



IS JOHN STUART MILL'S *ON LIBERTY* OBSOLETE?

Vincent Blasi*

In *On Liberty*, published in 1859, John Stuart Mill argues for the “absolute” protection of the “liberty of thought and discussion.” Ever the empiricist, he maintains that such uncompromised freedom, not for all communication or self-expression but for the subset of those activities that qualifies as thought and discussion, would generate the best overall consequences for societies such as Great Britain and the United States. The advent of digital technology has altered how thought and discussion is generated, distributed, and received in ways that might problematize some of the empirical assumptions upon which Mill’s argument in *On Liberty* is based. This essay explores whether the reasons he advances for the absolute liberty of thought and discussion continue to have purchase in the face of the changed empirical domain in which Mill’s cherished activities of inquiry and persuasion now operate.

INTRODUCTION

Without a doubt, the most widely read and closely studied argument for the freedom of speech ever written appears in John Stuart Mill’s *On Liberty*. Marking in 1959 the centennial of the essay’s publication, Isaiah Berlin opined that Mill’s

* Vincent Blasi, a Member of the American Academy of Arts and Sciences since 1998, is the Corliss Lamont Professor of Civil Liberties at Columbia Law School. He has published detailed accounts of the free speech arguments of John Milton, James Madison, John Stuart Mill, Learned Hand, Oliver Wendell Holmes, Jr., and Louis Brandeis. For perceptive critiques of earlier drafts, he would like to thank Ashutosh Bhagwat, Lee Bollinger, Thomas Healy, Aria Hejazi, RonNell Andersen Jones, Patricia Kitcher, Philip Kitcher, Kate Klonick, Christopher Macleod, Peter de Marneffe, Robert Post, Fred Schauer, Eugene Volokh, and James Weinstein. This article was originally published in August 2024 in Volume 153, Issue 3 of *Daedalus*, the Journal of the American Academy of Arts and Sciences. The citation format has been largely preserved from that publication.

“words are today alive and relevant to our own problems; whereas the works of James Mill, and of Buckle and Comte and Spencer, remain huge, half-forgotten hulks in the river of nineteenth-century thought.”¹ According to Berlin:

Mill’s central propositions are not truisms, they are not at all self-evident. . . . They are still assailed because they are still contemporary. . . . Mill looked at the questions that puzzled him directly, and not through spectacles provided by any orthodoxy. . . . One of the symptoms of this kind of three-dimensional, rounded, authentic quality is that we feel sure that we can tell where he would have stood on the issues of our day. . . . Surely that alone is some evidence of the permanence of the issues with which Mill dealt and the degree of his insight into them. Because . . . his conception of man was deeper, and his vision of history and life wider and less simple than that of his utilitarian predecessors or liberal followers, he has emerged as a major political thinker in our own day.²

Berlin’s “day” was the middle of the twentieth century. My question is whether sixty-five years later he plausibly could have maintained Mill’s contemporaneity in the face of the various ways that digital technology has altered the dynamics of human belief formation and persuasion.

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

I.

Mill’s argument is presented in friendly, unpretentious prose. It claims to be based on “one very simple principle.” It has enjoyed a large readership generation after generation, partly due to its secure place in the higher-education canon. It is

¹ Isaiah Berlin, “John Stuart Mill and the Ends of Life,” in *Four Essays on Liberty*, ed. Isaiah Berlin (Oxford: Oxford University Press, 1969), 173, 201–205.

² *Ibid.*, 201–202, 205.

³ Two leading Mill scholars have written short, perceptive books focused on the question of his contemporary relevance. See Philip Kitcher, *On John Stuart Mill* (New York: Columbia University Press, 2023); and John Skorupski, *Why Read Mill Today?* (London: Routledge, 2006).

not in the least bit dogmatic; it encourages the reader to push back. One mark of its appeal is that it has never been out of print since it was first published in 1859.

All of that is disarming. The argument is intricate, subtle, easily misunderstood, elusive in key places. It has generated a plethora of conflicting interpretations by knowledgeable devotees claiming fidelity to the text. It is extremely ambitious, and anything but airtight. It resists succinct summary.

For present purposes, there is no need to engage the key disputes in the sophisticated secondary literature about *On Liberty*. It will suffice to identify some of the most important discrete propositions advanced or implied in the essay that play a major role in Mill's argument under any plausible reading. Then we can scrutinize them for possible obsolescence.

One such proposition is 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. . . . His own good, either physical or moral, is not a sufficient warrant." This is Mill's "very simple principle."⁴

We might question whether that principle can do much work in resolving disputes over speech that carries the potential to cause serious harm. After all, speakers are seldom punished to protect them from themselves. Almost always, the worry is that their speech will, in one way or another, injure other people or society as a whole. Unless supplemented by additional principles governing disputes involving speech, Mill's antipaternalism principle would allow societal interference with harm-causing speech, as it does for all other harm-causing conduct, if "the general welfare" would be advanced by such interference.⁵

Indeed, shortly after he introduces his antipaternalism principle, Mill adds a supplementary principle that he specifies should be applicable to a certain subset of speech. There must be, he states, "absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral, or theological."⁶

A striking feature of *On Liberty* is its emphasis on the supreme importance of high-quality opinion formation throughout the population in order to advance the well-being of society. Mill's study of modern history convinced him that the key

⁴ John Stuart Mill, *On Liberty*, ed. David Bromwich and George Kateb (New Haven, Conn.: Yale University Press, 2003 [1859]), 80.

⁵ *Ibid.*, 81–82.

⁶ *Ibid.*, 82.

variable determining which societies in what eras flourished and which stagnated was the quality of their public opinion: what their “average human beings,” not just their “great thinkers,” believed and acted upon.⁷ And the feature of public opinion that matters most in shaping the course of a society, he found, is whether its “errors are corrigible.” “The whole strength and value of human judgment” depends, he says, “on the one property, that it can be set right when it is wrong.”⁸ The open mind is the key, individually and collectively. That is why freedom of opinion deserves special treatment.

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

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

At first pass, this seems like a non sequitur. Certainly, as a matter of practical classification, it is not difficult to differentiate silently holding an opinion from communicating it to others. Normatively, why aren’t the two kinds of acts different in light of the importance Mill attaches, in four different chapters of *On Liberty*, to

⁷ Ibid., 102.

⁸ Ibid., 90.

⁹ Ibid., 76.

¹⁰ Ibid., 82–83.

whether a person's conduct affects others? What then is the source of this "practical" inseparability?

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

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

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

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. . . .

Fourthly, the meaning of [an uncontested] 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.¹¹

These are epistemic arguments. The subject of each is “the silenced opinion,” “the received opinion,” or the “doctrine itself.” Professions capable of “truth,” “error,” “meaning,” “comprehension,” “rational grounds,” and “conviction” are what Mill is concerned about in this chapter. He certainly valued the freedom of individuals to express themselves and hear others on matters of exclusively personal interest, as well as their freedom to engage in and learn from communications of an immediately functional nature. However, Mill’s utilitarian commitments led him to pay special attention to, and reserve his highest level of protection for, the kind of speech that is meant to influence others, and ultimately public opinion, by means of its *epistemic* contribution to human well-being and development.¹²

As Canadian political theorist Richard Vernon notes about chapter two: “The word ‘discussion’ is frequently used in the chapter, as is the word ‘opinion.’ . . . Nowhere does he speak of freedom of expression, and he uses the word ‘expression’ only in the phrase ‘expression of opinion.’” According to Vernon, the argument “is plausible only if we suppose that the items exchanged in the critical process are propositions about actual or desirable states of affairs in the world, propositions capable of being accumulated into larger bodies of knowledge.”¹³ Or, as American philosopher Piers Norris Turner puts it: “‘Discussion’ is Mill’s consistently employed word for joint, reasoned engagement on some (usually public) matter, governed by norms of truth, fair play, and sincere attention to the general good.”¹⁴ Or, as British philosopher Christopher Macleod, a leading student of the full range of

¹¹ *Ibid.*, 118.

¹² For detailed demonstrations of the epistemic character of Mill’s arguments in “Chapter Two, Of the Liberty of Thought and Discussion,” see Christopher Macleod, “Truth, Discussion, and Free Speech in *On Liberty* II,” *Utilitas* 33 (2) (2021): 150, 150–155; and Frederick Schauer, *On the Relation Between Chapters One and Two of John Stuart Mill’s On Liberty*, 39 *CAPITAL U. L. REV.* 571 (2011). For Mill’s emphasis on development, see Mill, *On Liberty*, 76, 101, 122, 127, 128, 131, 132, 136, 142, 152, 170, 174. On Mill’s “commitment to promoting progress, and the primacy of growth,” see Don Habibi, “J. S. Mill’s Revisionist Utilitarianism,” *British Journal for the History of Philosophy* 6 (1) (1998): 89.

¹³ Richard Vernon, “Mill and Pornography: Beyond the Harm Principle,” *Ethics* 106 (3) (1996): 621, 622–623.

¹⁴ Piers Norris Turner, “Authority, Progress, and the ‘Assumption of Infallibility’ in *On Liberty*,” *Journal of the History of Philosophy* 51 (1) (2013): 93, 105.

Mill's writings, observes: what constitutes "discussion" as Mill uses the term in *On Liberty* "is perhaps surprisingly narrow." Macleod explains:

Because the argument is explicitly premised on contributions to discussion being either true, false, or partially true, it is important to note that it is applicable only to statements which are *truth-apt*: capable of being evaluated in terms of truth.¹⁵

Chapter two, it must be emphasized, extends its extraordinary "absolute" protection only to certain communications that enjoy a favored status on account of the special role they play in the pursuit of societal and individual well-being. These instrumentally valuable communications Mill labels "thought and discussion."

Further evidence of the productivity Mill associates with thought and discussion is his assertion that there exists a "real morality of public discussion" regarding the manner of advancing opinions that needs to be enforced by the powerful mechanism of public condemnation.¹⁶ Any participant must be discredited, he says, "in whose mode of advocacy either want of candor, or malignity, bigotry, or intolerance of feeling manifest themselves" so long as those vices are not inferred "from the side which a person takes."¹⁷ Conversely, audiences must accord "merited honor to everyone, whatever opinion he may hold, who has calmness to see and honesty to state what his opponents and their opinions really are, exaggerating nothing to their discredit, keeping nothing back which tells, or can be supposed to tell, in their favor."¹⁸

It is no wonder that Mill does not entitle chapter two "Of the Liberty of Speech" or "Of the Liberty of Expression." He entitles it "Of the Liberty of Thought and Discussion." Indeed, it is the chapter's limited coverage that allows Mill essentially to ignore examining how thought and discussion can cause harm. The chapter is devoted entirely to cataloging the ways that it generates singular, one might say priceless, value to society. Other useful forms of communication that don't make it

¹⁵ Christopher Macleod, "Mill on the Liberty of Thought and Discussion," in *The Oxford Handbook of Freedom of Speech*, ed. Adrienne Stone and Frederick Schauer (Oxford: Oxford University Press, 2021), 3, 14. Professor Macleod was selected to write the entry on Mill for the Stanford Encyclopedia of Philosophy.

¹⁶ He declares legal sanctions to be unsuited to the task, presumably because he considered them to be too slow-moving, formalistic, cumbersome, and necessarily defendant-protective for such moral standard-setting work. Mill, *On Liberty*, 119.

¹⁷ *Ibid.*

¹⁸ *Ibid.*, 119–120.

into chapter two, such as those whose value is exclusively of a self-expressive or transaction-facilitating nature, are protected under his general liberty principle, but only case-by-case when the price is right.

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

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

¹⁹ *Ibid.*, 81.

²⁰ On Mill’s rule utilitarianism, see Rex Martin, “Mill’s Rule Utilitarianism in Context,” in *John Stuart Mill and the Art of Life*, ed. Ben Eggleston, Dale E. Miller, and David Weinstein (Oxford: Oxford University Press, 2011), 21; J. O. Urmson, “The Interpretation of the Moral Philosophy of J. S. Mill,” *The Philosophical Quarterly* 3 (10) (1953): 33; and Henry R. West, *Mill’s Utilitarianism* (London: Continuum Books, 2007), 66–67.

²¹ Mill, *On Liberty*, 121.

the message by hugely expanding its audience. It is epistemic function rather than potential harm that determines whether a communication amounts to thought and discussion.

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

If there are any persons who contest a received opinion, or who will do so if law or opinion will let them, let us thank them for it, open our minds to listen to them, and rejoice that there is someone to do for us what we otherwise ought, if we have any regard for either the certainty or the vitality of our convictions, to do with much greater labor for ourselves.²²

This notion of "the vitality of our convictions" is central to Mill's argument in chapter two. He urges his readers to seek a "lively apprehension of the truth which they nominally recognize, so that it may penetrate the feelings and acquire a real mastery over the conduct." The point of discussion is to form "that living belief which regulates conduct."²³ We must be open to challenge because "complete liberty of contradicting and disproving our opinion is the very condition which justifies us in assuming its truth for purposes of action."²⁴

II.

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

1. Power can rightfully be exercised by society over its members in order to prevent them from harming others, but not to prevent them from harming themselves.
2. A modern society's capacity to adapt and advance depends on its having a public opinion that is "corrigible" in the light of evidence, experience, private reflection, and public discussion.
3. A theory of liberty needs to pay as much attention to private punishments of speakers as it does to legal regulation. Private sanctions, in-

²² Ibid., 112.

²³ Ibid., 107–108.

²⁴ Ibid., 89.

cluding condemnation, can protect the quality of public opinion by enforcing a “morality of public discussion,” but also can damage public opinion by discouraging independent thought, the lifeblood of progress.

4. A speaker’s manner of asserting an opinion may justly incur severe censure, though not legal punishment, so long as the censure is not based on which side of a controversy the speaker takes.
5. “Thought and discussion” should be accorded “absolute” protection on the ground that it is a uniquely important activity, different from other forms of communication and more valuable.
6. Speakers should welcome having their ideas challenged by insightful critics who actually believe the criticisms they are putting forth.

Although Mill studied law with the jurisprudential eminence John Austin, in *On Liberty* he presents a moral rather than legal argument; he makes no effort to tailor his principles to pragmatic concerns regarding legal administration.²⁵ His project is to identify the moral principles that would best enable an advanced society to maximize the well-being of its members in the light of changing conditions and the possibility of progress in harnessing knowledge to serve human needs.

III.

Assessing the contemporary efficacy of these Millian ideas is the task to which we now turn.

One way in which communication and persuasion have changed since Mill’s day is that we all, from our demagogues to our sages, operate at a faster pace of generating, spreading, judging, and moving on from ideas and information. This technology-driven speed-up in the pace of creation and distribution increases the sheer volume of ideas and information audiences must process, which in turn makes the competition among speakers for audience attention more important and more intense. Surely such conditions tempt speakers to resort to exaggeration and simplification to gain and hold audience attention, very likely more than the

²⁵ See Nicholas Capaldi, *John Stuart Mill: A Biography* (Cambridge: Cambridge University Press, 2004), 35–36.

speakers of Mill's time were so tempted. With technologies such as content algorithms and artificial intelligence now available to serve the cause of capturing and keeping audience attention, Mill's calls for depth of understanding, care of formulation, and unbending sincerity on the part of speakers may seem dated.

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

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

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

In addition, persuasion is made more difficult when technological capacity facilitates the tactic of "refutation" by flooding: that is, creating overwhelming digital

noise to drown out the messages of would-be persuaders. A different distortion of public debate can occur when online harassment of targeted speakers can be organized on a massive scale. The “chilling effect” is a venerable free speech concept, but digital technology introduces new means to harass that must lead many would-be speakers to choose discretion over valor.²⁶

In the digital age, it is easier than was true in Mill’s time to reach large audiences while speaking anonymously or pseudonymously. Anonymous communication can serve worthy ends, but too often it is the tool of liars, conspiracy theorists, and producers of bots designed to mislead audiences about the state of public opinion. The combination of flooding capacity, ease of anonymity, and the diminished influence of intermediaries bound by professional norms creates fertile ground for disinformation campaigns.

The speed and reach of unmediated digital transmission of ideas enable speakers with the most dangerous opinions and objectives to bring about destructive action without having to convince or rile up more than a tiny percentage of their audience members. Demagogues no longer need to “earn” their malicious influence.

Finally, modern technology enables the storage and retrieval of speech on a scale hitherto unimagined. This has to make speakers more cautious, even as it makes audiences far more capable of holding speakers accountable.

IV.

So how might these changes brought about by digital technology problematize the principal ideas in *On Liberty*?

One idea of Mill’s that is not in the least rendered obsolete by digital technology is his claim that the regulation of speech by nongovernmental actors and institutions deserves as much attention, even if not necessarily the same governing principles, as regulation by the state. This focus on private regulation follows from his priority of enabling society to realize the full measure of benefits that can be harvested from informed, energized, independent thinking by large numbers of persons with diverse interests and experiences. Much of that potential contribution can be diminished by the private regulation of thought and discussion.²⁷

²⁶ On flooding and harassment, see Tim Wu, *Is the First Amendment Obsolete?*, 117 MICH. L. REV. 547 (2018).

²⁷ See, generally, *Symposium: Non-Governmental Restrictions on Free Speech*, 2 J. FREE SPEECH L. 1 et seq. (2022).

Of course, private regulators of thought and discussion have existed since the dawn of civilization and were prominent in Mill's day. However, digital technology can enhance the reach and leverage of some private regulators to the point where they can influence the development of public opinion as much or more than legal regulation does. Consider the potential impact of the access policies of the dominant social media platforms.

Mill's concern about private regulation was largely about its capacity to enforce the customary understandings of majority opinion, thereby stifling innovation. When he criticizes private regulation in *On Liberty*, he employs such terminology as "society collectively," "the tyranny of the prevailing opinion," and the "interference of collective opinion with individual independence."²⁸ Private regulation in limited domains such as schools and workplaces when it is designed not to influence public opinion but to facilitate the specialized endeavors of the regulators is not a subject that Mill addresses in *On Liberty*.

Moreover, even when private regulation has the character of enforcing majority norms and is not domain-specific, Mill does not always disapprove. He views such norms as having an indispensable role in enforcing a productive "morality of public discussion." Nevertheless, he makes clear that such a "morality" must not be about the wisdom of a speaker's opinions but only their manner of presentation and distribution.²⁹

Mill's favorable view of private regulation in the service of a non-viewpoint-sensitive morality of public discussion would seem to extend to the pursuit of that objective in the digital age. In fact, despite their own shortcomings and frequently perverse incentives, entities such as social media platforms can and often do exercise their private power to help sustain the norm of truth-telling in the face of disinformation tactics enabled by contemporary technology.³⁰ In principle, such efforts are consistent with *On Liberty*.

²⁸ Mill, *On Liberty*, 76.

²⁹ *Ibid.*, 119–120.

³⁰ See Dawn Carla Nunziato, *Misinformation Mayhem: Social Media Platforms' Efforts to Combat Medical and Political Misinformation*, 19 *FIRST AMEND. L. REV.* 32 (2020); and Nathaniel Persily, "Platform Power, Online Speech, and the Search for New Constitutional Categories," in *Social Media, Freedom of Speech and the Future of Our Democracy*, ed. Lee C. Bollinger and Geoffrey R. Stone (Oxford: Oxford University Press, 2022), 193, 193–211.

Various exercises of high-leverage private power such as that possessed by the owners of social media platforms raise many difficult questions, about which responsible interpreters of Mill can disagree. What is not in dispute is that he was ahead of his time in recognizing the importance of private regulation in determining the quality of a society's thought and discussion—or at least ahead of his time in fully appreciating the significance of his friend Alexis de Tocqueville's observations twenty-four years earlier to that effect.³¹

A second idea of Mill's that we might evaluate for its staying power in the digital age is his claim that thought and discussion makes up a special subset of communication that, due to its unique instrumental value, must be accorded "absolute" protection. With the way that modern technology facilitates the capacity of some speakers to dominate audience attention or to advocate, plan, and implement violent measures, can we still afford to ascribe no legal significance to harms that ensue from the spreading of dangerous opinions simply because the initial messages have more the character of an appeal to thought about a public matter than a directly and personally manipulative "instigation"?

Mill's extended defense in chapter two of absolute freedom of thought and discussion is all about the singular, society-defining benefits of such freedom. Those benefits are so unique and so fundamental that they dwarf any harms that unregulated thought and discussion might cause, at least when the comparison is conducted at the categorical level. Or so Mill has to maintain if his prescription of absolute protection for thought and discussion is to be justified in utilitarian terms. From his uncharacteristic failure in chapter two to worry about the harm side of the equation, it is fair to assume that he found the comparison to be lopsided, not really in need of explanation.

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

³¹ See Alexis de Tocqueville, *Democracy in America, Volume 1* (New York: Vintage Books, 1990 [1835]), 233–238.

one would almost certainly have to demonstrate that the extraordinary value that he attaches to free thought and discussion about matters of general interest is somehow diminished in our time.

Can we say that the forming and discussing of one's thoughts in the digital age is a different sort of process than formerly, with a lower level of social importance? It might well be true that digital technology has caused the ideas we hold about matters of general interest to be less the product of our distinctive personas, life experiences, and introspection, and more the product of outside forces such as marketing, manipulation, and saturation. Persuading others or being persuaded by them might indeed be more infrequent than before, less in our control, and less the product of independent individual judgment on the merits.

If Mill had argued for according transcendent value to thought and discussion on autonomy rather than consequentialist grounds, concerns about the reduced independence of individual opinions would lend support to the obsolescence thesis. Autonomy by definition is about self-authorship, which entails personal responsibility for distinctive beliefs. And it must be noted that several leading Mill scholars do read him to be relying on autonomy notions in *On Liberty* despite his explicit and emphatic categorization of his argument as utilitarian.³² Alan Ryan, for example, concludes that

Mill argues for freedom and individuality as *parts of* happiness rather than merely *means to* happiness. As a result of this, freedom in the sense of individual moral autonomy appears as a good which is valued for its own sake, because it is part of the happiness of the self-consciously progressive man.³³

Even if Ryan and others are correct in this respect, the most it would imply is that certain claims to personal freedom “for its own sake” can be sustained on Millian grounds. It need not mean that the freedom to express opinions that might harm others is one of those claims.

Mill never employs the term “autonomy” in *On Liberty*. In the passage where he comes closest to making an explicit autonomy argument, he says: “The only freedom which deserves the name, is that of pursuing our own good in our own

³² See, for example, Capaldi, *John Stuart Mill*, 249–257; John Gray, *Mill on Liberty: A Defence*, 2nd ed. (London: Routledge, 1996), 73–86; Christopher Macleod, “Mill on Autonomy,” in *The Routledge Handbook of Autonomy*, ed. Ben Colburn (London: Taylor & Francis, 2022); and John Skorupski, *John Stuart Mill* (London: Routledge, 1989), 354–359.

³³ Alan Ryan, *J. S. Mill* (London: Routledge & Kegan Paul, 1974), 133.

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

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

This matters in that an argument from consequences, unlike an argument resting wholly on autonomy, can acknowledge a diminution in the independence of individual belief formation due to changes wrought by digital technology, count it as a cost, and yet find such diminution not to be conclusive. The net impact of protecting digitally influenced thought and discussion on individual, aggregative, and public good well-being could still be positive.

For example, genuinely new voices are finding better means of access to substantial audiences in the current environment. Expanded opportunities made possible by technology for seeking, storing, and retrieving information do much to facilitate an increase in the accumulation and accessibility of public knowledge as well as the practical capacity to apply it. The pace of change in the digital world, not only regarding beliefs but in countless other dimensions of social organization, surely problematizes custom worship. These are all Millian gains that cut against the thesis

³⁴ Mill, *On Liberty*, 83.

that his prioritization of the liberty of thought and discussion over all other liberties is outdated.

A proponent of the obsolescence thesis could nonetheless claim that digital technology so corrupts public opinion by facilitating disinformation, distraction, flooding, and censorial harassment that nowadays thought and discussion about matters of general interest produces less good in utilitarian terms than Mill supposed from his mid-nineteenth-century vantage point. Disinformation and harassment are probably the worst of these corruptions, but they are also forms of communication that are properly excluded from Mill's absolutely protected domain of thought and discussion. However, other corruptions cannot be bracketed so readily. Distraction and flooding can be accomplished not only by communications that do not qualify for chapter two's protection but also by Millian thought and discussion transmitted on a technology-enabled massive scale. So audience resistance in the form of not succumbing to the temptation to be swayed or diverted by disproportionate inputs is likely to be the only effective way consistent with Mill's analysis to contain at least some forms of distraction and flooding.

And sure enough, in chapter three of *On Liberty*, entitled "Of Individuality, as One of the Elements of Well-Being," Mill argues that strong individual character is an irreplaceable element of a well-functioning society. There he develops in detail the thesis that adaptation and progress are best served by a social order that fosters "individuality," replete with diverse character types, a wide range of available experiences, and high collective energy. Mill's notion of "individuality" may sound like "autonomy" by another name, but the difference lies in the instrumental, and thus consequentialist, nature of the concept as he employs it. For him, individuality is not about protective self-sovereignty as a universal right so much as the utilitarian benefits that strong characters with diverse talents and experiences can enjoy on that account and the contributions they can make to the well-being of others, including by creating public goods.

Strong individual character cannot be developed and sustained by shielding audiences from dangerous thought and discussion regarding matters of general interest, even when the ideas that must be resisted gain undeserved prominence by means of digital proliferation. Consistent with his emphatic rejection of paternalism in chapter one, his demanding account of belief formation in chapter two, and his exaltation of individuality in chapter three, Mill was not averse to relying on audience character and judgment as the best means to protect society from novel

threatening forces in the dynamics of persuasion. In his reading of history, such reliance has always been requisite.

Even so, the corruptions of the digital age might be so unprecedented and formidable as to make obsolete Mill's foundational move of building his argument for the liberty of thought and discussion on the objective of enriching public opinion. After all, there are other possible starting points for such an argument, including those that are driven by distrust of regulators or notions of self-evident entitlement.

True enough, but a well-known observation by a legendary judge explains why a thinker such as Mill, whose primary concern is human flourishing, simply cannot give up on public opinion. In May of 1944, two weeks prior to D-Day, Judge Learned Hand administered the oath of citizenship to one hundred fifty thousand newly naturalized immigrants gathered in New York's Central Park. With over one million of their fellow citizens in attendance, Hand told the new Americans:

Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it; no constitution, no law, no court can even do much to help it. While it lies there, it needs no constitution, no law, no court to save it.³⁵

Those two sentences would fit perfectly in chapter three of *On Liberty*.

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

³⁵ Learned Hand, *The Spirit of Liberty: Papers and Addresses of Learned Hand*, ed. Irving Dilliard, 2nd ed. (New York: Alfred A. Knopf, 1953), 189, 190.

³⁶ Mill, *On Liberty*, 118.

³⁷ *Ibid.*, 112.

Despite the ways that digital technology has broadened and intensified public discussion, we might well wonder whether such energizing is having perverse consequences when it comes to the corrigibility of beliefs. Is Mill's ideal of the open mind sustainable in a world of fast-paced contention between impassioned combatants who enjoy unprecedented technology-enabled ways to control their intakes, confirm their biases, and police their acolytes?

Suppose it is true that corrigibility of belief is harder to maintain amid the cognitive overload and strident rhetoric of our age. Does that tarnish the *ideal* of the open mind? Perhaps Mill's best idea in *On Liberty* is that the open mind never ceases to be the key to societal well-being, and all the more so in periods when it is hardest to achieve.

Probably in every age, people experience angst about how the process of belief formation and persuasion operates compared to the way it used to or should. Mill himself was not without such angst. Consider this lament of his, written in 1836:

This is a reading age, and precisely because it is so reading an age, any book which is the result of profound meditation is perhaps less likely to be duly and profitably read than at a former period. The world reads too much and too quickly to read well. . . . He, therefore, who should and would write a book, and write it in the proper manner of writing a book, now dashes down his first hasty thoughts, or what he mistakes for his thoughts, in a periodical. And the public is in the predicament of an indolent man, who cannot bring himself to apply his mind vigorously to his own affairs, and over whom, therefore, not he who speaks most wisely, but he who speaks most frequently, obtains the influence.³⁸

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

Certainly, a utilitarian, especially one whose measuring rod is "the permanent interests of man as a progressive being," needs to be forward-looking in the sense of not assuming that current patterns of belief formation that bear on societal well-

³⁸ John Stuart Mill, *Civilization* (1836), reprinted in *The Collected Works of John Stuart Mill, Vol. XVIII: Essays on Politics and Society, Part I*, ed. John M. Robson (Toronto: Toronto University Press, 1977).

being constitute the inevitable future.³⁹ If the corrigibility of belief is as important as Mill claims it is, and if keeping alive the ideal of the open mind is a way to help revitalize the active holding of unfrozen opinions, or even just preserve what corrigibility of belief remains in the digital age, *On Liberty* has something to say to contemporary readers.

In that regard, despite six subsequent decades of evolution in the processes of opinion formation, Isaiah Berlin's centennial assessment of *On Liberty*'s durability remains apt:

Mill's defence of his position in the tract on Liberty is not, as has often been pointed out, of the highest intellectual quality. . . . Nevertheless, the inner citadel—the central thesis—has stood the test. It may need elaboration or qualification, but it is still the clearest, most candid, persuasive, and moving exposition of the point of view of those who desire an open and tolerant society. The reason for this is not merely the honesty of Mill's mind, or the moral and intellectual charm of his prose, but the fact that he is saying something true and important about some of the most fundamental characteristics and aspirations of human beings.⁴⁰

³⁹ Mill, *On Liberty*, 81.

⁴⁰ Berlin, "John Stuart Mill and the Ends of Life," 201.