, or persons who might kindly be described as amateur journalists; even news stories promulgated by professional news organizations make use of Twitter posts by celebrities as sources. The confluence of these trends has arguably produced a society which unintentionally limits its own access to information and intelligent opinions. This is a type of censorship we inflict on ourselves by failing to make use of available sources, until, by our lack of interest in the sources, they become unavailable – as is happening to many American newspapers.

As is the case with legal sources of censorship, the free action of these cultural forces could be justified in terms of maximizing good consequences. We no longer enjoy reading, and gain convenience by combining the activities of information gathering and entertainment. Unfortunately though, Mill does not explicitly address unintentional censorship, unless we consider the profession of enfeebled dogma, the thoughtless repetition of old ideas so loudly and frequently that other ideas are drowned, as unintentional censorship.

The Right To Lie

We've seen that Mill presents an excellent argument against the justification of censorship; that current legal and social forces in the developed world currently encourage a type of market censorship; and that this censorship might seem to be justifiable on utilitarian grounds. Yet ultimately, censorship is not justifiable, and Mill's arguments in *On Liberty* explain why. Mill reminds us that there is something more important and larger at stake than freedom of speech or the offense someone may feel.

Let us first consider laws against Holocaust denial. According to Michael Whine in 'Expanding Holocaust Denial and Legislation Against It' in *Jewish Political Studies Review* #20, Spring 2008, a prominent justification for these laws is that people who deny the murder of six million Jews by the Nazis are political extremists likely to advocate Nazi policies themselves (Whine himself argues that education is a better long-term strategy for coping with political extremism than censorship). Another justification is that speech which denies the existence of the Holocaust is offensive and threatening.

Threatening speech is a special category of speech: it is speech which is likely to result in immediate physical harm to someone. Mill deals with it in Chapter 3 of *On Liberty*: "No one pretends that actions should be as free as opinions," he writes on p.53, before going on to distinguish between the promulgation of opinions in the unthreatening form of putting up signs or writing for a newspaper (or, we can imagine, posting

Riley has offered a reason to intervene against the crowd rather than the couple – and this reason is also debatable, for surely each individual onlooker could legitimately claim that his or her marginal presence is insufficient to block the free flow of pedestrians. Even if one accepts that the original couple and not the crowd are ultimately responsible for the blockage, a second point is that no sooner is Riley's solution spelled out than it stops being a solution to *this* problem. The account of harmful conduct offered is that which knowingly causes crowds of onlookers and imitators to build up in public spaces. Yet the same could also apply to unlicensed buskers, street hawkers and those who organise flash mobs. So this conduct is to be prohibited not because, as Mill in fact claims, it is an affront to decency but because it is a public nuisance.

An even more radical solution to the problem (if indeed it is a solution properly called) is to say that because the violation of good manners passage is inconsistent within Mill's over-all position as set out in *On Liberty* the reader should not therefore consider it as being part of 'Mill's position'. It is a mere aberration in that sense. This is the most radical of all the solutions considered so far, since it deals with the problem simply by removing the offending passage from the field of play.

I reject this solution on the grounds that it exhibits what Quentin Skinner dubs 'the mythology of coherence'. This is to assume that the work of leading figures in the history of ideas must surely be consistent, so that the task becomes to reveal that consistency by whatever means necessary. If it is first assumed that Mill must have developed a consistent view in *On Liberty*, then it becomes acceptable to discount passages which threaten consistency. The problem is that the consistency which is discovered by this process is the mere appearance of consistency. Should the violation of good manners passage no longer be considered as part of 'Mill's position' the reader could forfeit any hope of understanding what Mill's position actually was.

A final solution is to fundamentally rethink the central aim of Mill's essay. In his article, 'Mill On Liberty, Speech and the Free Society' (2000), Daniel Jacobson insists that the object of the essay is not to assert the harm principle – a crude universal principle which is bound to admit of exceptions – but to defend the doctrine of liberty. This doctrine says that we should support a social and political system that allows individuals a substantial space in which they might be free from social coercion. It might then be argued that if the harm principle is rendered false with respect to violations of good manners, then this only goes to show that the harm principle is not the real point of the essay. Instead the real point of the essay is the doctrine of liberty which seeks a substantive realm of liberty for all but does not rule out the prohibition of violations of good manners.

Of all the solutions we've looked at here, I find this the most compelling. But at the same time I acknowledge that it could make some people feel a little uneasy. They will say that a solution which ignores Mill's own assertions about the aim of *On Liberty* is no solution at all. What could be said to ameliorate this understandable sense of unease? One suggestion put by Jonathan Wolff in his, 'Mill, Indecency and the Liberty Principle' (1998), is to say that Mill himself fully recognised the inconsistency and that he knowingly exaggerated the scope

of the harm principle in setting it out. He thought that harm to others was generally a necessary condition for justified intervention but recognised its limited scope. Then again, Mill makes it clear in his *Autobiography* (1873) that together with his wife (Harriet Taylor) he went back and forth over *On Liberty*, "weighing and criticising every sentence." "None of my writings have either been so carefully composed, or so sedulously corrected as this." Thus if the harm principle remained in the text, it must have been for a good reason. So the question is: why would Mill deliberately assert a universal principle that he himself recognised had 'obvious limitations' in practice?

I offer the following conjecture. In writing *On Liberty* Mill wished to reach out not merely to philosophers but also to the public and to legislators. This means, on the one hand, giving philosophers access to principles which are objective and universal and, on the other hand, giving the public and legislators rules of conduct which they can follow in living their lives and executing their public duties. Thus when Mill comes to apply the harm principle to concrete cases in Chapter V – the chapter in which the violation of good manners passage appears – he refers not to the harm principle but to 'two maxims'. "The maxims are, first, that the individual is not accountable to society for his actions, in so far as these concern the interests of no person but himself... Secondly, that for such actions as are prejudicial to the interests of others, the individual is accountable, and may be subjected either to social or to legal punishments, if society is of opinion that the one or the other is requisite for its protection." Mill does not explicitly say whether acting on the basis of these two maxims is to be understood as equivalent to acting in accordance with the harm principle. Nevertheless, there are possible grounds for differentiation. Whereas a *principle* applies objectively and in all cases, a *maxim* is to be adopted by the subject and is to be followed in accordance with his or her own inclinations and judgement with regards to any given case. Keeping this difference in mind it is no longer problematic to say that a legislator can rightly decide to prohibit violations of good manners under the subjective maxim if not under the universal principle.

Whatever his rationale for asserting the universal principle at the start of Chapter I only to rely instead on the two maxims in Chapter V, looking from the vantage point of his *Autobiography* Mill summed up the significance of his essay not in terms of one very simple principle but in terms of 'a single truth'. "The *Liberty* is likely to survive longer than anything else that I have written... because the conjunction of her [Harriet's] mind with mine has rendered it a kind of philosophical text-book of a single truth, which the changes progressively taking place in modern society tend to bring out into even stronger relief: the importance, to man and society of a large variety in types of character, and of giving full freedom to human nature to expand itself in innumerable and conflicting directions." Interestingly the content of this single truth is much closer to the doctrine of liberty than to the harm principle.

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Alexander Brown is Lecturer in Contemporary Social and Political Theory at the University of East Anglia. He is the author of several articles on Mill as well as the monograph *Personal Responsibility: Why it Matters* (Continuum Press, 2009).