



JOHN STUART MILL'S FREEDOM OF EXPRESSION:
A CRITICAL STUDY

NAPRAPA CHINCHANACHOKCHAI

A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT
OF THE REQUIREMENT FOR THE DEGREE OF
DOCTOR OF PHILOSOPHY IN PHILOSOPHY

GRADUATE SCHOOL OF PHILOSOPHY AND RELIGION
ASSUMPTION UNIVERSITY OF THAILAND
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DISSERTATION TITLE: John Stuart Mill's Freedom of Expression: A Critical Study

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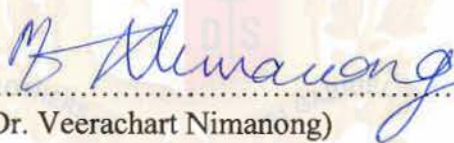
ACADEMIC YEAR: 2012

The Graduate School of Philosophy and Religion, Assumption University, has approved this dissertation as a partial fulfillment of the requirements for the Degree of Doctor of Philosophy in Philosophy.



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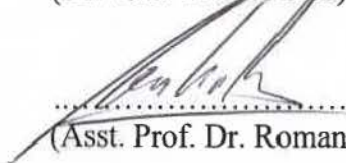
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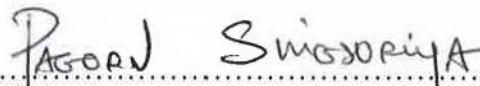
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ADVISOR: Asst Prof. Warayuth Sriwarakuel

ACADEMIC YEAR: 2011

Abstract

This research demonstrated that Mill's freedom of expression is a tolerant, liberal position that is progressive in essence and upholds a dialogical, pluralistic spirit. Mill's freedom of expression is central to his liberalism and promotes a strong sense of individuality. He claims that there should be absolute freedom of opinion and sentiment on all subjects—practical or speculative, scientific, moral, or theological. He also reinforces his position by stating that if all humankind minus one were of one opinion, and only one person were of the contrary opinion, humankind would be no more justified in silencing that one person than he (if he had the power) would be justified in silencing humankind.

Mill provides *four arguments* to support his position: the human fallibility argument; the necessity-of-error argument; the pursuit-of-truth argument; and the synthetic truth argument. In addition, he provides responses to criticism of these arguments. After presenting these arguments, Mill claims that since people receive the protection of society, they owe certain conduct in return. Thus he does not support unbridled freedom of expression without any limits. The limitation he places on free expression is "one very simple principle", now commonly called the Harm Principle,

which states that the only purpose for which power can rightfully be exercised over any member of a civilized community, against his will, is to prevent harm to others.

A variety of critics have put forward six main *counter-arguments* on Mill's stands on: inequality; self-regarding acts; individuality; epistemological complications; the downplaying of the harm principle; and the insufficiency of the harm principle.

Equality, immunity of self-regarding acts, liberating individuality, an epistemological stance, and the sufficiency of liberty (or the harm principle): these are the main elements of Mill's liberal thought on freedom of expression. His position is a tolerant, liberal one because it supports a liberal society where individuals tolerate differing and opposing opinions on all subjects. Thus different views on any subject are treated equally and dialogically where a pluralistic spirit works and where people are left with their choices after every opinion on any subject is allowed to be told and heard. The responses to six main counter-arguments here recognize Mill's milieu in understanding his transitional nature, the difference between his *positions* and *steps*, and between his long-term goals and short-term remedies. More important, appreciating his position on freedom of expression that he defends so rigorously and that he thinks a civilized nation should embrace is worthy of study.

Acknowledgments

I would like to express my gratitude to all those who made it possible for me to complete this work. I thank Assumption University and my father for handing me an opportunity to study in the first place and I thank everyone in my life who has supported me and acted as my mentor. Of course, I am deeply indebted to all professors, instructors, and teachers—in particular Assistant Professor Dr Warayuth Sriwarakuel, who has sacrificed his precious time to encourage me and act as my advisor to complete the writing of this thesis. I especially would like to thank my devoted mother for always being there for me. And a special thank you to Gary Tyler, my American editor, who transformed this paper by stressing the importance of professionalism and by reminding me that “They don’t give out awards for average work.” Lastly, I thank Destiny for making all of this happen.

Naprapa Chinchachokchai
August 2012

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Chapter I

Introduction

1.1 Scope and significance of the study

The issue of freedom of expression is one of the most significant and contentious issues related to human rights and freedom that we face today. It is as important in modern times as it was in centuries past. However, the nature and understanding of the issue has undergone changes because of modern political systems, media, information technology, globalization, and the interdependence of nations. Freedom of expression is unevenly understood through different cultures, thus we see different attitudes on the issue. Today the tension on the issue of freedom of expression is apparent between developed and highly democratic nations on the one hand and nations that are either less democratic or are in transition on the other hand. Globalization and information technology has brought the subject to the fore as acts of freedom of expression in any part of the world cause ripples and storms across the globe. In fact, the right—and moral duty—of expressing one's thoughts truthfully is acknowledged by all cultures and nations, but in practice such freedom is a luxury in some societies. For example, speaking the truth is supposedly morally desirable in all nations, but in fact is sometimes not considered appropriate at certain times and under certain circumstances. People often don't say what they mean or mean what they say: They sometimes hide their thoughts, express them indirectly, or use ambiguous metaphorical language that can produce different meanings and conflicting interpretations. In short, there is always something contextual or

circumstantial for a speaker, which in several ways affects the act of expression.

More important, our modern times have led the issue of freedom of expression into a politically sensitive realm: its use, misuse, and abuse have made the issue politically strategic as well. Modern information technology means that freedom of expression and its widespread interpretation, which had been mainly cultural and local, is not so anymore. Besides globalization and free-market economies, cross-continental information exchange has turned the globe into a small village, resulting in the potential for a controversial statement made in any part of the world to cause serious repercussions in distant countries. The concern then becomes: What kind of freedom of expression is publicly defensible, politically tolerable, and legally enforceable? In addition, what limits should we place on freedom of expression and on what grounds can we justify them? In fact, the censorship of books, journals, movies, and newspapers in almost every part of the world demands serious analysis and discussion as it is a key element in this use of freedom of expression. Are lying, slander, defamation, libel, and violating privacy within the scope of freedom of expression? Furthermore, the issues of intended and unintended distortion of facts, and fictionalizing historical personalities that have a wider sensitive existence (such as religious personalities) are also important relevant issues. Should we use freedom of expression to gauge the progress of society and civilization? Do only some deserve to be called upon to express themselves or should everyone receive equal treatment? Should freedom of expression be related to the political progress of societies, their maturity in education, and their overall progress? Considering these various aspects of the issue may lead to some positions that are consistent in theory and at the same time practical and feasible.

After looking at this multifaceted issue, it is obvious that freedom of expression is matter of liberty in essence, but it cannot be solely a matter of unqualified liberty or liberalism. Liberty that promotes freedom of expression requires a qualified form on defensible grounds, recognizing practical necessities. After surveying ideas and positions on the issue, Mill's ideas on the subject appear preferable because they potentially offer a fair solution. In fact, he dedicated a complete work to liberty and mainly discussed freedom of expression throughout: his arguments are most convincing and his thorough treatment of the issue is impressive. Thus his ideas seem to deserve a critical study and due appreciation to reveal the underlying wisdom of his stand on the issue. A plausible interpretation of his thought is also needed to help us apply his claims on freedom of expression to a liberal ethos and towards greater individual welfare.

Freedom of expression is related to human liberty and rights and is epistemological in nature. It is related to human rights and freedom because freedom of speech is a human right and carries with it certain complexities, including the questions that always arise as to how much freedom, when, where, and for whom? The issue is also epistemological: How can we differentiate truth from falsehoods? Freedom of expression faces challenges when statements are attacked as being fictitious, misrepresentations, falsehoods, libel, distortions, etc. This aspect of the issue is troubling because it concerns a sense of responsibility, the morality of public discussion, and the use of language. And it is the use of language and stated 'facts' that reflect the claims of epistemological certitude of statements.

Because freedom of expression is crucially connected to media, cinema, the Internet, books, and journalism, in this research it is treated as a comprehensive term

to include *all* forms of expression. Actions that violate freedom of expression take different names such as *ban*, *suppression of speech*, and *censorship*, but are commonly known as censorship. Thus ‘censorship’ here is a comprehensive term, including every act that suppresses freedom of expression in some way. *The Columbia Encyclopedia* defines ‘censorship’ this way:

Official prohibition or restriction of any type of expression believed to threaten the political, social, or moral order. It may be imposed by governmental authority, local or national, by a religious body, or occasionally by a powerful private group. It may be applied to the mails, speech, the press, the theater, dance, art, literature, photography, the cinema, radio, television, or computer networks (2007, p. 9313).

1.2 Background

The debate on freedom of expression and censorship go hand in hand when discussing either of them and the struggle for freedom of expression is as old as the history of censorship. The history of freedom of expression dates back to ancient societies such as those of Israel and China where censorship was a legitimate instrument for regulating the moral and political life of the population. In China, the first censorship law was introduced in 300 AD (Newth, 2001, paragraph 1). The Greek era shows that there was space for the freedom of expression as witnessed in Athenian direct democracy. Furthermore, the history of Greek philosophy shows a clear distinction between *doxa* (opinion) and *episteme* (knowledge): Greek philosophers—particularly Socrates and Plato—were not just interested in proposing their views, but were in the same spirit interested in listening to *opposing* views. This trend in dialectics is clearly present in Plato’s written dialogs. Human history since ancient times on the issue of freedom of expression is rich with illustrations of free speech

and censorship, but it is beyond the scope of this research to go into it in detail. Nevertheless, a historical timeline of the issue highlighting events that brought about revolutionary developments and progress is unavoidable ...

David Smith and Luc Torres (2006) have given a historical timeline of freedom of expression which is followed here but with additions, deletions, and elaborations as appropriate. To brief the long history of the issue, the Greek playwright Euripides (480 - 406 BC) defended the true liberty of the freeborn: the right to speak freely. Later the most famous case of censorship in ancient times was that of Socrates who was sentenced to drink poison in 399 BC for his so-called corruption of youth and his acknowledgment of unorthodox divinities. Skipping over medieval times, which was mostly a time of religious supervision of freedom of expression, in 1215 the Magna Carta (also called the Magna Carta Libertatum, or the Great Charter of Freedoms) was signed in England and was regarded as the cornerstone of liberty in England. The other related development accelerating freedom of expression was the invention of the printing press by Gutenberg in 1455. Later, in 1516, Erasmus defended free speech in *The Education of a Christian Prince*. The well-documented suppression of freedom of expression is popularly ascribed to the Inquisition. In 1633, Galileo Galilei was tried as a heretic after claiming that the sun did not revolve around the earth.

English history shows that it was John Milton who, in 1644, boldly defended freedom of expression in a speech entitled "Areopagitica" that he delivered in the parliament. Milton argued against the use of censorship because he believed that man makes rational choices between good and evil, so his defense of freedom of expression is rationalistic. He came up with the notion of "the marketplace of ideas" –

that truth will eventually emerge from a free context of opinions (1907). A later outstanding philosopher was John Locke, who had much in common with Milton since both were concerned with religious issues. In 1689, Locke published *Epistola de Tolerantia*, translated into English as *A Letter of Toleration*, emphasizing religious tolerance and tolerance of others' opinions. Furthermore, he believed that rationality would lead to truth. In 1689, in England, the Bill of Rights granted "freedom of speech in Parliament" after James II was overthrown and William and Mary became co-rulers. In the same period, French philosopher Voltaire (1694-1778) also defended freedom of expression through his many works. He authored several works denouncing any form of religious fanaticism that persecutes so-called heretics, also decrying the power of a clergy that perpetuated evil and suppressed the capacity of individuals to think for themselves (Ishay, 2007, p. 95). In 1789 "The Declaration of the Rights of Man", the fundamental document of the French Revolution, provided for freedom of speech and similarly only two years later (in 1791) the First Amendment to the US Constitution as part of the "Bill of Rights" guaranteed four freedoms: freedom of religion, speech, the press, and the right to assemble. Along with the favorable legislation and intellectual defense of freedom of expression, a well-elaborated defense of freedom of expression came in 1859 when Mill penned *On Liberty*, which emphasized individuality and the rights of individuals. His main concern was supporting freedom of expression as a civil and social liberty against government suppression and the "tyranny of majority". He argued for open political discourse and saw it as a good prerequisite for intellectual and social progress, also developing the notion of the Harm Principle—that each individual has the right to act as he wants so long as the actions do not harm others.

According to John Keane (1991, pp. 11-20), the important philosophers promoting freedom put forward four types of arguments:

- Milton's theological arguments based on God-given human reason
- Locke's individual rights-based arguments
- Bentham's theory of utilitarianism, which holds that censorship of public opinion is a license for despotism and is contrary to the principle of maximizing the happiness of the governed, and
- Mill's arguments guided by the idea of attaining truth through unrestricted public discussion among citizens.

In addition to these intellectual efforts, Isaiah Berlin differentiated between positive and negative liberty and defended negative liberty against positive liberty in a 1958 lecture entitled "Two Concepts of Liberty".

In 1948, the United Nations General Assembly unanimously adopted The Universal Declaration of Human Rights, which urges member states to promote human, civil, economic, and social rights—including freedom of expression and religion (UN General Assembly, Articles 18 and 19, 1966). Since the 1950s the status of freedom of the expression has remained mixed, with positive developments but with many setbacks as well. The movement has mainly met the greatest resistance either from certain political systems or from radical fundamentalist religious groups. However, freedom of expression—despite being recognized as a basic human right and with due acknowledgment under international law and in various constitutions—still finds itself caught between two extremes. On the one hand, it is exercised in such a way that all lines seem to have blurred in many developed Western countries; on the other hand, it is suppressed to the level of suffocation in many other countries. Thus

freedom of expression remains an open-ended, much-discussed issue. The open-ended nature of this issue reflects the variations in our political, cultural, and social systems.

1.3 Literature review

John Stuart Mill (1806-1873), British philosopher, economist, moral and political theorist, administrator, and Member of Parliament, was the most influential English-speaking philosopher and liberal thinker of the nineteenth century and his views continue to be influential today. The overall aim of his philosophy was to develop a positive view of the universe and the place of humans in it—one that contributes to the progress of human knowledge, individual freedom, and human well-being (Wilson, para. 1, 2007). His major works include *A System of Logic* (1843), *Principles of Political Economy* (1848), *On Liberty* (1859), *Utilitarianism* (1861), and *the Subjection of Women* (1869).

Mill's philosophy is characterized as liberal and utilitarian: he supported both utilitarianism and liberalism, though he claimed that his liberalism was based on the principle of utility. His famous works *On Liberty* and *Utilitarianism* profoundly elaborate on these related themes. However, his utilitarianism, which he inherited from Jeremy Bentham (1748-1832), is a more complex version of it. Mill's obsession with utilitarianism and liberalism led his contribution to political and social philosophy, but his treatment of freedom of expression is exclusively discussed in his *On Liberty*, which is his defense of liberalism.

On Liberty is a classical treatise on liberty and in particular a fierce opposition to government suppression of individual freedom. His goal is to protect the rights of individuals against the government and the "tyranny of the majority". The limitation

he allows on liberty is spelled out in his harm principle—that the good of society requires that individuals be allowed to hold whatever opinions they wish and to express these opinions if this does not harm others. He further pointed out that if society does not allow individuals to challenge widely held beliefs, these beliefs—even if true—can become ingrained prejudices. The foundation of the issue is liberty to express individuality, that individuality should be allowed to express itself, and that this contributes greatly to our personal happiness and to the wellbeing of society (1885, pp. 105-106).

Along with individuality, he also makes his position boldly clear on freedom of expression in the first chapter of *On Liberty* (p. 25):

This, then, is the appropriate region of human liberty. It comprises, first, the inward domain of consciousness; demanding liberty of conscience, in the most comprehensive sense; liberty of thought and feeling; absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral, or theological.

And in a footnote at the beginning of the second chapter, Mill makes this bold statement: “If the arguments of the present chapter are of any validity, there ought to exist the fullest liberty of professing and discussing, as a matter of ethical conviction, any doctrine, however immoral it may be considered” (p. 30).

These statements show that Mill’s position on freedom of expression is very clear and without any qualifications. He reinforces his position by stating that “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” (1885, p. 31). This clearly shows that his position is nondiscriminatory and is based on equality, with his arguments boiled down to three main points:

- Any opinion which is restricted may turn out to be true;
- Even false opinions may contain some grain of truth and should thus not be suppressed; and
- Even opinions that turn out to be true can degenerate into prejudices if not challenged; hence, true opinions should be challenged in public debate.

(These arguments are fully explored in *Chapter II*.)

To be clear: Mill did *not* support unbridled freedom of expression without any limits or restraints and thus proposed the harm principle in support of which he used an example of corn dealers (see section 4.2) to distinguish between *instigation* and merely expressing an *opinion* in the media.

Mill's position on liberty with his main emphasis on freedom of expression has been attacked by a host of critics including Gertrude Himmelfarb, James Fitzjames Stephen, C. L. Ten, John Plamenatz, Maurice Cowling, Shirley Letwin, Isaiah Berlin, and Paul Feyerabend. Of the *favorable* interpretations of his position, John Skorupski, John N. Gray, Alan Ryan, J. C. Rees, Joel Feinberg, Henry R. West, and David O. Brink are notable for their support. Some of these defenders, however, have pointed to what they see as insufficiencies in Mill's thought. These kinds of observations and reservations have been included in the six main counter-arguments in *Chapter III*.

Chapter IV analyzes the arguments and interpretations made in the third chapter. By dealing with relevant themes, it is argued that Mill's freedom of expression is a tolerant liberal position that is progressive in essence and upholds a dialogical pluralistic spirit. The chapter begins with an epistemological defense of

Mill's arguments for freedom of expression and explains that Mill's thought is progressive. In addition, the chapter resolves the contradiction between the rights of elites and commoners to freedom of expression.

Chapter V concludes the research to support and justify the thesis statement; further recommendations for research on the topic are given as well.

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1.4 Research question and focus

The research question concerns the above arguments and focuses on responding to these arguments critically. For an overall assessment of Mill's thought, this thesis statement is used:

Mill's freedom of expression is a tolerant liberal position that is progressive in essence and it upholds a dialogical pluralistic spirit.

This pluralistic spirit acknowledges diversity, with pluralism as a guiding principle to allow the peaceful coexistence of different interest, convictions, and lifestyles. The critical part of the research is focused on justifying the thesis statement to give meaning and purpose to Mill's thought on freedom of expression—what critics describe as inconsistent, transitional, and confused.

1.5 Research Method

John Stuart Mill's primary sources, especially *On Liberty* (1885), are studied to analyze his justification of freedom of expression. Arguments against Mill are analyzed and evaluated.

1.6 Research objectives

- To analyze Mill's justification of freedom of expression
- To analyze and evaluate arguments against Mill's justification of freedom of expression



Chapter II

John Stuart Mill's freedom of expression

This chapter aims to set forth Mill's arguments on freedom of expression. Initially, Mill's general thought is explored in brief to understand his arguments in the more all-encompassing light of his philosophy. The succeeding sections explore his liberalism since it is intertwined with his position and arguments on freedom of expression. Finally, Mill's exclusive arguments in support of freedom of expression are explicated with essential details.

2.1 Mill's overall philosophy

Among the nineteenth-century English-speaking philosophers it is impossible not to mention this British legend of liberal thinkers. Mill was an economist, moral and political theorist, administrator, and member of the British parliament. He had been instructed and guided by his father, James Mill, from childhood on philosophy, logic, and classical languages. His father was an intellectual who was a close friend and follower of Bentham's and gave his son a formidable education, starting him on Greek (at age 3) and Latin (at age 8). His expertise in reading Greek and Latin classics had given him more in-depth understanding of the historical background of logic and math. He was also prepared to accept the central tenets of philosophical radicalism—a set of economic, political, and philosophical views shared by a group of reformers who regarded Bentham and James Mill as their intellectual leaders. Besides his father's influence, Mill's relationship with Harriet Hardy Taylor, the author of *The Enfranchisement of Women* (1851), was also intellectually stimulating. Her

collaboration on all his work would have a profound impact on his work and thought. Two decades of friendship led to their marriage after the death of Taylor's husband in 1852. Until 1826, Mill's thought was completely controlled by his father, but in 1826 he suffered severe depression for months, which led him to reconsider the doctrines he had been raised with and to seek other than Benthamite sources of thought. Mill came to admire both the Saint-Simonians and the Coleridgeans and attempted to incorporate into his own thinking what he considered sound in their doctrines. He reached a philosophical position that seemed to him far more adequate than the older Benthamism and never again changed his philosophical views so radically.

In addition to Mill's contribution to various issues and branches of philosophy, his views on empiricism, moral philosophy, political theory, and political economy were influential in shaping new trends of thought in these fields. With all of Mill's knowledge and being an empiricist with a strong background in math and logic, he extensively elaborated on his views in *A System of Logic, Ratiocinative and Inductive* (1843). His moral philosophy was a modified version of utilitarianism, a moral theory proposed by his father and Bentham. He proposed these ideas in *Utilitarianism* (1861). His contributions in political theory and social philosophy are contained in *On Liberty* (1859), *Principles of Political Economy* (1848), *Considerations on Representative Government* (1861), and *The Subjection of Women* (1869) (Schneewind, 1967, pp. 220-232). Mill's views continue to be influential today. The overall aim of his philosophy was to develop a positive view of the universe and our place in it that helps advance human knowledge, individual freedom, and well-being (Wilson, para. 1, 2007).

2.2 Mill's freedom-of-expression philosophy

Mill's laid out his philosophy in *On Liberty*, which is generally treated as his account of liberalism and contains his position and arguments on freedom of expression. The definition of liberty is clear from the work: to strive for widening the meaning of freedom of expression to avoid violating people's rights and liberty. His work mirrors his eagerness to protect and nurture individuality that he believed would produce entirely positive effects for liberty, individuals, and society. Specifically, *On Liberty* shows some connections between liberty for social advancement, the ability to encourage a progressive society, and the avoidance of social stagnation if we allow individuality to develop without fear of social control or the compulsion of social conformity.

Mill's philosophy of freedom of expression is the focus of his liberalism and it seems that for liberalism freedom of expression is the main component. He elaborated on the utilitarian basis for freedom of expression in this way:

I regard utility as the ultimate appeal on all ethical questions; but it must be utility in the largest sense, grounded on 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. If any one does an act hurtful to others, there is a *prima facie* case for punishing him, by law, or, where legal penalties are not safely applicable, by general disapprobation (1885, p. 23).

Clearly, his position on freedom of expression is not based on unqualified liberalism, so it seems that we must understand Mill's own brand of liberalism before understanding his particular position and arguments on freedom of expression. This requires clarifying his positions and statements with a composite look at the big

picture rather than dealing with his arguments in a fragmented manner. Therefore, the succeeding sections explain his liberalism, with important clarifications.

2.2.1 Mill's liberalism

Mill's liberalism is the subject of *On Liberty*, a classical treatise on liberty and a particular position that does not support any government suppression of individual freedom. His objective was to protect the rights of individuals against government and the “tyranny of the majority”. He began by stating that the subject of *On Liberty* is Civil or Social Liberty—the nature and limits of the power which can legitimately be exercised by society over the individual (1885, p. 7). When looking at how political conditions develop for individuals he remarked that ultimately individuals must reach the stage where their leaders, who must be able to represent their interests, serve them. He considered human progress through different political systems—particularly the democratic systems. While deliberating on representative government in a democratic system Mill observed that it seemed quite safe to give those in power total discretion to rule and that the danger of being tyrannized by the people was nil. The people empowered those leaders who arrived without power by authorizing them to rule. The minority may be oppressed intentionally by the majority, and Mill's “tyranny of the majority” is now generally included among the evils which society must guard against. Like other tyrannies, the tyranny of the majority was—and is—still dreaded, chiefly operating through the acts of public authorities (p. 12). Oppression of the minority by the majority is becoming acceptable by noted thinkers even today. Mill believed that tyrannizing society is possible even without ideal political conditions and that the force of public opinion could suffocate individuals

holding different opinions, potentially creating more disagreement than any law ever could. Therefore, he argued (p. 13) that individuality must be secured against the predominant public opinion *and* against the influence of society towards others, saying that

there needs [to be] protection also against the tyranny of the prevailing opinion and feeling; against the tendency of society to impose, by other means than civil penalties, its own ideas and practices as rules of conduct on those who dissent from them; to fetter the development, and, if possible, prevent the formation, of any individuality not in harmony with its ways, and compel all characters to fashion themselves upon the model of its own. There is a limit to the legitimate interference of collective opinion with individual independence; and to find that limit, and maintain it against encroachment, is as indispensable to a good condition of human affairs, as protection against political despotism.

In short, Mill strongly favored liberty and strongly opposed governmental action to limit that freedom, except where such liberty harms others, which led to the limits in his harm principle. He divided the sphere of human liberty into three categories (or domains) and demanded that all free societies respect them:

- The domain of the conscience and liberty of individual thought and opinion
- The planning of one's own life, and the liberty of tastes and pursuits, and
- The liberty to unite with other consenting individuals for any purpose that does not harm others.

These liberties reflect the idea that true freedom means pursuing one's own good in one's own way, as long as it does not prevent others from doing the same. These ideas directly contradict society's increasing tendency to demand conformity, and Mill believed that unless moral conviction reversed this trend the demand for conformity would only increase (1885, pp. 24-25). After explaining the three domains of human liberty, Mill (p. 26) made this position statement on his liberalism:

No society in which these liberties are not, on the whole, respected, is free, whatever may be its form of government; and none is completely free in which they do not exist absolute and unqualified. The only freedom which deserves the name, is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it. Each is the proper guardian of his own health, whether bodily, or mental or spiritual. Mankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest.

This general description of Mill's liberalism clearly shows his main concerns: freedom of expression as it relates to an individual in expressing himself and a group of people in exercising their roles in a democratic political process. With his liberalism as a backdrop, his treatment of freedom of expression is explained in this chapter.

2.3 Mill and freedom of expression

Mill's position on freedom of expression was central to his liberalism as expounded in *On Liberty* based on the three domains mentioned above: freedom of expression; individuality; and peaceful gathering. The first two are interrelated: Freedom of expression relates directly to expressing individuality in a special way that may not be consistent with contemporary social mores. He made his position boldly clear on freedom of expression in the very first chapter of *On Liberty* (p. 25):

This, then, is the appropriate region of human liberty. It comprises, first, the inward domain of consciousness; demanding liberty of conscience, in the most comprehensive sense; liberty of thought and feeling; absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral, or theological.

In a later footnote at the beginning of the second chapter (p. 30) he said, "If the arguments of the present chapter are of any validity, there ought to exist the fullest liberty of professing and discussing, as a matter of ethical conviction, any doctrine,

however immoral it may be considered.” Thus his freedom of expression is related to two main points that are essential in expressing thoughts or speech:

- The liberty of opinion, and
- The freedom of individuality.

Liberty of opinion. Mill argued that those in power must not curtail the expression of opinions where it would cause no demonstrable harm to others and explained that “if the opinion is right, [we] are deprived of the opportunity of exchanging error for truth; if wrong, [we] lose what is almost as great a benefit – the clearer perception and livelier impression of truth produced by its collision with error” (1885, p. 32).

Liberty to express individuality. Mill also believed that in a strictly controlled society where the powers-that-be restrain different beliefs if, by chance, those different beliefs turned out to be true, this would disadvantage society. Since the foundation of the issue is liberty to express individuality, he believed that we should be allowed to express our individuality and that such expression contributes greatly to our personal happiness and to the well-being of society. A particular belief held by an individual might be unacceptable and unexpected, but this is all part of demonstrating individuality. He also argued that when individuals fulfill their unique potentials many benefits could emerge:

Human life becomes rich, diversified, and animating, furnishing more abundant aliment to high thoughts and elevated feelings, and strengthening the tie that binds every individual to the race, making the race infinitely better worth belonging to. In proportion to the development of his individuality, each person becomes more valuable to himself, and is therefore capable of being more valuable to others (pp. 105-106).

Mill also held that although other people may give us advice on how we should act, we ourselves should make the final call on what to do. Furthermore, the nature of freedom is that individuality should be allowed to express its uniqueness.

2.4 Mill's arguments for freedom of expression

Mill offered one of the first and most famous liberal defenses of free speech in proposing full liberty for professing and discussing any doctrine regardless of any ethical concerns (1885, p. 30). This was clearly a very strong defense of free speech, with Mill telling us that any doctrine should be allowed to see the light of day no matter how immoral it may seem to others. In addition, he advocated the fullest liberty on all subject matter—"absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral or theological" (p. 25).

This defense of freedom of expression is solid, but he suggests that we need some rules of conduct to regulate the actions and words of members of a political community. His limitation on free expression is "one very simple principle", now usually referred to as the Harm Principle.

Mill put forth three reasons why we should expose our opinions to the challenge of a public debate:

- Any opinion that is restricted may turn out to be true
- Even false opinion may contain some grain of truth and thus should not be suppressed, and
- Even opinions that are true can degenerate into prejudices if not challenged.

He then made *four arguments* to support this position and responds to possible objections to these arguments:

- 1) The *human fallibility argument* states that human fallibility makes it necessary that freedom of expression be allowed to avoid any suppression of true beliefs.
- 2) The *necessity-of-error argument* claims that even if a popular opinion is true, without debate it will become “dead dogma” and that without freedom of discussion one cannot appreciate the full meaning of the opinion.
- 3) The *pursuit-of-truth argument* claims that if we do not debate a true opinion the meaning of the opinion itself may be lost.
- 4) The *synthetic truth argument* holds that where there are conflicting doctrines the most common case may be that instead of one being true and the other being false, the truth lies somewhere in between.

2.4.1 The human fallibility argument

Mill's *first argument* opposed silencing opinions as he argued that human fallibility requires that freedom of expression be realized to avoid any suppression of true beliefs (1885, p. 32). Since we are fallible, we do not have the right to make decisions for others or suppress opposing opinions. This argument is based on the notion of human fallibility—that we are capable of making mistakes and being wrong: “We can never be sure that the opinion we are endeavoring to stifle is a false opinion; and if we were sure, stifling it would be an evil still” (p. 32). And since we can all make mistakes, it is reasonable not to restrain any opinion because opinions assumed to be *false* now that are suppressed could become *true* in the future. He illustrated his point by using famous historical examples such as the life of Socrates and Jesus to

prove that we are fallible and can make mistakes leading to prosecution and even execution.

Mill reminded us that even the most highly respected intellectuals and some of the wisest figures in history, such as the Roman emperor Marcus Aurelius, made catastrophic mistakes (p. 46). He argued that if extraordinary people have made disastrous mistakes, ordinary and average people are more likely to do so, claiming that all of us should have a chance to make mistakes equally. We could also be mistaken even though others generally accepted whatever we believed throughout our lifetime. He explained that "If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error" (1885, p. 32).

After presenting his first argument, Mill addressed *four possible objections* to his reasoning and responded to them...

First, the objection that although those in power may be wrong, those who engage in mistaken acts of suppression are often sincere and believe they are right to curtail expression. When people are sure that they are right it would be cowardly for them not to act on their beliefs and thus allow doctrines that they believe might be harmful to others. Mill's response was that although we claim that suppressed opinions may be false, since we are fallible the chance to be free to discuss them would be the best way to ensure that they *are* false. Without freedom of discussion we have no power to say what is false and what to believe since we implicitly always presume ourselves infallible when claiming that an opinion is false. However, as

fallible beings it is not logical to believe that opinions are true unless we can exercise freedom of expression. For Mill (p. 36), if we are to rest our beliefs on something, rational freedom of expression is essential: "Complete liberty of contradicting and disproving our opinion is the very condition which justifies us in assuming its truth for purposes of action: and on no other terms can a being with human faculties have any rational assurance of being right."

Second, the objection that says governments have a duty to uphold certain beliefs thought to be important for the well-being of society. Therefore, it is the duty of governments—and individuals—to form the truest opinions possible, to form them carefully, and never to impose them on others unless they are quite sure of being right. However, when they are sure, it is not conscientiousness but cowardice to shrink from acting on their opinions and to thus allow doctrines that they honestly think threaten the welfare of society. Mill's response was that there is a great difference between on the one hand presuming an opinion to be true because it has not been refuted despite opportunities to contest it, and assuming its truth so as not to permit it to be refuted on the other hand. Total liberty to contradict and disprove our opinions is what justifies us in assuming that they are for purposes of action, and on no other terms can a being with human faculties have any rational assurance of being right (1885, p. 36).

Third, the objection that truth may be justifiably persecuted because persecution is something that truth should have to face, but that truth will always survive. Mill's response was that we cannot justify accepting that persecution will not suppress the truth forever and that truth will always prevail regardless. He pointed out that history has shown that expressing the truth can result in persecution and that this

is harshly unfair to those who are actually persecuted simply for holding true ideas. By discovering the truth, these people had performed a great service to humanity and supporting their persecution suggests that their contributions were not truly being valued. He also contended that is wrong to assume that "truth always triumphs over persecution", saying, "It may take centuries for truth to reemerge after its suppression" (p. 49).

Fourth, the objection that since we no longer actually put dissenters to death, no true opinion will ever be eliminated. Mill's response was that the absence of freedom of expression also creates an atmosphere in which men fear to pursue their opinions to unorthodox and socially unacceptable conclusions. Instead, they will dilute their beliefs to suit the existing orthodoxies, leading to an atmosphere of intellectual timidity and conformity where no new true beliefs will emerge to challenge prevailing views. He argued that societal intolerance causes people to hide their views, stifling intellectualism and independent thought. Stifling freethinking obscures truth, regardless of whether or not a particular instance of freethinking leads to false conclusions.

2.4.2 The necessity-of-error argument

Mill's *second argument* was that if an 'acceptable' opinion is not debated, even though it may be true, it should be called "dead dogma":

However unwillingly a person who has a strong opinion may admit the possibility that his opinion may be false, he ought to be moved by the consideration that however true it may be, if it is not fully, frequently, and fearlessly discussed, it will be held as a dead dogma, not a living truth" (1885, p. 60).

If truth is simply a prejudice, then people will not fully understand it, and will not understand how to refute objections to it. Dissent, even if it is false, sustains truth.

Once again, Mill does not value simply *having* true opinions, but the *way* we hold that truth: He wanted people to hold rational opinions and to understand the significance of these opinions and their grounds for holding them, along with a willingness to change or modify them in light of new arguments and evidence. He also held that espousing a true opinion without reasonable evidence or arguments to support it was nothing more than a bias (p. 61).

The second argument also held that there is no way people can truly understand the real meaning of an opinion without freedom of discussion. True beliefs would be held as a “dead dogma”. By this Mill meant that the person who held such a belief would not be properly influenced by it and would not fully appreciate what he had committed to when he accepted the opinion. At the same time, accepting this belief would prevent him from accepting other beliefs that appear to oppose it, but may in fact be no more than complementary to it, or perhaps a refinement of it, or even completely unrelated to it. The absence of freedom of discussion also prevents us from knowing “the grounds of the opinions”. Men would embrace a belief quite independently of the balance of the arguments and evidence for and against it. Their belief would thus be rigid and dogmatic and they would not be able to adapt it to changing circumstances. For Mill, knowing the core basis of an opinion would improve our wisdom and judgment, while the lack of freedom of discussion would only cripple those capabilities.

He then addressed *two potential objections* ... The *first potential objection* posits that just because we may act mistakenly in suppressing a true opinion, it does not follow that we should not act at all. His response was that if we base our beliefs on solid ground and others want to refute them using false claims, we should not restrain them just because we think

they might be mistaken. On this point, Mill replied:

There is the greatest difference between presuming an opinion to be true, because, with every opportunity for contesting it, it has not been refuted, and assuming its truth for the purpose of not permitting its refutation. Complete liberty of contradicting and disproving our opinion, is the very condition which justifies us in assuming its truth for purposes of action; and on no other terms can a being with human faculties have any rational assurance of being right (1885, p. 36).

His reply attempts to undercut the claim that we can have unquestioned beliefs and that our opinions are right even though freedom of discussion is lacking:

When we consider either the history of opinion, or the ordinary conduct of human life, to what is it to be ascribed that the one and the other are no worse than they are? Not certainly to the inherent force of human understanding; for, on any matter not self-evident, there are ninety-nine persons totally incapable of judging of it, for one who is capable; and the capacity of the hundredth person is only comparative; for the majority of the eminent men of every past generation held many opinions now known to be erroneous, and did or approved numerous things which no one will now justify" (p. 36).

He concluded: "To call any proposition certain, while there is anyone who would deny its certainty if permitted, but who is not permitted, is to assume that we ourselves, and those who agree with us, are the judges of certainty, and judges without hearing the other side" (p. 39).

The *second potential objection* posits that it is unnecessary for the general population to seek and become acquainted with opposition to their beliefs since this is the duty of philosophers or theologians. Mill's response (1885, p. 66) was that opposition to certain beliefs would not make them weaker in the arena of free discussion because those who refuse to accept will hear these objections too. Evidence showed that there were differences between commoners and intellectuals. In the Catholic Church, these two groups are very different, but for Protestants it was similar to the present time because they considered individuals responsible for their own choices without any distinction between ordinary citizens and intellectuals.

2.4.3 The pursuit-of-truth argument

Mill's *third argument* emphasized the value of liberty of thought and argument. He reminded us that in the history of ethical and religious beliefs when true opinions were not challenged they lost their vivid strength. In the case of Christianity, Mill reminded us that people's behavior does not necessarily reflect their beliefs, that it is possible for believers not to completely grasp the true meaning of certain beliefs, and that mistakes might occur from their misinterpretation. He then elaborated on this point:

Yet it is scarcely too much to say that not one Christian in a thousand guides or tests his individual conduct by reference to those laws. The standard to which he does refer it, is the custom of his nation, his class, or his religious profession. He has thus, on the one hand, a collection of ethical maxims, which he believes to have been vouchsafed to him by infallible wisdom as rules for his government; and on the other, a set of every-day judgments and practices, which go a certain length with some of those maxims, not so great a length with others, stand in direct opposition to some, and are, on the whole, a compromise between the Christian creed and the interests and suggestions of worldly life. To the first of these standards he gives his homage; to the other his real allegiance (p. 70).

2.4.4 The synthetic truth argument

Mill's *fourth argument* on freedom of opinion relates to antagonistic theories: ordinarily one opinion may be true and another may be false, but he would say that truth might lie in the middle somewhere. One truth can replace one portion of another and a new truth can be revealed in time. Opposing unacceptable or unpopular opinions may contain some partial truths and deserve to be heard because they may contain what is called a "fragment of wisdom". If we are open-minded, we should encourage any fact that contradicts popular belief instead of ignoring it simply because it is unpopular. According to Mill, we can see "by admitted and multiplied

examples, the universality of the fact that only through diversity of opinion is there, in the existing state of human intellect, a chance of fair play to all sides of the truth” (1885, p. 82).

Mill criticized Christianity for not allowing its followers to challenge any beliefs. For instance, Christians must obey their beliefs without any disagreement: It is completely unacceptable if anyone opposes these beliefs. He saw this Christian morality as still incomplete and one-sided. It seemed as if it had been planned for such incompleteness and that Christians must supply the missing pieces based on worldly realities that cannot be ignored. Mill explained how we could complement the foundation of fallibility by various different opinions in truly seeking the truth:

What little recognition the idea of obligation to the public obtains in modern morality, is derived from Greek and Roman sources, not from Christian; as, even in the morality of private life, whatever exists of magnanimity, high-mindedness, personal dignity, even the sense of honor, is derived from the purely human, not the religious part of our education, and never could have grown out of a standard of ethics in which the only worth, professedly recognized, is that of obedience (p. 85).

2.5 Limits on freedom of expression

Mill explained that it is the duty of society to give people protection, but that they must reciprocate by being well behaved—that individuals must not compromise the interests of others because they have certain rights. We can censure individuals by public opinion, though not by law, for harming others while not violating their rights. Thus society has jurisdiction over every aspect of human behavior that effects prejudicially the interests of others: That's when the law has authority to control behavior that might cause damage to those interests, and

everyone who receives the protection of society owes a return for the benefit, and the fact of living in society renders it indispensable that each should be bound to observe a certain line of conduct towards the rest. This conduct consists, first, in not injuring the interests of one another; or rather certain interests, which, either by express legal provision or by tacit understanding, ought to be considered as rights; and in each person's bearing his share (to be fixed on some equitable principle) of the labors and sacrifices incurred for defending the society or its members from injury and molestation (1885, pp. 125-126).

So Mill did not support unchecked, unbridled freedom of expression without any limits, believing that self-protection is the only excuse that individuals or society as a whole can use to interfere with individual liberty. Laws and public opinion should not be coercive unless they serve the common good. Force can be justified whenever an individual becomes a threat to others, but "Over himself, over his own body and mind, the individual is sovereign" (p. 21). He proposed the harm principle as a way of keeping people in line under controlled circumstances where rules are necessary.

2.5.1 The harm principle (liberty principle)

Mill (p. 94) conceded that in certain situations allowing free speech can be unsafe and that "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." Under the harm principle action must be seen as negative incitement and sometimes punishment might be called for, but only assuming no hidden agendas. In specific cases, punishment may be appropriate, but only if we can establish a probable connection between an overt act and the instigation (1885, p. 30).

For Mill, protection for freedom of expression was not about whether an idea is being spread widely, whether it is true or false, or whether it is a personal or private

matter. Rather it was about how freedom of expression and an individual's conduct might affect others. It is not a requirement that freedom of expression be absolute. Instead, the emphasis is on a strong dislike of trying to suppress any unacceptable beliefs. If no harm results, then suppression is not justified.

2.6 Beyond the liberty and harm principles

Two key principles in Mill's writing also appear in the final chapter of *On Liberty* (p. 157) ... *First*, that it is not our responsibility to be in charge of society for actions that don't concern others, but what society can do is to show that certain actions are inappropriate or unacceptable just through "advice, instruction, persuasion, and avoidance by other people if thought necessary by them for their own good". *Second*, if an individual causes harm to others, that individual must be held responsible for it and punishment is appropriate using both social and legal means. To illustrate a case of action causing harm to others, Mill used this example: in a job competition, someone wins and another loses, thus surely causing harm to the loser, but it is not correct to punish the winner because it does not affect society in general, just as in the case of free trade. He summed up these two principles this way:

The maxims are, first, that the individual is not accountable to society for his actions, as far as these concern the interests of no person but himself. Advice, instruction, persuasion, and avoidance by other people, if thought necessary by them for their own good, are the only measures by which society can justifiably express its dislike or disapprobation of his conduct. 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 (p. 157).

He then turned to the issue of whether people should be free to “counsel or incite” others to act in a certain way, meaning instigation to an act that will not harm others: His position was that for the sake of exchanging opinions, this must happen.

2.7 Conclusion

This chapter explained that Mill's views on freedom of expression cannot be fully understood without understanding his liberalism because his position on freedom of expression is grounded in his liberalism—liberalism of a particular type, opposing government suppression of speech and the tyranny of majority. The focus of his liberal theory is freedom of expression and individuality, which in fact are related. His position on freedom of expression is very strong as he defends absolute freedom of expression on all matters.

After presenting his arguments, Mill claimed that since people receive the protection of society, they owe certain conduct in return. Thus he did not support unchecked freedom of expression without any limits. The limitation he placed on free expression in his harm principle states that the only purpose for which those in power can rightfully exercise that power over any member of a civilized community, against his will, is to prevent harm to others. He concluded that his thesis can be broken down into *two basic principles* ... *First*, people are not accountable to society for actions that only concern themselves and that the only means society has to express disapproval of such actions is through advice, instruction, persuasion, and avoidance by others if they think it necessary for their own good. *Second*, the individual is accountable for actions that harm others, and society can punish a person socially or legally as appropriate for such actions.

Chapter III

Counter-arguments: Objections and interpretations

This chapter discusses objections to Mill and interpretations of his thought on freedom of expression. Himmelfarb, Stephen, Ten, Plamenatz, Cowling, Letwin, Berlin, and Feyerabend have criticized his views on liberty as it relates to freedom of expression. Others who have given favorable interpretations of Mill's views include Skorupski, Gray, Ryan, Rees, Feinberg, West, and Brink. The *six main counter-arguments* relate to epistemology, self-regarding acts, individuality, equality, self-interest, and harm to others:

- 1 The argument that Mill defends inequality among people in expressing themselves, which is contrary to his position in *On Liberty*: Himmelfarb, Cowling, and Letwin have pointed out this seeming contradiction.
- 2 The argument that not all acts are self-regarding and that this is contrary to the distinction Mill makes between acts: Stephen has argued along these lines.
- 3 An argument on individuality that Mill is confused between freeing an individual and at the same time recommending a particular lifestyle for him as well as recommending a free environment for developing individuality, which is unnecessary: Berlin has identified this seeming problem.
- 4 An argument on epistemology regarding freedom of expression intended

to show epistemological complications in Mill's arguments for freedom of expression: Feyerabend has a critical argument on this.

- 5 An argument downplaying use of the harm principle relative to freedom of expression: Skorupski has put forward this argument.
- 6 An argument on the insufficiency of the harm principle in limiting freedom of expression from Feinberg who, although defending the harm principle, remained unsatisfied and proposed the Offence Principle.

These counter-arguments and interpretations are elaborated on below, along with how they relate directly to Mill's position on freedom of expression as dealt with in the preceding chapter.

3.1 Inequality

Mill's thought on liberty—and particularly on freedom of expression—is based on equality among people without discrimination. His liberal thinking means that he opposed the tyranny of the majority in the political arena and believed everyone needs to be secured against such tyranny. However, Himmelfarb, Cowling, and Letwin have argued that Mill's claim is not what he himself believed or put forward in his other works and in his political thought.

First, Himmelfarb (1974, p. 304 fn) criticized an apparent contradiction in Mill's position, claiming that he treated people unequally in some works and equally in *On Liberty*. She illustrated her position by examples, comparing Mill's proposal on proportional representation voting and plural voting in his *Representative Government and Thoughts on Parliamentary Reform* (1859) with his ideas in *On Liberty*. The

argument is that in his earlier work Mill tried to convince us that the voices of people from different backgrounds were not worth considering, but that in *On Liberty* he contradicts himself by saying that *every individual* can have different opinions and his own way of expressing his uniqueness and that every voice is equal and deserves consideration.

Second, Cowling reinforced this argument by suggesting that Mill's concept of individuality is for selected people. Cowling's arguments (1963, p. 104) show an intense denial of Mill's concept on individuality with the accusation that "it is similar to moral totalitarianism" and that it seemed to imply unbearable concealment, carefully done by the writer's intellect. In Cowling's comprehensive attack of *On Liberty*, he claimed that Mill had only superficially maintained the appeal of individual liberty and that what Mill was really trying to defend was only fine and noble individuals. He argued that human liberty seemed less valuable or important with Mill's theory instead of reaching its highest potentiality. From Cowling's study of a long timeline in Mill's life—from the early essays of 1831 on *The Spirit of the Age* to his Inaugural Address to the University of St. Andrews (delivered in 1867), and the posthumously published *Three Essays on Religion*—he concluded that the aim of the work was basically to promote privilege for the few. For example, Cowling argued that "*On Liberty* ... is designed to propagate the individuality of the elevated by protecting *them* against the mediocrity of opinion as a whole" (1963, p. 104).

Third, along similar lines, Letwin (1965, p. 8) argued that Mill was a divided philosopher—divided between liberalism for all and state-paternalism under the guidance of a few. She supported Cowling's position on Mill to some degree, but was a little less extreme than Cowling in affirming Mill's views on individuality. Because

Mill himself could not be decisive between the two inconsistent extremes, Mill according to her

marked the birth of the “liberal intellectual”, so familiar today, who with one part of him genuinely values liberty and recognizes the equal right of all adults to decide their lives for themselves, but with another wants the government, under the direction of the superior few, to impose what he considers the good life on all his fellows (1965, p. 8).

Mill's approval of the educated and intellectual elite may initially appear, once again, to support elitism. Letwin (1965, p. 248) went further than Himmelfarb in this regard, believing that Mill was putting forth a claim for his own membership or leadership of that elite. For Letwin, elitism appears to mean the right of the few to rule over the many and the subservience of the many to the few.

These three counter-arguments suggest that Mill did not always believe in the equality of individuals despite what he said in *On Liberty*. Therefore, Mill was inconsistent, supporting the elite over commoners, and supporting the elevated over ordinary citizens.

3.2 Self-Regarding acts

On freedom of expression, Mill distinguishes between acts affecting only the actor and acts affecting others. He thus argued that only speech affecting or causing harm to others needed to be restricted. After showing the importance of the relationship between personal liberty and the social-legal obligation, Mill made it clear that for those liberal acts where only the actor himself is affected without causing any harm to others, the person's freedom should not be curtailed. But he also made it clear that where individual acts hurt others the consequences should be

accepting punishment by public opinion, not by law. The exception: for those acts harming and causing damage to the interests of others, society should allow authority to take charge if such interference enhances the general welfare of the people. However, there is no reason to consider such an option if an individual's conduct doesn't affect the interest of others—or needs not affect others unless they encourage it. In these cases citizens should enjoy perfect freedom—legal and social—to take action and stand the consequences (1885, p. 126).

Contrary to the above claim in which Mill makes it clear that some acts are purely self-regarding, Stephen argues in *Liberty, Equality, Fraternity* (1967) that we can't know this. These criticisms were leveled at Mill in 1873, fourteen years after *On Liberty* first appeared, and have influenced almost all later discussions of Mill's work (Rourke, 2001, p. 4). Stephen argues that Mill's principle of self-protection presupposes a distinction that we cannot intelligently make between *self-regarding* acts and *other-regarding* acts. His main argument is that government can interfere in the life of the individual to focus on the greater good of the whole: his overall perspective is at odds with Mill's fundamental standpoint. He attempts to show that discussion cannot play the role in society that Mill advocates and that liberty can be harmful to the majority of people.

Separating self-regarding acts from other-regarding acts is not easy, thus this objection to Mill's theory in *On Liberty*. Stephen (1967, p. 28) claimed that distinguishing between these two kinds of acts is too difficult for differentiating the acts in time and space, and concluded that such an attempt would be totally misleading and groundless.

3.3 Individuality

The freedom to express the uniqueness of individuality can allow individuals to achieve happiness and reflect societal standards. Mill (1885, p. 26) further defended individuality in this way:

The only freedom which deserves the name, is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it. Each is the proper guardian of his own health, whether bodily, or mental or spiritual. Mankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest.

Berlin criticized this concept of individuality, believing that Mill was the ultimate defender of negative liberty. In his 1958 lecture “Two Concepts of Liberty” Berlin asked a pertinent question, saying that “liberty in the negative sense involves an answer to the question: ‘What is the area within which the subject – a person or group of persons – is or should be left to do or be what he is able to do or be, without interference by other persons?’” In support of this interpretation, Berlin cites Mill’s bold assertion that the only real freedom is pursuing our own good in our own way. Yet Berlin also recognizes that Mill’s essay contains arguments that recommend a particular lifestyle that a free person ought to lead. Here Mill appeared to endorse a particular type of character development (or ‘individuality’) and to reject a life that blindly followed custom. Trying to reconcile Mill’s defense of *negative freedom* with his support of individuality confused Berlin because negative liberty is freedom without interference, while *positive liberty* concerns individuality and self-realization such as showing uniqueness, creativity, and nonconformance “to the point of eccentricity” (1969, p. 128).

Mill believed that individuality could be fully developed only in a state of freedom. Berlin tried to refute this by using the claim from Stephen (1967) regarding

the history of the Puritan Calvinists of Scotland and New England as well as the experience of the military by claiming that the quality of integrity, love of truth, and individualism can still develop. If this claim were correct, then Mill's argument for increasing human individuality only under a free state would fail. However, if Berlin was right this would constitute strong proof that Mill's defense of liberalism was muddled and just a jumble of incoherent, incompatible ideas.

3.4 Epistemological complications

In *On Liberty* (p. 36) Mill's concerns regarding freedom of expression are aimed at unraveling the truth through dialog among different and opposing opinions:

There is the greatest difference between presuming an opinion to be true, because, with every opportunity for contesting it, it has not been refuted, and assuming its truth for the purpose of not permitting its refutation. Complete liberty of contradicting and disproving our opinion, is the very condition which justifies us in assuming its truth for purposes of action; and on no other terms can a being with human faculties have any rational assurance of being right.

On this epistemological stance pursuing truth through dialog in defense of freedom of expression critics have made objections on the consistency of Mill's writing from *On Liberty*, which indirectly concerns fallibility of knowledge using inductive reasoning. This can be seen throughout all of Mill's epistemological writings, prompting Feyerabend's "Two Mill Thesis"—the claim that Mill accepted epistemological pluralism, believing that human knowledge can reach its peak by promoting conjecture and different worldviews (1993). Thus Feyerabend claimed that Mill embraced a form of epistemological pluralism in *On Liberty* that conflicted with the more straightforward inductive account offered elsewhere in his writings.

3.5 Downplaying the harm principle

Mill strongly favored liberty and opposed governmental action to limit that freedom except where such liberty becomes harmful to others as envisaged in his harm principle (also called “the liberty principle”). This principle applies to all domains of liberty covered in his writings. However, on the issue of freedom of expression Skorupski had a different point of view: he did not think the principle applied to freedom of expression. Skorupski is a thinker who focuses on epistemology; ethics and moral philosophy; politics; and philosophical history. He is best known for his critique of Mill’s works and provides what seems to be a solid argument for the “two principles” thesis:

Liberty of expression is not a special case of the Liberty Principle, nor does it mainly flow from the same source ... the deepest justification for the Principle of Liberty of Expression is that it gives a hearing to the communal voice - that to which we respond in common ... [Mill] is not presenting a special case of the Liberty Principle; he is defending the dialogue model by appeal to its internal goal. One may accept his defence of liberty of expression and reject the Liberty Principle, or vice versa (1989, p. 376).

Skorupski identifies his “dialogue model” of *On Liberty* by zeroing in on the importance of *the speaker* rather than *the hearer* and sees a separation between the principle of freedom and the Mill liberty principle. According to Skorupski (1989, p. 371), to pursue truth we need unhindered dialog between rational people. He proceeds to explain that Mill’s defense of liberty of expression, in appealing to the growth of truth and of rational qualities of mind, does not relate directly to the liberty principle or individual rights (1989, p. 375). Here, truth assumes an importance of greater value than the individual does. For Skorupski the social importance of dialog in the discovery of truth justifies Mill’s account of liberty of expression.

Thus he concludes that the principle of freedom of expression must be distinguished from the liberty principle since the liberty principle focuses on *the individual* and freedom of expression focus on *society*. Freedom of expression prohibits restrictions on honest dialog for the sake of the communal discovery of truth, while the liberty principle allows intervention for acts of inflammatory speech to prevent harm (1989, p. 371). So in Skorupski's account, speech can be restricted or banned altogether if its possible or probable effects are considered harmful as “non-dialogue effects”, but when the role of *the hearer* is emphasized Mill's theory can be demonstrated as consistent, both for freedom of thought and discussion and for the wider principle of liberty.

3.6 Harm principle insufficiency

Feinberg elaborated on the harm principle and suggested that offense-prevention should also be considered in limiting liberty. He was one Mill's first defenders. In his most popular work, *Offense to Others*, he tried to defend the “liberal position” on the moral constraints of criminal law by limiting criminal prohibition to harm prevention and offense prevention. His tetralogy includes *Harm to Others* (1984) on the harm principle; *Offense to Others* (1985), defending the offense principle; *Harm to Self* (1986) on legal paternalism; and *Harmless Wrongdoing* (1988) on rejecting legal moralism. These defenses are mostly consistent with Mill's views in *On Liberty* except that Feinberg adds the offence principle to complement Mill's harm principle and widen its scope.

Claiming that Mill's harm principle could not offer enough protection for the misdeeds of others, Feinberg introduced what has become known as the offence

principle. According to Feinberg (1988, p. 1) proposing criminal prohibition might be very effective in protecting against serious offense to others. Hence he argued that the harshness of the harm principle and legal provisions could prevent some kinds of offensive expression. It is less serious to offend someone than to cause harm for which the penalties should be more serious—a variation of “Let the punishment fit the crime.” For Mill, legal penalties were not acceptable unless an individual violated the harm principle. Feinberg also argued that in applying the offense principle we must consider numerous factors: the extent, duration, and social value of the speech; the ease with which it can be avoided; the motives of the speaker; the number of people offended; the intensity of the offense; and the general interest of the community at large.

3.7 Conclusion

The chapter examined the major objections to and interpretations of Mill’s position on the liberal issue of freedom of expression. Arguments relate directly to freedom of expression within the scope of his liberalism and are directly linked to his defense of freedom of expression. Six counter-arguments were reviewed: 1) that Mill defended inequality among people in expressing themselves, which contradicts his position in *On Liberty* (Himmelfarb, Cowling, and Letwin); 2) that not all acts are self-regarding, contrary to the distinction Mill made among acts (Stephen); 3) that Mill is confused about individuality—between freeing an individual and at the same time recommending a particular life style and recommending a free environment for developing individuality, which is not necessary (Berlin); 4) epistemological complications in Mill’s arguments for freedom of expression (Feyerabend); 5)

downplaying use of harm principle for freedom of expression (Skorupski); and 6) the insufficiency of the harm principle in limiting freedom of expression (Feinberg).



Chapter IV

Analysis and Criticism

The aim of this research is to support the position that Mill's stand on freedom of expression is a tolerant liberal position that is progressive in essence and upholds a dialogical pluralistic spirit. "Tolerant liberal position" is used here to mean a liberal society in which different views and opposing positions are tolerated on all subjects: Differing views are treated equally and dialogically where a pluralistic spirit works and people are left with their choices after every opinion on any subject is allowed to be aired. In matters of policymaking, Mill's liberal position in his earlier works is progressive and emphasizes the educated and "the elite by merit" to set a society on the road to liberal ideals.

The preceding chapter introduced six major counter-arguments related to Mill's views on freedom of expression. Here this debate is analyzed and criticized, grouped by types of objections and interpretations. Mill's position on freedom of expression is being understood hermeneutically for a holistic and purposive understanding of his thought rather being fragmented between his various pronouncements that per se seem conflicting but were actually responses to changing political and social developments. The links between 'parts' and 'whole' are being connected with a progressive understanding of Mill's personality, thought, and the changing political-social environment. In addition, hermeneutical understanding is being used to look at the epistemological side of these issues. In the same way, the notion that we are evolutionary and progressive is applied to Mill's thought and its application to freedom of expression.

4.1 Criticism of the argument on inequality

Freedom of expression is a cornerstone of Mill's defense of liberty for every person in society. The importance of everyone having the right to say what they think makes the case for freedom of expression significant. Otherwise, restricted freedom of expression with such a right reserved for a selected class of people makes the whole subject meaningless.

Counter-arguments by Himmelfarb, Cowling, and Letwin relate to what they see as discrimination between the elite and commoners in Mill's thought, suggesting that he favored the elite. The gist of the argument is that his earlier works give unequal voice to different classes of people, whereas *On Liberty* advocates an equal voice for everyone (Himmelfarb, 1974). Furthermore, his concept of individuality in *On Liberty* is said to be for selected people—the individuality of the elevated, which he purportedly supported (Cowling, 1963). Mill is seen as a moral totalitarian, intellectually jealous, and a carefully disguised intolerant (Cowling, 1963). In the same way, he was said to be a divided philosopher—divided between liberalism for all and state-paternalism under the guidance of a few (Letwin, 1965). Although Mill sincerely valued liberty, recognized equal rights for everyone, and advocated opportunities for individuals to choose their own lifestyles, he also believed that it is government's responsibility, directed by a superior few, to provide the best life for the people. Letwin (1965) also claimed that Mill supported elitism, and thus was divided between two incompatible ends.

In responding this criticism, we must understand that defending freedom of expression, as Mill did eloquently, becomes meaningless if such freedom is intended for a selected class of people. The holders of the opposite view—that he supported the

elite and a selected few—is mainly construed from his earlier works before *On Liberty*. However, there is a difference between allowing all opinions on any subject to become publicly known and the subject of debate on the one hand, and selecting one of them to suit policymaking and government legislation on the other hand. Mill's concern was with the former when he defended freedom of expression. He strongly opposed silencing opinions, claiming that there should be “absolute freedom of opinion and sentiment on all subjects” (1885, p. 25). However, when it came to policymaking and running institutions, we should agree that any opinion on any particular subject can be adopted in practice, but that freedom of expression is all about allowing every opinion on the subject to be heard and discussed.

Admittedly, the views expressed in Mill's earlier works sound different from what he believes and defends in *On Liberty*. This makes him a transitional thinker, but being *transitional* does not have to mean being *contradictory*. A *contradiction* in practical matters occurs when someone holds different positions on the same issue under the same circumstances. A *transition* occurs when someone shifts from one position to another in the face of shifting and changing circumstances. We can easily ascribe the seeming ‘contradiction’ between statements at various times to the notion that Mill was an *evolutionary* thinker whose thought was evolving in relation to the times he lived in. Thus, instead of proposing the Two-Mill Theory, it is important to see him as evolutionary, with the circumstances in which he developed leading him to different conclusions on social and political issues. The significance of delivering different positions on the same issues shows that we arrive at the truth for social and political issues through the overall development of society and individuals. In the same way, this evolutionary and transitional series of changing opinions on freedom,

equality, and freedom of expression sets forth a guide to those cultures and nations on the road to progress for their political systems and the common good.

We can frame this seeming inconsistency in three ways to make Mill meaningful and coherent:

- 1 The hermeneutical circle
- 2 The exception proves the rule, and
- 3 Progressive thought.

The hermeneutical circle suggests that understanding a text should allow us to see the relationship between the parts and the whole. This hermeneutical method of understanding goes beyond one text and connects with other texts by the same author, also taking into account the times when the author lived. We must understand Mill's ideas in this way as well. We must also differentiate between his *major positions*, which can be called 'theses', and his *marginal statements*, which can be called 'exceptions'. The positions that he set forth are consistent with a progressive, changing society: both he and his society were in a progressive stage and we should understand his positions relative to changing circumstances.

The hermeneutical circle, proposed initially by Selmer and Ernesti and further developed by Schleiermacher, holds that interpretation should be a holistic activity and that interpreting any piece of the text requires a thorough understanding of the whole text, including the writer's use of language and the broad historical context. An understanding of the historical background of the times is inescapable as well. This becomes a kind of art to understand the preexisting context and to understand all aspects of the author. In short, the hermeneutical circle is about the parts and the

whole whose parts we understand in light of the whole, with the whole being a composite of its various parts (Mueller-Vollmer, 1994, pp. 86-90).

We must also apply this hermeneutical circle to Mill's philosophy. Understanding his philosophy requires going back and forth between his works and a timeline, as we need to consider the historical context of his writings. His critics cited in the preceding chapters point to inconsistencies but have ignored the major part of his philosophy, his major arguments, and his main thesis. For example, the way he argued for liberty for everyone has much more substance and detail than the few comments that seem contradictory. Arguably, Mill has written a complete work on liberty rather than on the despotism attributed to him, just as he has similarly defended equality in his *On Liberty* against the inequality ascribed to him. He thus deserves to be understood in light of the totality of his thought. We should treat his rules as his *position* and his *exceptions* as *encroachments* that gather and fade away over time as circumstances change. We can also discern further support of this position from his intellectual maturity that reached its peak in his later years when he wrote *On Liberty*. We should view the positions he took in this work as his final positions on the issues and should see them as negating his previously held marginal exceptions.

Among the objections to Mill is that in his earlier works he preferred freedom of expression for only a few and gave more importance to the elite—the objection being that he only wanted to foster freedom of speech for the sake of the elite and for those of higher standing. Moreover, he obviously realized the differences between the powers and intellectual abilities of individuals and that the intellectual elites could contribute more to the society than other groups (Broadbent, 1968, p. 270). Thus he

kept his ideals and ultimate positions in mind while at the same time being realistic about social and political progress. In his early writing Mill expressed the view that only the superior elite could change old practices into better ones, but that achieving this must involve others. His argument was that freedom of speech could be most powerful when it involved everyone:

Not that it is solely, or chiefly, to form great thinkers, that freedom of thinking is required. On the contrary, it is as much and even more to enable average human beings to attain the mental stature which they are capable of. There have been, and may again, be, great individual thinkers in a general atmosphere of mental slavery. But there never has been, nor ever will be, in that atmosphere an intellectually active people (1885, p. 59).

While taking a realistic look at his society, Mill hoped that the elite could help bring about social and political change that could in turn help commoners develop their wisdom. The belief was that we are endowed with different kinds of capacities and that we bear a responsibility to society according to our capacities. If he gave special consideration to the elite it was not given based on human inequality, but because the elite had more influence in society and in the political arena along with access to education. If he assigned a greater role to the elite this does not mean that he ignored the rest as his thoughts on liberty were for all (Stimson and Milgate, 1993, p. 901).

Mill's early thinking *did* reflect special attention given to the elite, while his later thoughts treat every individual equally. This shows his progressive thinking and his belief that more people in the future would become educated and would be capable of making wise decisions: his thinking progressed in a self-correcting manner and reached its height in his final works. We can see this progressive development in his life from the very beginning, having grown up with the flourishing of the

utilitarian movement. His own father was in the mainstream of Bentham's theories, with Mill selected as the protégé-successor. Philosophical radicalism was part of the Benthamite circle, led by Mill in his youth as a major reformation of utilitarianism. His biography suggests someone undergoing a self-correcting process from the very beginning: in his early days he was a solid believer in Bentham's and James Mill's utilitarianism, then in the latter stage he adjusted his understanding of utilitarianism and qualified the utilitarian calculus with qualitative dimensions.

The main objection to liberty and freedom of expression related to Mill's special treatment of the elite actually concerns his ideas on political representation, asserting that people should rule through their representatives and that those who vote must be literate and qualified. The reason for this special treatment of the elite was his belief that it was better to let a technically trained specialist exercise power—"an elite of merit". Nevertheless, this was *not* his position in *On Liberty*: We need to understand that he was responding to the circumstances he grew up in and the society he was part of, causing him to be skeptical about the abilities of people in governing themselves and possessing appropriate skills. These kinds of ideas, even in the modern age, are not totally dead in any democratic country. Although the public may have the right to vote, in practice an elite of merit mostly run the country and are in charge of its institutions. They are qualified in the sense of having higher capacities of making change and contributing to society: This can be intellectual capacity as well as other capacities that give them special influence. By referring to "an elite of merit", Mill showed his concerns about the practice of politics rather than making some theoretical claims. In a purely democratic and free society where people have the

franchise, we elect the elite of merit and they gain positions in the country's most powerful institutions.

A free society where every eligible citizen has the right to vote for the candidate of his or her choice respects some rich tradition or usually a basic law called a constitution. This respect for tradition or constitution, along with free elections, aims to save such a society from falling into chaos or anarchy. By the same tradition, even the United States Congress holds the right to impeach and remove a president from office—a president who actually takes office by a majority of the country through presidential elections. These issues are not new: Aristotle, who understood the problems of democracy, suggested that it could only be effective if it was constitutional. He believed that the best form of government was a constitutional democracy, which he called 'polity', a type of democracy guarded by a constitution. Mill's wisdom in identifying the elite is also reflected in modern-day democracies where constitutions are not written by ordinary people, but by skilled and qualified specialists who thoughtfully lay out checks and balances and provide the basic law for a country. Citizens then have a say in accepting such a constitution through a referendum. However, if the role and significance of the constitution is to protect a society from the tyranny of the majority, a constitution is needed that lays a suitable foundation and that does not leave the future of the country to the opinions of its majority. This is true of any country: The United States Constitution was drafted chiefly by James Madison; the Indian constitution was written by and under the supervision of Dr Ambedkar; and Thailand's 2007 constitution was drafted under the supervision of former Thammasat University Rector Noranit Sethabutra along with a drafting committee of nearly two hundred qualified members. These people who have

drafted the world's constitutions fall within the category of the "elite of merit". The qualities of intelligence, effort, and wisdom expected of these drafting committees are not what we would expect of just any ordinary citizen. Thus Mill's special reference to the elite should be understood in this same context. From these beliefs, he derived his arguments against democratic rule and in favor of elite rule, believing that in every field of human experience "true principles" have been established, which can be known. In politics, a body of knowledge comprises the most enlightened doctrines and the principles they justify. Those who are specially trained and experienced understand these principles better than others do. Serving the real interests of people and classes requires practical reasoning and acquired knowledge. To rely on an incapable majority of "low-information" individuals who are still unclear about morality and appropriate behavior is risky if we allow these individuals to make important decisions on how to empower others to govern them. Shields (1958, p. xxvii) put it this way:

Mill's contention that authority should in practice be exercised by an elite of "merit" appears to depend on a doctrine of cultural evolution according to which a people progresses from one stage of advancement to another. This doctrine supplies Mill with plausible grounds for denying the "lower classes" of his day any opportunity to participate meaningfully in political life. But by stressing the educational value of political participation, Mill certainly is saying that "in theory" popular rule is desirable, and he seems to be leaving the door open for the practice of democracy at some future date when society has progressed to a more advanced point in civilization.

We also need to understand Mill's position as a response to a historical context. Shields (p. xxxix) investigated the conflicting claims and concluded:

Many times in the course of his lifetime, Mill argued contrary positions on the same question. At one time, he argued that judges should be made responsible to the "people," yet in *Representative Government* we find him arguing against popular election of judges on the grounds that they should be immune to political influence. At one time Mill argued in favor of the secret

ballot, yet later we find him contending that the vote should be cast in public because the secret ballot encourages the elector to neglect his public duty. At one time Mill argued in favor of pledging candidates for public office, yet later we find him saying that a candidate should make no pledges whatsoever to his constituents. These examples are not of exceptions in Mill's writings. They are indicative of a characteristic in his thought. Many views Mill entertained in his youth he later abandoned when they no longer served middle-class interests; many views he held late in life he had roundly criticized as a young reformer.

Mill saw that in one stage of human history when knowledge and power to influence change is within the reach of the elite of merit he assigned them a larger role in political governance, fearing the tyranny of the majority because the public may not know what is good for them. Nonetheless, he kept the changing public civility in view and in *On liberty* became more open without distinguishing between *the few* and *the many*. This was at a time for his own country when the public at large understood their responsibilities and had reached a level of civilization that Mill thought would deliver progress by greater public participation. But he did not generalize his views on liberty that seemed to fit British society to other nations such as India, which was under British rule: although he advocated liberty and individuality for Britain, he favored colonial rule for India because he thought the India of his time had not yet developed as fully as his own country. The Indian people were not as literate as his own people were and the country was still a colony with a long way to go before establishing the institutions already in place in Great Britain. Tunick (2004) in the abstract of his paper "Tolerant Imperialism: John Stuart Mill's Defense of British Rule in India" explained this distinction:

John Stuart Mill has been said to support the use of violence and force to impose a monistic vision of the good life in India, even though Mill is known as a defender of liberty and experiments in living. The two positions have been reconciled by claiming that Mill intends his principle of liberty to apply only to civilized people and supports despotism for the uncivilized.

Of course, Mill's views discriminating between these two nations in this way would not be acceptable today, but we can appreciate his reasons on social and political grounds. India has now become one of the world's largest democracies with the media and press enjoying greater freedom than many other countries. This shows that he was not absolute on the issues that apply to every society and nation, but that his thinking was rather progressive, believing that liberty and freedom of expression required a nurturing environment with citizens who had reached a higher level of equality and civilization.

Therefore, juxtaposing Mill's ideas on the elite and the rest of society, there seem to be no inconsistencies: he is really still talking about the same human race that deserves different treatment during its progression at different stages of history until a state of affairs emerges where implementing liberty and its practical aspects could work in a positive and meaningful way without producing any harmful effects. In this way, it seems that his 'unharmful' liberalism was also at work in implementing and realizing liberty and freedom of expression along with his concern about how to improve welfare for society. Simply put, a barbarian nation (think Attila the Hun and Genghis Khan) treated by the standards of *On Liberty* would make no sense. Likewise, an educated, civilized nation where people have a higher sense of individuality and human rights subjected to despotism would only make things worse. Furthermore, in the historical context, Mill was writing his earlier works not in modern England, but in a society that was itself undergoing change and transition.

We also need to understand the issue of freedom of expression in terms of cultural traditions. Some countries in the West have enjoyed freedom of expression as a long-standing tradition for generations until it has taken a strong grip on people.

However, in most Eastern countries this tradition does not exist because of cultural differences. Freedom of expression in these countries is lacking because of less democratic political systems, with some under authoritarian systems. The tradition of free expression is not traditionally as grounded as in the West. The current situation in the West reflects what Mill proposed long ago. The debate in the West is not about whether his ideas are good or bad: Most Westerners cherish his ideas as witnessed by the press freedom and freedom of expression that the West largely enjoys. The application of his ideas might become more relevant to a country like Thailand where people still need to undergo training and education to enable them to understand their rights and duties. Furthermore, political awareness and education should build capacities such as toleration, wisdom, and respect for different opinions over time.

Thus it appears that Mill's thought on freedom of expression reflected progressive and transitional thinking culminating in realizing equality for individuals in expressing their opinions. This thinking in its essence is progressive and could be helpful for politically undeveloped societies to progress toward better conditions for human rights such as freedom of expression.

4.2 Criticism of the argument on self-regarding acts

While making a general defense of liberty and individuality in *On Liberty*, Mill distinguished between acts affecting *the actor* and acts affecting *others*. Similarly, he distinguished between mere speech and speech that is instigation, arguing that only speech harmful to others needed to be restricted.

Contrary to this distinction, Stephen (1967, p. 28) argued that it is beyond human knowledge to separate some acts as self-regarding and others as not—that acts

can occur anywhere, and whatever our acts they will affect both others and ourselves. For Stephen, the distinction that Mill strives to make is totally incorrect and groundless.

Trying to differentiate between *self-regarding* and *other-regarding* was crucial to the way Mill framed liberty in general. The distinction became relevant for him specifically for freedom of expression because he believed that we could curtail such freedom if it caused harm to others. The distinction he made between self-regarding and other-regarding is neither fallacious nor unfounded as Stephen claimed. Stephen argued that every statement *does* affect both the speaker and listener, but his thinking is flawed because Mill was talking about causing *harmful effects to others*. If we take Stephen's point seriously, nobody would dare to speak. Mill's distinction is factual and well founded because not every speech is harmful speech and not every act is a harmful act.

Mill's concept of 'circumstances' when speech affects others in a harmful way is important in understanding limits to freedom of expression extrinsically. Expression for Mill was of two types: *intrinsic expression* and *extrinsic expression*. Intrinsic expression should not be restricted, but extrinsic expression *does* need to be restricted—not because of some intrinsic quality, but rather because of some extrinsic factor that takes expression from its mode of *immunity* to the mode of *susceptibility*. To illustrate this he set forth a concrete example of how the same statement can be *intrinsically* immune and *extrinsically* assailable. He gave us an example of corn dealers, making a distinction between instigation and merely expressing an opinion in the media: He suggested that it is acceptable to claim that corn dealers starve the poor if this view is expressed through the medium of the printed page, but that it is *not* permissible to express the same view to an angry mob, ready to explode, that has

gathered outside the house of the dealer. The difference between the two is that the latter is an expression “such as to constitute...a positive instigation to some mischievous act” (1885, pp. 93-4). Expressing opinions, he said, will lead to positive instigation, not causing “such as to constitute...a positive instigation to some mischievous act” (pp. 93-4).

The most important aspect of Mill’s position on freedom of expression is that it related to *speech* and not *action*. This may seem puzzling because it is possible to include speech within action, and harmful speech is culpable, but he suggested that *speech* becomes *act* only when it clearly becomes *instigation*. The scope of his views on *speech*, *action*, and *instigation* as applied to a liberal position on freedom of expression is of practical significance, allowing freedom of expression without suppressing opinions or knowledge. The important point here is that we must differentiate speech from instigation: This seems the only solution since people have such wildly opposing or differing opinions on academic, social, and political issues.

Mill’s tolerant liberal approach immunizes freedom of expression when we exercise such freedom properly. Moreover, contrary to what Stephen claims, Mill clearly distinguished between what could be termed *speech* and what could be termed *harmful speech*. In this way, his freedom of expression builds a spirit of toleration between speaker and audience if the speaker is tolerant in what he has to say and if he can demonstrate this tolerance through his choice of medium and the circumstances of expression. His position on freedom of expression then becomes a tolerant position where the speaker must choose ways and words that won’t escape the circle of tolerance and thus lead to some harmful instigation.

4.3 Criticism of the argument on individuality

Freedom of expression and individuality are inevitably connected because if individuality is not encouraged and safeguarded individuals will always fear speaking their minds. Mill (1885, p. 26) thus strongly defended individuality, saying that “each is the proper guardian of his own health, whether bodily, or mental or spiritual. Mankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest.” Although Berlin appreciated Mill’s defense of negative liberty, he accused him of proposing a particular kind of life that a free person ought to lead. The puzzle for Berlin (1969, p. 128) was to harmonize the defense of Mill’s negative freedom with his support of individuality, arguing that Mill “confuses two distinct notions”. Berlin’s interpretation was that Mill believed we could best develop individuality in a state without constraints on freedom. But Berlin contended that history showed the qualities of being honest and mentally upright, craving for truth, and a strong desire for individuality all have an equal chance to flourish even in strictly run communities. If Berlin’s contention on Mill’s claims were valid, this would negate Mill’s basis for developing human genius.

Berlin’s argument was in *two parts ... The first part* dealt with the contradiction between individuals as free and individuals as being encouraged to follow a certain lifestyle. *The second part* related to Berlin’s doubts that freedom is the primary basis for developing individuality. Berlin’s view was that Mill’s argument rested on the claim that we can breed individuality only in conditions of freedom. But Berlin also argued that historical evidence shows that individualism can develop at least as often in severely disciplined communities. If so, Mill’s argument for liberty as

a precondition for developing human genius would be unsupportable.

The first part of Berlin's criticism does not make much sense if we consider the broader picture of Mill's thinking on freedom of individuality and expression. In addition, he defined the extent of this freedom using his harm principle, dealing with not causing harm to others. This is one side of the position; the other side of the position is that Berlin thought Mill was proposing a particular lifestyle for individuals. However, Mill did not make this obligatory since, as long as absolute freedom is given without harming others, all lifestyle possibilities that individuals may choose are already supported. This position again shows support for toleration and pluralistic thinking in which different lifestyles can tolerantly exist as long as harm is not caused to others.

The second part of Berlin's criticism does not cause any problem for Mill who, while arguing for freedom of expression, took on a similar objection, scrutinized it, and responded to it. The objection was that we could justifiably suppress the truth since we cannot separate oppression and truth, and truth will survive no matter what. He argued that optimistically accepting that persecution would not suppress the truth forever and that the truth would eventually prevail could not be justified. He pointed out that history has shown truth being prosecuted and that this was grossly unfair to the persecuted for simply holding true ideas. By discovering something true, these people had performed a great service to humanity. Supporting their persecution suggested that their contributions were not truly valued. Mill also contended that it is wrong to assume that "truth always triumphs over persecution" saying, "It may take centuries for truth to reemerge after it is suppressed" (1885, p. 49).

Similarly, since Mill's response was that we no longer put to death those who dare to think differently, we should theoretically not exclude true opinions. He

believed that people may fear following unpopular opinions, but once we cease to air our opinions, the result can be intellectual timidity and conformity—that nothing new and true would appear. Society should allow more room for freedom of expression so that we hear, discuss, and debate opinions of both sides.

Mill thus argued that a strictly disciplinarian society in which freedom of individuality and free expression are restricted could not be defended on rational grounds. Berlin's argument may contain some value, but it does not provide any rational support for suppressing individuality or make a valid argument against what Mill proposed when he defended individuality and freedom of expression. Overtly, Berlin's position is consistent with support for a disciplinarian society where individual freedom is restricted as it is in typical paternalistic and authoritarian societies.

4.4 Criticism of the argument on epistemology

In *On Liberty*, Mill's particular concerns about freedom of expression aimed to unravel the truth through dialog among different and opposing opinions. He argued that when defending freedom of expression "We can never be sure that the opinion we are endeavouring to stifle is a false opinion; and if we were sure, stifling it would be an evil still" (1885, p. 32). He also believed that "complete liberty of contradicting and disproving our opinion, is the very condition which justifies us in assuming its truth for purposes of action; and on no other terms can a being with human faculties have any rational assurance of being right" (p. 36) and that "only through diversity of opinion is there, in the existing state of human intellect, a chance of fair play to all sides of the truth" (p. 82).

The epistemological aspect of freedom of expression is one of the main problems in any debate on the issue. The day-to-day continuing emergence of many sensitive, highly charged, complex issues that sometimes produce public outcries and sometimes see media groups extending apologies to listeners and readers shows that free speech expression is always linked to epistemological certainties and uncertainties. The public and intellectual perceptions always recognize this reality, distinguishing between *episteme* (knowledge) and *doxa* (opinion). This is why the public seldom contests facts of hard sciences that remain subject to scrutiny within the circles of higher learning, whereas opinions on political, religious, and social issues are most often debated and sometimes contested even by people of average education. In terms of permissibility and prohibition, freedom of expression generally relates closely to epistemological correctness of its assertions and its consequences for the public good. Mill very tactfully tackled these issues.

We can see the epistemological aspect of Mill's position on freedom of expression in his major arguments as he spoke about attaining truth and rational assurance for one's opinion. Attaining truth through rational opinions seems the crucial objective of expression in his argument. Similarly, his stress on human fallibility is also of epistemological concern: We can see this epistemological aspect in objections and interpretations related to his thought. We see the climax of these kinds of objections in Feyerabend's objection that in *On Liberty* Mill embraced a form of epistemological pluralism that conflicts with the more straightforward inductive account offered elsewhere in his writings (1993).

This objection has been used to support for the Two-Mill Theory—that his thought is contradictory and divided between his utilitarian and liberal aspirations. The

response to this objection is Brink's claim (2008, pp. 40-62) that the tool to produce truth is freedom of expression and that progressive thinkers seek knowledge rather than mere true beliefs. Knowledge requires justifying one's beliefs and actions, requiring deliberation among alternatives. Skorupski has also commented on the issue: He points to Mill's dialog model of *On Liberty* by concentrating on the importance of the speaker rather than the hearer, and comes up with a principle of freedom of expression apart from his principle of liberty—dialog as unconstrained discourse between rational people that aims at the common pursuit of truth. The social importance of dialog in discovering truth justifies Mill's account of liberty of expression. Skorupski maintains that there must be a principle of freedom of expression which is separate from the principle of liberty, with the latter emphasizing *the individual* and the former emphasizing *society*. The principle of liberty of expression prohibits restrictions on honest dialog for the sake of the communal discovery of truth and allows acts of expression to be interfered with. Skorupski (1989, p. 371) concedes that speech can be restricted and even banned altogether if its possible or probable effects are deemed harmful in their "non-dialogue effects".

Obviously, Mill's arguments for freedom of expression, in aggregate, relate to the pursuit of truth. The epistemological aspect of his arguments suggests a pluralistic epistemology different from his empiricism. We can see this concept of truth and its repetition in all his arguments with Fiala's brief of them (emphasis added):

Mill's argument for freedom of thought in *On Liberty* contains the following claims. (1) Silenced opinions may be *true*. To assume they are not is to assume that we are infallible. (2) Even false opinions may contain valid points of contention and parts of the *truth*. To know the whole of *truth* we might have to weave together parts of *truth* from different sources. (3) To claim to know the *truth* means that we are able to defend it against all vigorous opposition. Thus we need to be able to hear and respond to false

opinions in order to know all of the arguments for a proposition. (4) *Truth* that is not continuously and vigorously contested becomes mere superstition. Such dogmatically held superstitions may thus crumble before even weak opposition and will not be heartily believed or defended (2006).

This summary shows that 'truth' is present in every argument and that attaining truth is the essence of Mill's philosophy if argumentation is free and without suppression (Greenawalt, 1989, p. 131). Mill was an empiricist: We can know everything via sense perception. However, the way he presented his ideas on freedom of expression leads to epistemological pluralism. This tension seems to support a contradiction between the compatibility of the strongly fallible theory of knowledge intimated in *On Liberty* and the inductivism defended in the *System of Logic* and throughout Mill's writings on epistemological concepts. The other significant feature that is clearly present in his arguments can be called 'conversation' or 'dialog' in pursuing, believing, and defending 'truth'.

While keeping the elements of truth and dialog integral, it seems that Mill had something other than empirical hard sciences in mind while writing *On Liberty*. Clearly, the subject matter of *On Liberty* is related to social, political, and human freedom although Mill (1885, p. 25) generalized his claim for freedom of expression on every subject without exception, suggesting that for absolute freedom of opinion and emotional expression liberty is required and that this applies to all subjects.

We must also determine whether the overall subject of *On Liberty*—which is actually individuality—is consistent with his overall position on freedom of expression. He supported absolute freedom of expression on all subjects with reasonable consideration of epistemological concerns, and thus his position on freedom of expression lies within the ethical realms of sociology and politics. His

general claim makes sense if we take into account the historical background of freedom of expression. Human history *does* provide enough support for the assertion that opinions have been suppressed at times indiscriminately and that scientists of the natural sciences and thinkers on religious, political, and moral subjects have been persecuted and prosecuted. Thus his claim *does* make sense in the face of the historical facts. However, on the epistemological aspect of the issue he reasonably qualified his claim of generality by pointing out differences on how we find answers for some questions. For example, Mill (p. 62) used mathematics to clarify the perplexing idea that once the solution is right it is always there—no need to interpret or object to it. But with some types of knowledge such as morals, religion, politics, social relations, and business ethics more discussion is needed to find correct explanations. Furthermore, something we call ‘truth’ today may not be true tomorrow, so to find the balance many conflicting views and reasons we should share, discuss, and debate them to ensure that we base our opinions on solid ground.

Mill’s arguments for freedom of expression include important elements such as ‘truth’, ‘dialog’, and ‘prejudice’. In short, truth is revealed to the fullest through dialog and if not discussed and tested by rival claims, it may become dogma or prejudice. *On Liberty*, if understood through its details, focuses on concerns about the realm of human sciences rather than natural sciences, with Mill explicating his ideas and his arguments mainly through ethics, society, and politics. His epistemological pluralism in *On Liberty* can thus be understood in the same way as Gadamer’s special way of looking at the human sciences in *Truth and Method* (1994). Gadamer’s relevance is important epistemologically because his thinking was a culmination of a

long tradition related to concerns that make human sciences different from natural sciences in ascertaining certainty or truth.

The epistemic nature of Mill's arguments—stressing openness and listening to all views on a topic—leads back to the Platonic dialogs. His dialogical openness is sometimes referred to using John Milton's term "the market place of ideas", meaning that we should have free transactions of ideas. In this case, the Socratic dialectics and Gadamer's "fusion of horizon" are relevant. Mill's approach opens dialog for different opinions and avoids clashes. Gadamer (1994, p. 379) developed his fusion of horizon and concept of dialog by connecting truth and dialog along the same lines, explaining that "...in successful conversation they (the parties) both come under the influence of the truth of the object and are thus bound to one another in a new community". Gadamer also agreed with Mill (1885, p. 35) who said, "There is no such thing as absolute certainty, but there is assurance sufficient for the purposes of human life."

Moreover, Mill appreciated that facts of human sciences are not contextually neutral as scientific facts and suggested that issues related to liberty go through stages of history where they should receive a different and special treatment. Accordingly, on the subject of liberty Mill (1885, p. 7) stated, "... but in the stage of progress into which the more civilized portions of the species have now entered, it presents itself under new conditions, and requires a different and more fundamental treatment." He contextualized these human-science issues with relevant factors, including education of the general population and their maturity, and elaborated:

Despotism is a legitimate mode of government in dealing with barbarians, provided the end be their improvement, and the means justified by actually effecting that end. Liberty, as a principle, has no application to any state of

things anterior to the time when mankind have become capable of being improved by free and equal discussion. Until then, there is nothing for them but implicit obedience to an Akbar or a Charlemagne, if they are so fortunate as to find one. But as soon as mankind have attained the capacity of being guided to their own improvement by conviction or persuasion (a period long since reached in all nations with whom we need here concern ourselves), compulsion, either in the direct form or in that of pains and penalties for non-compliance, is no longer admissible as a means to their own good, and justifiable only for the security of others (p. 22).

This makes the case for freedom of expression itself as distinct from any scientific issue, phenomenon, or fact. Gadamer's thought more directly states that searching for a methodology for the *geisteswissenschaften* that would place them on a sound footing alongside the "sciences of nature" (the *naturwissenschaften*) is thus shown to be fundamentally misguided. Gadamer's conception of understanding is not reducible to method or technique, with his insistence on understanding as an ongoing process with no completion.

Gadamer proposed attaining understanding using a precise process, starting with a 'prejudice' and then overcoming, correcting, or adjusting it through dialog, which he called "fusion of horizon". From this process, the emerging interpretation could be anything: it could be the earlier interpretation without any change or it could be a new interpretation. According to Gadamer, the final interpretation called 'truth' and revealed through dialog cannot always be the ultimate truth, but is just the best truth at or for that time. Gadamer admitted that prejudice could sometimes occur, but not always. The dialog interplay should occur during the process of understanding to identify and solve problems. He believed that dialog negotiation among partners helps in reaching agreement with a hermeneutical issue, and reaching that agreement will be based on a common framework: his "fusion of horizon", or simply 'horizon'.

Similarly, Mill proposed his approach to dialog, which allows hearing every opinion and making a choice among them without suppressing any rival opinions. Furthermore, he believed that without dialog on conflicting opinions there would be no rational assurance that anyone was right, commenting that "Complete liberty of contradicting and disproving our opinion, is the very condition which justifies us in assuming its truth for purposes of action; and on no other terms can a being with human faculties have any rational assurance of being right" (1885, p. 36). Like Gadamer, Mill encouraged dialog between conflicting opinions, believing that one should not suppress others' opinions and rely blindly on one's own opinion. Mill (p. 63) was most persuasive in arguing for mutual openness and seeking to know and hear the other side of an issue:

He who knows only his own side of the case knows little of that. His reasons may be good, and no one may have been able to refute them. But if he is equally unable to refute the reasons on the opposite side; if he does not so much as know what they are, he has no ground for preferring either opinion.

He also provided a careful methodology for analyzing and viewing opposing opinions and views:

Nor is it enough that he should hear the arguments of adversaries from his own teachers, presented as they state them, and accompanied by what they offer as refutations. This is not the way to do justice to the arguments, or bring them into real contact with his own mind. He must be able to hear them from persons who actually believe them; who defend them in earnest, and do their very utmost for them. He must know them in their most plausible and persuasive form; he must feel the whole force of the difficulty which the true view of the subject has to encounter and dispose of, else he will never really possess himself of the portion of truth which meets and removes that difficulty (pp. 63-64).

In addition, Mill (p. 64) emphasized the exchange of opinions—particularly when those involved have never really examined or tested their own beliefs, saying that

their conclusion may be true, but it might be false for anything they know: they have never thrown themselves into the mental position of those who think differently from them, and considered what such persons may have to say; and consequently they do not, in any proper sense of the word, know the doctrine which they themselves profess.

For such a dialog he suggested that “only through diversity of opinion is there, in the existing state of human intellect, a chance of fair play to all sides of the truth” (1885, p. 82). He also warned that “it is when they attend only to one [opinion] that errors harden into prejudices, and truth itself ceases to have the effect of truth, by being exaggerated into falsehood” (p. 88).

Mill’s arguments for freedom of expression are thus dialogical and are in many ways similar to Gadamer’s concept of dialog. Epistemologically, he indirectly differentiated between natural and human sciences as mentioned earlier, concluding that freedom of expression is important while looking at the nature of differing opinions.

4.5 Criticism of the argument on dual freedom-of-expression principles

The crucial concept of freedom of expression for Mill was his *liberty principle*, also called the *harm principle*. It states that civilized communities can rightfully exercise power against any member for only one purpose: to prevent harmful action that might affect others (p. 21). However, on the freedom-of-expression issue Skorupski (1989, p. 376) has a different viewpoint: he does not think that the principle applies to freedom of expression, and provides what seems to be a solid argument for a “two principles” thesis. He holds that for the liberty principle, freedom of expression is not special and that Mill “is not presenting a special case of the Liberty Principle; he is defending the dialogue model by appeal to its internal goal. One may accept his defence of liberty of expression and reject the Liberty

Principle, or vice versa.” This principle of liberty of expression prohibits restrictions on honest dialog for the sake of the communal discovery of truth, but permits interference with acts of expression for foreseeable harmful non-dialog effects (Skorupski, 1989, p. 371).

Skorupski is a Mill defender, but his interpretation of Mill is problematic in that he argues that the harm principle applies to harmful non-dialog effects. This interpretation restricts freedom of expression and contains it within a very limited scope. The point is this: Freedom of expression can't be curtailed because of anticipated harmful non-dialog effects, but it *can* be curtailed if it becomes a clear instigation under certain circumstances.

On freedom of expression, Mill (1885, p. 94) clearly stated that “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.” He illustrated this using the corn dealer example (see section 4.2). If Skorupski's interpretation is accepted then freedom of expression will always require a censorship committee to make decisions on various types of expression and whether they should be permitted or restricted, but it would surely be impractical to judge what can and cannot be stated. Therefore, *absolute freedom of expression* is necessary, and only if exercised in circumstances where it can clearly be called instigation need it be curtailed. Promoting greater dialog as part of freedom of expression is one of the payoffs of Mill's approach.

4.6 Criticism of the argument on insufficiency of the harm principle

Mill's harm principle states that "the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others" (1885, p. 21). Feinberg's "offense principle" is an attempt to rebut Mill's harm principle by claiming that it doesn't provide enough protection to prevent harmful acts against others. Feinberg (1988, p. 1) says as "it is reasonable to support the prevention of the criminal mind of the actors as an offensive and necessary means then there would be no harm causing to others." Hence he argues that the harm principle and the laws could obstruct and prevent the process of expression since they could cause offense.

In addition to these objections, other concerns relate to the harm principle. Thus the harm principle needs to be explained and its parameters need to be delineated: this is done in sections 4.6.1 through 4.6.3 below.

4.6.1 The harm principle explained

The harm principle (or liberty principle) is the only principle in Mill's thought that limits liberty, including freedom of expression. We should see the principle within the descriptions he gave; otherwise, we might go astray when attempting to understand it.

The danger that Mill recognized from free speech arises when the circumstances of expressing an opinion turns a positive instigation into some mischievous act, meaning that the opinion then becomes fraud. When explicating the harm principle, he used the example of corn dealers (see section 4.2) to distinguish

between instigation and merely expressing an opinion in the media. His argument was that understanding the consequences, ramifications, and repercussions of expressing your thoughts in certain circumstances is crucial—for instance, in expressing views to an angry mob as in the corn dealers' case the results of jeopardizing someone else's life by that action would be unacceptable. His formulation of the harm principle in the corn dealers' example shows that the harm principle actually relates to the decision-making process for those in authority when handing down judgments on acts of freedom of speech. Considering the harm principle as an element in the decision-making process is a better choice than making it a moral criterion (Holtug, 2002, p. 357).

Gray and Mill are seeing the same thing: Gray (1996, p. 40) has helped to clarify Mill's point on the harm principle and to narrow its objective to avoid an open-ended interpretation. Gray views the argument of *On Liberty* in the context of Mill's larger corpus, including Book VI of the *System of Logic* and the account of justice and moral rights in the final chapter of Mill's *Utilitarianism*. In *Utilitarianism* the most vital interests of human beings are identified as those relating to security and to moral rules that tend to prevent harmful acts against others (1996, p. 41). Gray (p. 42) concludes:

The significance of this claim for the argument of *On Liberty* can scarcely be exaggerated. These are the 'certain interests' which Mill there specifies are to be protected as rights ... these interests are satisfied when men refrain from invading one another's autonomy and from undermining one another's security. Unless these vital interests are endangered, no policy, which aims at preventing men from harming themselves, or at compelling them to benefit others, can ever be justified. It is to these interests that Mill refers in the introductory chapter of *On Liberty* when he makes the appeal to 'the permanent interests of man as a progressive being' and which function in Mill's theory of liberty in a manner analogous to the primary goods in Rawls's theory of justice. These vital interests are to be protected before any others a man may have; and they are not to be invaded or damaged simply because it seems that a greater satisfaction of overall preferences might thereby be achieved.

In short, Gray holds that we must protect certain interests as rights. Refraining from invading others' autonomy and not undermining others' security would satisfy their interests.

4.6.2 Applicative range of the harm principle

Defending Mill on freedom of expression does not concern how ideas are disseminated, or if they are true or false, or if they involve a person's private life with no bearing on scientific, moral, political, religious, and social issues. The harm principle applies if we violate the private rights of individuals. If understood correctly, Mill's freedom of expression concerns scientific, moral, political, religious, and social issues—areas that are in fact no one's property or private belongings. They are matters of preference, not of rights: for example, a believer of a particular religion cannot claim ownership of that religion; a follower of a particular moral code does not have right to own that moral system. A believer of any faith has the right to defend his faith and argue for it, but he has no right to be violent or suppress any opinion that may not conform to his understanding. After all, religion cannot be owned; it cannot be a property. In the same way, scientific knowledge, political opinions, and moral opinions by their nature cannot be owned, thus discussing such issues does not actually cause harm. When Mill discussed the harm principle, he meant harm to basic individual rights—for example, the right to life. Whereas we have many issues in society for which people claim rights it is difficult to see how these people would support having such rights: for example, who has rights of ownership for science, religion, morality, politics, art, and culture?

4.6.3 The harm principle and social obligation

Mill's discourse on liberty does not allow unlimited liberty that could become moral, social, or political anarchy. Therefore, on the one hand, he defends liberty, but on the other hand, he demands that individuals recognize their obligations. He believed that it is everyone's duty to do something in return for the protectiveness that society provides and that each person should respect others' interests and boundaries, saying that

This conduct consists, *first*, in not injuring the interests of one another; or rather certain interests, which, either by express legal provision or by tacit understanding ought to be considered as rights; and *secondly*, in each person's bearing his share of the labors and sacrifices incurred for defending the society or its members from injury and molestation. In enforcing these conditions, society is justified, at all costs to those endeavor to withhold fulfillment (1885, pp. 125-6).

4.6.4 Beyond the harm principle: Penalized by public opinion or corrected by persuasion

After showing the importance of the relationship between personal liberty and social-legal obligations Mill made it clear that for liberal acts impacting only the actor himself, without causing any harm to others, an individual's freedom should not be curtailed. He stated (p. 126) that the law sometimes cannot punish every offender whose acts harm others—that the only punishment available was public opinion. Whenever the interests of others are threatened, society can do something about it legally. The point is that the requirement of open discussion must be available to judge what is appropriate for the general welfare.

Mill thus established a balance between individual liberty and social obligations, arguing that an individual deserves to be free to act liberally if his actions do not negatively affect others. However, while defending individual freedom he does

not reject any role for society in persuading individuals to do what society deems appropriate as long as such persuasion is not coercive. He elaborated on social interaction where individuals care about each other would like others to follow what they consider the good life. Mill concluded that many of us seem to have no concern with each other's conduct in life and don't seem to concern ourselves with the well-doing or well-being of one another unless our own interests are involved. Responding to this view, he stated that we need a great increase in disinterested exertion to promote the good of others. However, he suggested that disinterested benevolence could find instruments to persuade people to do good other than whips and scourges, either literal or metaphorical. He further suggested that we help each other to distinguish the better from the worse and encourage others to choose the former and avoid the latter—that we should be forever stimulating each other. However, he cautioned that neither one person nor any number of persons is warranted in saying to another adult that he should not do with his life for his own benefit what he chooses to do with it because each individual knows his condition and circumstances better than anyone else. Therefore, in our conduct towards one another we are entitled to exercise our individual spontaneity freely. Considerations to aid our judgment or exhortations to strengthen our will may be offered to us or forced on us by others, but we ourselves are the final judges. Any errors that we are likely to commit against advice and warning are far outweighed by the evil of allowing others to constrain us to what they deem our good (1885, pp. 126-7). Regardless of what advice is given, an individual has the right to make decisions on what to do in the end. Even if the result shows that a decision was erroneous it is much better than being forced to do something just because it is seen as right in the eyes of others (pp. 126-7).

Mill also considered how people could show their dislike for an individual's actions, stating that people have the right to act on their own opinions without compromising anyone's individuality. He explained that we are not bound, for example, to seek social intercourse with a person whose actions we may dislike; we have a right to avoid them and can choose the social milieu that suits us. Moreover, everyone has a duty to warn others about any pernicious acts that might affect them. He also believed that penalties might sometimes be too severe for an offense where the faults directly concern the doer and not others, giving this example:

A person who shows rashness, obstinacy, self-conceit—who cannot live within moderate means—who cannot restrain himself from hurtful indulgences—who pursues animal pleasures at the expense of those of feeling and intellect—must expect to be lowered in the opinion of others, and to have a less share of their favorable sentiments, but of this he has no right to complain, unless he has merited their favor by special excellence in his social relations, and has thus established a title to their good offices, which is not affected by his demerits towards himself (1885, p. 130).

He then discussed injurious acts that harm others and that must be treated differently, including:

- The intrusion on others' rights
- Losses that cause suffering
- Falsehoods or duplicity in dealing with others
- Treating others unfairly and ungenerously, and
- Selfishly defending others to avoid injury.

He saw these as morally depraved acts for which moral retribution and punishment are required in serious cases (pp. 131-2).

In conclusion, two maxims apply here: *First*, if an action concerns only the doer and not others we should not hold the individual accountable to society for it: the

individual is not accountable to society when his actions affect the interests of no person but himself. Advice, instruction, persuasion, and the avoidance of wrongdoers are the only measures that society can justifiably use to express its dislike or disapproval of someone's conduct. *Second*, the individual is accountable for actions prejudicial to the interests of others and may be subject to social or legal punishment if society believes that one or the other is required for its protection (1885, p. 157).

The scope of the harm principle appears to be sufficient to protect freedom of expression and to legally penalize wrongdoers for encroaching on the vital rights of others. As for Feinberg's suggested "offence principle", it seems that expression causing offense but no harm can be penalized by opinion or corrected by persuasion as Mill proposed.

4.7 Real morality in public discussion

Mill's freedom of expression is *dialogical*, with interlocutors expected to maintain some morality of public discussion, mainly for the role of language in stating assertions or making statements. We must understand that language and its power and sensitivity play a major role in freedom of expression. Mill also stressed and appreciated the use of proper media and language in explaining truth in addition to understanding the subject at hand from various points of view. This aspect of the issue leads back to the use of language: even if we are allowed to express everything, we must be discreet in our use of language and thus our degree of certainty and the nature of our statements must be reflected in the language we use. This aspect of language in freedom of expression is critically important because in an atmosphere where statements are made with due care for their epistemological certitude and when facts

are not blown out of proportion tolerance of freedom of expression is an easier task. This is why statements made with academic seriousness attract minimal public disapproval as opposed to the same statements made in the commercial media with the careless use of strident language, inflammatory claims, and catchy titles.

Mill had his own ideas on the “morality of public discussion” related to his arguments on freedom of expression. His method of expressing opinions and thoughts was dialogical, but he had several concerns when suggesting such an approach for uncovering the truth. Among them:

- He urged us to consider the communication aspects of freedom of expression.
- In addition to the liberty to practice freedom of expression in holding opposing views and opinions, any argument requires that participants have honest minds to facilitate understanding of their thinking and most important to adhere to “public discussion’s morality”.
- To maintain public discussion morality, he didn’t favor regulation by the authorities and rejected restraints governing public debate from law-enforcement or other public authorities, advocating instead individuals as the source of restraint.
- He insisted that individuals exercising freedom of expression exhibit some sense of responsibility when making statements, including *what* statements to make, *when* to make them, and *how* to make them.
- His “real morality of public discussion” required exercising moral virtue and intelligent judgment about the qualities of mind and character of an interlocutor.

He explained his concerns this way:

It is, however, obvious that law and authority have no business with restraining either, while opinion ought, in every instance, to determine its verdict by the circumstances of the individual case; condemning every one, on whichever side of the argument he places himself, in whose mode of advocacy either want of candor, or malignity, bigotry or intolerance of feeling manifest themselves, but not inferring these vices from the side which a person takes, though it be the contrary side of the question to our own; and giving merited honor to every one, 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. This is the real morality of public discussion; and if often violated, I am happy to think that there are many controversialists who to a great extent observe it, and a still greater number who conscientiously strive towards it (1885, pp. 92-3).

Famous contemporary cases related to freedom of expression have proved that unnecessary violence and provocation of the public resulted from fictitious statements or presenting merely hypothetical propositions as facts, along with the use of inflammatory and irresponsible language. In his *On Liberty* Mill developed an approach for understanding the positions of opponents. A careful reading of the work reveals that he was very cautious in discussing freedom of expression to protect himself. His morality of discussion included many aspects that are missing in these times of shallow, strident sensationalism as we have increasingly commercialized the art of writing. This may well work without any negative consequences in some fields, but other areas requiring extreme sensitivity include discussions of religious, cultural, and national political issues where exercising freedom of expression must recognize factors related to the 'why', the 'when', and the 'how'. These factors are present in Mill's work, and understanding them would help us maintain freedom of expression without causing unwarranted and unnecessary suffering to others.

4.8 Conclusion

The six counter-arguments laid out in the preceding chapter have been negated here.

The *first counter-argument* held that Mill was inconsistent because his works advocate both equality and inequality among individuals contrary to his position on freedom of expression in *On Liberty*: In other words, the elite are favored over the commoner. In response, it was shown that Mill supported freedom of expression for *everyone*. However, this does not mean that we can treat every opinion equally in matters of decision-making: this is where “the elite of merit” become an important factor. The contradiction is removed by arguing along three lines: 1) the hermeneutical circle; 2) the exception proves the rule; and 3) progressive thought.

The *second counter-argument* held that not all acts are self-regarding, contrary to Mill’s distinction between *speech* and *harmful speech*. In response, it was argued that the distinction is well founded and valid because not all speech is harmful speech and that not every act is a harmful act. It was also shown that the distinctions between *speech*, *action*, and *instigation* are of practical significance when applied to a liberal position on freedom of expression.

The *third counter-argument*, in response to Berlin, held that a) Mill was divided between freeing an individual and at the same time expecting him to live a certain lifestyle, and that b) a free society is not essential in promoting a free individuality. In response, it was shown that Mill’s absolute freedom without harm to others already supported all lifestyles that individuals might prefer or like to enjoy. The second part of Berlin’s objection likewise does not cause any problem for Mill since Berlin’s was well aware of how harmful disciplinarian or paternalistic

authoritarian societies could be where freedom was restricted, but where individuality could still develop.

The *fourth counter-argument* held that Mill embraced a form of epistemological pluralism that conflicted with the more straightforward inductive account offered elsewhere in his writings. In response, it was shown that Mill used dialog as a tool to achieve freedom of expression—that his arguments in aggregate were related to the pursuit of truth through dialog. His use of pluralistic epistemology for freedom of expression echoes Gadamer's concerns that we cannot fully understand the human sciences simply by using the scientific method. Mill was actually concerned with human sciences such as ethics and politics, but his overall position on freedom of expression—including the natural sciences—makes sense only if understood in the historical context of freedom of expression.

The *fifth counter-argument* held that there should be two principles for freedom of expression as opposed to the single harm principle Mill proposed. The response shows that the two-principle theory negates the concept of freedom of expression.

The *sixth counter-argument* related to the insufficiency of the harm principle and suggested the “offence principle” in curtailing freedom of expression. In response, it was shown that Mill's harm principle as it applies to freedom of expression is sufficient in legally penalizing those who encroach on the vital rights of others. Regarding the “offence principle”, it seems clear that we can penalize expressions of opinions that cause offence but no harm through public opinion or persuasion as Mill suggested.

Chapter V

Conclusion and recommendations for further research

Conclusion

Unlike past research on John Stuart Mill, this study has confirmed that his approach to freedom of expression as developed in *On Liberty* is a tolerant, liberal, progressive position that upholds a dialogical, pluralistic spirit. It is a tolerant, liberal position because it supports a liberal society where different and opposing opinions on all subjects are tolerated. Thus differing views are treated equally and dialogically in a pluralistic spirit, with individuals left to their own choices after every opinion is allowed to be aired. The dialogical aspect of his position on freedom of expression is undoubtedly one of his greatest contributions. His position also reminds us of the distinction that Habermas makes between *power claims* (where beliefs are forced upon us) and *validity claims* resulting from dialog and discussion.

There is a legitimate reason why for almost two hundred years detractors and advocates alike have found Mill's *On Liberty* to be required reading and one of the most influential works ever written in defense of individual freedom. This research has reinforced the importance of his work. Meanwhile, critics of the work have attempted to weaken or dismiss his position by challenging the premises or the logic of Mill's arguments by claiming intellectual splits in his thinking as well as incoherencies, inconsistencies, contradictions, or other weaknesses in his arguments. This work has refuted these objections using applied hermeneutics to understand the epistemological, constructive, evolutionary, and progressive nature of his thought

traced as the backdrop for his position on freedom of expression. By taking into account Mill's milieu and transitional nature in responding to these criticisms it was found that the differences between his positions and intermediate steps, along with his remedies, can be understood and easily defended.

Mill's position on freedom of expression is central to his liberalism and directly relates to freedom of individuality: in fact, for him it was all about individuality. Instead of concern with the conditions of a "free society" Mill's concern was the conditions of a society where *individuals* could be free—not just 'politically' free, but free to develop as individuals. Thus he was also concerned with *all* the ways that society exercises power over individuals. Mill understood the freedom of individuals as the absence of power being exercised over them, free from interference or limitation by society. This 'negative' freedom focused on what someone is free from, what is absent, and what areas of life society should have *no* say at all in. For him it was these things that make individuals free as prerequisites for freedom of thought and freedom of expression.

He argued for absolute freedom of opinion and sentiment on all subjects—practical, speculative, scientific, moral, or theological, along with the fullest liberty for professing and discussing any doctrine, however immoral it might seem, as a matter of ethical conviction. His acceptance of epistemological pluralism was not contrary to his empiricism as he made an implicit distinction between natural and human sciences. In addition, his approach to dialog allowed airing every opinion and making choices without suppressing any rival opinions.

Of the three types of freedom that Mill identified, the first was freedom of thought—"absolute freedom of opinion and sentiment on all subjects": freedom of

expression then derives from this. He argued for freedom of thought in three ways ... *First*, if we accept that none of us are infallible when it comes to knowledge or definitive insight into the ultimate truth, we should value liberty of thought and argument. Why? Because one way we can learn where our knowledge, judgment, and views about the 'truth' have gone wrong is to listen to critics of "conventional wisdom" so that we can learn exactly *why* they disagree with us. We must understand that common wisdom is sometimes simply wrong. Thus Mill argued that we should not fear the free expression of ideas—true or false—because truth drives out falsity and that by considering false views we can reaffirm the basis for our true views. He thus concluded that we should not exclude views on the basis of *apparent* falsity. *Second*, by accepting controversy half-truths held by various individuals can become unified truth of the whole. *Third*, unless we are willing to rethink what we take for granted—even if we are totally confident of our beliefs and understanding—our ideas and beliefs can easily become atrophied dogmas. This is why he also argued that free discussion is needed to prevent the "deep slumber of a decided opinion".

All of this means that we must teach each generation to think and reason for themselves and that we must arrive at our own conclusions through thought and reflection to keep our ideas and beliefs alive and make them meaningful. This, Mill argued, is because truth is not fixed or stable, but evolves over time, and because much of what we once considered true is now seen as false.

Mill's liberalism differed from other conceptions of liberalism in that it aimed to put individuals on guard against government suppression and the three types of tyranny that threatened freedom down through the ages: 1) the rule of one or the few over the many (dictators and oligarchs); 2) the rule of the many over the one; and 3)

the rule of the majority over the minority to dominate the political process. The source of this tyrannical power was the use and control of political coercion through state power, allowing some to deny freedom to individuals who held contrary beliefs or values. His position on civil or social liberty focused on the nature and limits of the power that can be legitimately exercised by society over the individual: The issue was stifling or preventing individuals from exercising personal freedom as they wished. He also argued that an opinion only carries intrinsic value to the owner of that opinion, thus silencing the expression of that opinion is an injustice violating a basic human right.

However, Mill did not support unbridled freedom of expression and suggested that we need some rules of conduct to regulate the actions and words of members of a political community. This resulted in his Harm Principle stating that the only justification for exercising power over a member of a civilized community against his will is to prevent harm to others, reasoning that since we receive the protection of society we owe certain conduct in return. And he reasonably regarded instigation to violence as harm to others, which should be restricted, with opinions being expressed in an appropriate manner. *First*, he argued that individuals are not accountable to society for self-regarding acts and that society should only express disapproval of such actions through advice, instruction, persuasion, and avoidance by others. However, suppression of speech could not be justified to protect the speaker's own well-being or because of moral or economic implications. *Second*, he argued that individuals *are* accountable for actions that harm others, and that society can punish them socially or legally as deemed necessary to prevent harm from a clear or direct threat.

Implications for Thailand. *On Liberty* contains important lessons for Thai people and Thai society. So how might John Stuart Mill view Thailand's current approach to freedom of thought and freedom of expression? Initially he would be delighted to read part 7, section 45 of the 2007 constitution headed "Freedom of Expression of Individual and the Press" ("A person shall enjoy the liberty to express his opinion, make speech, write, print, publicize, and make expression by other means.")

Thai people can learn from Mill's justification for freedom of expression. In his justification, it is worth noting that he does not only refer to the liberal position but also positive consequences of the freedom (e.g. creativity, truths and individuality). The latter element can be very helpful for today's society. It is obvious that censorship in the Thai society goes so far as to obstruct prospective positive consequences. At the same time, some groups adhere to the liberal position to the point of ignoring the need to consider about consequences to follow from their free expression. Moreover, with reference to the harm principle, problems exist which are caused by censorship based on beliefs in harms that do not exist. At the same time, problems are found which arise because people overlook or down play harmful consequences. This shows that Thai people should learn to strike a balance between the liberal stance and the utilitarian consideration.

Democratic attitude can also be enhanced by the above suggestions. Thailand is like most of other Asian countries where authoritarianism overshadows individual freedom. Many try to challenge the authoritarian attitude with the liberal position. The other option is to so challenge by virtue of utilitarian consideration. It should not be forgotten that this kind of consideration and democracy are related. According to one of Mill's justifications, freedom of expression can leads to truths. When people are

allowed to freely express their opinions, other people can contribute to test the truth of these opinions. Such test can be effective in the context of democracy.

Mill would most certainly argue that debate and argument can only benefit Thai society's democratic advancement, while admitting that freedom is not easy since it requires an open mind. He would warn that with discrimination or repression we only have rights if they are allowed by the "morals police", meaning authoritarian intolerance resulting in conformity and control. Mill would view this as backward and dangerous, leading to stagnation rather than the dynamic democratic society that Thais profess to seek.

In light of this, he might see freedom of expression in Thailand so far as more of a journey than a destination—a journey where lessons are being learned, character is being developed, and passions are being ignited (but which has also included 17 constitutions and 18 coups). Western-educated generations have become the norm over the past few decades with Western views on freedom of expression emphasizing individualism as a self-concept. This just might help to temper the traditional way of Asian submissive thinking as part of this journey. In fact, Mill's dialogical and pluralistic spirit might also give us the perfect balance in our quest for free expression of opinions. As Sir Arthur Conan Doyle said, "We can but try."

Recommendations for further research

There seems to be a need for further research on the importance of freedom of speech on a practical level in the political and social arena rather than simply on an

intellectual level—particularly for the Eastern countries. The cultural and political realities in the Eastern countries often mean that they are not positioned to allow greater freedom of expression, one factor being lower literacy rates. The researcher believes that the Eastern world must undergo a gradual change and that these governments must take steps to educate children from the very early school years to respect diversity and build a spirit of toleration. For adults, political initiatives are a must: adults should conduct training on press freedom and building capacity to tolerate different views without prejudice. It is also important that these values be built into workplaces. How such initiatives can be developed remains a fertile research area for social scientists to explore, for philosophers to ponder, and for governments to implement.



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AUTOBIOGRAPHICAL SUMMARY

I was raised by a loving, caring family, living in Bangkok most of my lifetime. I studied at Khema Siri Memorial School from Pathom 1 through Mattayom 6. Then, I had a chance to study at Assumption University for a BBA in marketing, an MBA, and a doctorate in philosophy.

Who am I in life?

When I was a child, I loved art – especially painting. I won many awards for painting during high school and thought that art would be my life. But as I grew older (and wiser?) I realized that I should not lead my life with a narrow mindset. Then here comes philosophy! Having a chance to study philosophy opened other perspectives in my life.

What does life mean to me?

It seems to me that life can be miserable, but challenging. Carrying on with life isn't easy and requires much effort to move on with it. Philosophy has helped me to understand more about life and to learn how to handle life's challenges.

What is my outlook for the future?

I hope that opportunities will arise for me to use my limited knowledge to help others and to make the world a better place.

