

Grounds for Freedom of Expression

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The main arguments which explain the special status of freedom of expression and therefore insist on granting it broad protection can be summarized along the following lines:

(A) **The Arguments from Autonomy.** Freedom of expression is necessary to enable individuals to advance their faculties and to realize themselves by advocating ideas and beliefs and by giving flight to spirit.¹ Words are keys of thought and persuasion, and we need free communication to enable individuals to learn about the different options open to them. Emphasis is put on the contribution of free speech to rationality, asserting that freedom of expression is needed to make up our mind, to decide what to believe, and to weigh reasons for action.

This argument further holds that a need exists to convey beliefs, to vigorously contest the opinions of others, for otherwise opinions will degenerate into prejudices or “dead dogma”, with little comprehension of their rational grounds.² Thus, freedom of expression is needed to ensure the development of individuals as autonomous, rational, and independent beings.³ It is required to protect the dignity of the person,⁴ the moral sovereignty of people, the self-determination of our moral powers of rationality and reasonableness in conceptions of a life well and humanely lived.⁵ Furthermore, expressions have a validating function in promoting people's well-being.⁶ They give the relevant ways of life the stamp of public acceptability. Free speech helps people to identify with their sense of its worth, and their sense that their way of life facilitates their integration into their society.⁷ Expressions also serve to reassure those whose ways of life are being portrayed that they are not alone, that their problems are common, their experiences known to others. Public validation is an essential element in the process of societal transmission, preservation and renewal.

¹ J.S. Mill, *Utilitarianism, Liberty, and Representative Government* (London: J. M. Dent. Everyman's edition, 1948).

² Mill, *Ibid.*

³ C.E. Baker, “Autonomy and Hate Speech”, in Ivan Hare and James Weinstein (eds.), *Extreme Speech and Democracy* (Oxford: Oxford University Press, 2009): 139-157.

⁴ William Ruger, “Free Speech Is Central to Our Dignity as Humans”, *Time Magazine* (3 June 2016), <http://time.com/4355651/free-speech-human-dignity/>

⁵ David A.J. Richards, *Toleration and the Constitution* (New York: Oxford University Press, 1986); Frederick Schauer, *Free Speech: A Philosophical Enquiry* (New York: Cambridge University Press, 1982).

⁶ Jonathan Gilmore, “Expression as Realization: Speakers' Interests in Freedom of Speech”, *Law and Philosophy* 30 (2011): 517-539.

⁷ R. Cohen-Almagor, *The Boundaries of Liberty and Tolerance: The Struggle Against Kahanism in Israel* (Gainesville, FL: The University Press of Florida, 1994): 90.

(B) **The Infallibility Argument** is based on the assumptions that (1) all human beings are fallible and, therefore, (2) they should have the right to express their thoughts and to compete in the free market of ideas in order to affirm or refute their thoughts, seek assurances and change course of action when it is justifiably criticized. The Infallibility Argument further assumes that (3) there are beliefs which admit of, or have a claim to holding of the truth, in areas which it is impossible to hold with certainty any belief to be true; and that (4) any intolerance of opinions involves, *ipso facto*, a claim to infallible knowledge.⁸ Mill explained that even those opinions which we are confident in their truthfulness must be exposed to scrutiny and doubts.⁹ Those who assume that they know what the truth is provide reasons against pursuing a constant inquiry and debate, which deprive humanity of exploring further truths, with the result of inserting sticks in the wheels of progress. Thus, Mill wrote: "If all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind."¹⁰ This argument is strongly related to the Arguments from truth because no person is in a position to claim complete hold on the truth.

(C) **The Arguments from Truth.** It is the freedom of the individual and the community to bring truth to light through a struggle between truth and falsity. The underlying assumption is that truth will prevail in a free and open encounter with falsehood. Although an opinion may have been silenced because it was thought to be in error, it may have contained a portion of truth. Mill explained that people need freedom of expression because most people do not feel comfortable living in a lie. The quest for truth is both an important as well as an expedient endeavour.¹¹ Only truth freely gained and freely held is of value. Truth is the keystone of Mill's plea for liberty of thought and expression, and it is also of salient importance in his discussion of liberty of action. Every opinion should be checked against experience. Because we can never be sure where the truth lies, all our answers must be tentative: a universal, single truth is not, and cannot be found. Mill wrote: "If even the Newtonian philosophy were not permitted to be questioned, mankind could not feel as complete assurance of its truth

⁸ For critique of the Infallibility Argument, see Alan Haworth, "On Mill, Infallibility, and Freedom of Expression", in Glen Newey (ed.), *Freedom of Expression: Counting the Costs* (Newcastle: Cambridge Scholars Publishing, 2007): 168-190, at 170-177.

⁹ J.S. Mill, *Utilitarianism, Liberty, and Representative Government*, 83.

¹⁰ *Ibid*, 79.

¹¹ *Ibid*, especially chapter 2.

as they now do".¹² We should always question common beliefs which are held as "truths", for truth is an ideal that we should continue to test and reaffirm.

Although acknowledging the fact that, indeed, "the dictum that truth always triumphs over persecution is one of those pleasant falsehoods which men repeat after one another till they pass into commonplaces, but which all experience refutes",¹³ Mill reasoned that free and open discussion is bound to bring about truth. In a somewhat similar way to Adam Smith's belief in the "invisible hand" function in regulating the economic powers of the market, Mill believed in such a "hand" which regulates the "market-place of ideas", leading to the discovery of truth. Truth in the long run never fails to prevail over error: it may be extinguished once, twice, or many times, but in the course of the ages there will generally be found persons to rediscover it.

(D) The Vitality Argument. Without free exchange of ideas, common views would become rigid, lack adaptability, and soon turn into a dead dogma. However true an opinion may be, if it is not fully, frequently, and fearlessly discussed, it will cease to be held as a "living truth".¹⁴ Mill warned against the despotism of custom. In other words, it is not only important to hold true beliefs but also to have clear understanding of these beliefs, being cognizant of the reasons for holding them. The meaning of doctrines will be in danger of being lost and deprived of its vital effect on the character and conduct unless freedom exists to express any challenging opinion. Toleration of any opinion, even one conceived to be in gross error, is vital, since silencing such an error can lead to two negative consequences: it would open the gate for further constraints on free expression, and it would intimidate discoverers of truth, discouraging them from investing in further efforts, and leading to their silence. Silencing of an opinion is resembled to "robbing the human race".¹⁵ Vitality leads to progress, and progress is valued in the sense of improvement in the moral and intellectual qualities of the individual, which will contribute to the development of society as a whole.¹⁶ Mill urged this argument in support of his demand for tolerance in the spheres of politics, morality, religion, and taste, spheres that are frequently invaded by intolerance.

¹² Ibid., 83. For discussion and critique of the Truth Principle, see Maurice Cowling, *Mill and Liberalism* (Cambridge: Cambridge University Press, 1963); Geoffrey Marshall, *Constitutional Theory* (Oxford: Clarendon Press, 1971); Frederick Schauer, *Free Speech: A Philosophical Enquiry* (New York: Cambridge University Press, 1982: 27-34); Kent Greenawalt, *Speech, Crime and the Uses of Language* (New York: Oxford University Press, 1989: 16-26); Irene M. Ten Cate, "Speech, Truth, and Freedom: An Examination of John Stuart Mill's and Justice Oliver Wendell Holmes's Free Speech Defenses", *Yale Journal of Law & the Humanities*, 22 (1), Article 2 (2010), <http://digitalcommons.law.yale.edu/yjlh/vol22/iss1/2>; Eric Barendt, *Freedom of Speech* (Oxford: Clarendon Press, 2005): 8-14.

¹³ Ibid., 89.

¹⁴ J.S. Mill, *Utilitarianism, Liberty, and Representative Government*, 95.

¹⁵ Ibid.

¹⁶ Ibid.

(E) The Arguments from Democracy. Free expression is a fundamental right and value in democracies. It is a necessary component for securing human rights and participation in the democratic life.¹⁷ Relevant information is made available to the public who then can, on the basis of that information, decide their conduct. Given the fact that transitions are constantly in the making, freedom of expression is necessary for citizens to reflect upon their current situation, and to suggest accommodations. It is instrumental to maintain a balance between stability and change in society. Furthermore, acts of expression serve to familiarize the public at large with ways of life common to different segments of the public. Freedom of expression promotes the virtue of tolerance.¹⁸ The open confrontation of ideas strengthens the self-correcting powers of society. Moreover, freedom of expression should be protected because of the lessons that society is likely to learn from such experiences, and because these experiences contribute to the shaping of a wider culture of tolerance.

Freedom of expression is also a means for controlling the government and assuring its legitimacy;¹⁹ a means against the government's attempts at exploitation; a means against possible corruption of public officials; and a necessary requirement for securing the consent of the citizens. Finally, freedom of expression is crucial to indicate causes of discontent, the presence of cleavages, and possible future conflicts.

These arguments make a strong position for freedom of speech. The Office for Students (OfS) in the United Kingdom that was set to protect the students' best interests holds that advancing ideas and learning through debate is a critical part of what universities and colleges do. Therefore, freedom of expression is essential to the interests of students. OfS aims to protect and uphold it and believes universities and colleges should do the same. According to OfS, freedom of expression is important because:

- exposes students to new and challenging ideas
- encourages robust but civil debate which respects and understands different viewpoints

¹⁷ Alexander Meiklejohn, *Political Freedom* (NY: Oxford University Press, 1965).

¹⁸ Frederick Schauer, "Free Speech on Tuesdays", *Law and Philosophy* 34 (2015): 119-40; Bican Sahin, *Toleration: the liberal virtue* (Lanham, MD: Lexington Books, 2010); Glen Newey, "Tolerance as a Virtue", in John Horton and Susan Mendus (eds.), *Toleration: Identity and Difference* (London: Macmillan, 1999): 38-64; David Heyd (ed.), *Toleration: An Elusive Virtue* (Princeton: Princeton University Press, 1996); L.C. Bollinger, *The Tolerant Society* (Oxford: Clarendon Press, 1986).

¹⁹ Thomas Scanlon, "A Theory of Freedom of Expression", in R.M. Dworkin (ed.), *The Philosophy of Law* (Hong Kong: Oxford University Press, 1977): 153-171; T.M. Scanlon, "Freedom of Expression and Categories of Expression", *University of Pittsburgh Law Review* 40 (4) (Summer 1979): 519-550; T.M. Scanlon, "Content Regulation Reconsidered", in Judith Lichtenberg (ed.), *Democracy and the Mass Media* (NY: Cambridge University Press, 1995): 331-39; Thomas Scanlon, *The Difficulty of Tolerance* (Cambridge: Cambridge University Press, 2003); Frederick Schauer, *Free Speech* (New York: Cambridge University Press, 1982) and Schauer, "The Cost of Communicative Tolerance", in R. Cohen-Almagor (ed.), *Liberal Democracy and the Limits of Tolerance* (Ann Arbor: University of Michigan Press, 2000): 28-42.

- underpins the diversity of England's higher education sector
- is a key part of giving students a high-quality higher education.²⁰

²⁰ Office for Students, Freedom of Speech, <https://www.officeforstudents.org.uk/advice-and-guidance/student-wellbeing-and-protection/freedom-of-speech/>