

**DISOBEDIENT DISCOURSE: MILL, CONTRAPOINTS, AND
THE LIMITS OF FREE SPEECH NORMS**

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Contents

Abstract	1
Introductory	2
Roadmap	4
Chapter 1: Mill's Justification	6
1.1. Truth Worth Having	6
1.2. Human Fallibility	10
1.3. Free Speech Norms and Truth Worth Having	14
1.4. Is Truth Worth Having Really Worth It?	15
Chapter 2: The Scope of Mill's Norms	19
2.1. Social Tyranny and Progressive Protests	19
2.2. Bigots vs Corn-Dealers	22
2.3. Sticks and Stones?	26
2.4. The Revised Principle of Liberty	28
2.5. Mill's Verdict for Progressive Protestors	31
Chapter 3: ContraPoints	32
3.1. The Unfairness Objection	34
3.2. The Enfeeblement Objection	38
Chapter 4: Disobedient Discourse	42
4.1. Justifying Disobedience	44
4.2. Improving Discourse	49
4.3. Assessing the Damage	50
Conclusion	53
Reference List	54

Abstract

In this paper, I explore contemporary disagreement regarding protests against speakers deemed regressive or bigoted by progressive activists. I do so by examining the rationale, scope, and operation of free speech norms (i.e. non-legal standards that require people to respond to speech with tolerance). I specifically focus on the free speech norms defended by John Stuart Mill in his essay '*On Liberty*'. I contend that Mill's free speech norms are well-justified and extend to protect the speech of regressive bigots in almost all circumstances. However, I also draw upon two arguments from Natalie Wynn's video essay '*The Witch Trials of J.K. Rowling*' to contend that Millian free speech norms present serious problems for marginalised people. I attempt to resolve this tension between Mill's well-justified norms and their problematic implications for marginalised people by developing a concept of 'disobedient discourse' that is modelled after John Rawls' account of civil disobedience and allows for free speech norms to be violated in circumstances of longstanding injustice.

Introductory

*‘Bad men need nothing more to compass their ends, than that good men should look on and do nothing. He is not a good man who, **without a protest**, allows wrong to be committed...’*

- John Stuart Mill¹

How should progressives and members of marginalised groups respond to speech which they consider regressive or bigoted? This single question has generated an enormous amount of controversy in recent decades, with the actions of progressive political movements often facing stern criticism from supporters of liberal free speech. Protests against university guest speakers,² academics,³ comedians,⁴ conservative activists,⁵ and other public figures have garnered a great deal of both public and academic attention. This has in turn led to a growing anxiety regarding ‘cancel culture’ and the (allegedly) stifling impacts of political correctness, which has left many liberals clamouring for a firm reassertion of the right to freely express one’s opinion.⁶

Such a right can take many forms, ranging from explicit legal protection against government interference with speech (such as that provided by the First Amendment of the Constitution of the United States) to societal norms requiring individuals to tolerate the ideas of others without resorting to violence or censorship. It is this latter category of non-legal norms that is primarily

¹ *Inaugural Address Delivered to the University of St. Andrews Feb. 1st 1867* (London: Longmans, Green, Reader, and Dyer, 1867), 36 (emphasis added).

² BBC News, “Steve Bannon Oxford Union Appearance Leads to Protests,” *BBC News*, November 16, 2018, <https://www.bbc.com/news/uk-england-oxfordshire-46240655>.

³ Matthew Weaver, “Trans Activists Disrupt Kathleen Stock Speech at Oxford Union,” *The Guardian*, May 31, 2023, <https://www.theguardian.com/society/2023/may/30/trans-activists-disrupt-kathleen-stock-speech-at-oxford-union>.

⁴ Rory Carroll, “Berkeley Students Bid to Ban ‘Blatant Bigot’ Bill Maher from Commencement Ceremony,” *The Guardian*, October 29, 2014, <https://www.theguardian.com/us-news/2014/oct/28/berkeley-petition-bill-maher-commencement>.

⁵ Madison Park and Kyung Lah, “Berkeley protests of Yiannopoulos caused \$100,000 in damage,” *CNN*, February 2, 2017, <https://edition.cnn.com/2017/02/01/us/milo-yiannopoulos-berkeley/index.html>.

⁶ “A Letter on Justice and Open Debate,” *Harper’s Magazine*, July 7, 2020, <https://harpers.org/a-letter-on-justice-and-open-debate/>; “FIRE’s Mission,” The Foundation of Individual Rights and Expression, accessed October 22, 2023, <https://www.thefire.org/about-us/mission>.

of issue in controversies arising from progressive protests. Such protests are not exercises of government power; they are instances of collective action carried out by private citizens. As such, the liberal desire for freedom of speech in the context of progressive protests is best understood as a desire for universal adherence to particular norms of discourse. More specifically, it is a desire for everyone, including progressives and marginalised groups, to obey norms which dictate that they ought to respond to speech in a sufficiently tolerant way (hereafter referred to as ‘free speech norms’).

Liberals (or, at least, well-informed liberals) derive free speech norms from a variety of sources and justifications.⁷ Among these various lines of thought, the classic and most widely read view is that provided by 19th century English philosopher John Stuart Mill.⁸ Contained in what is arguably the most famous work of one of the most famous Western philosophers,⁹ Mill’s defence of free speech norms in the second chapter of ‘*On Liberty*’¹⁰ (hereafter referred to as ‘the Millian argument’) stands for nothing in terms of historical importance. It also stands as an undeniable landmark within contemporary liberal thought,¹¹ having gone so far as to become the dominant view expressed by the Supreme Court of the United States in free speech cases.¹² This suggests that when contemporary liberals argue in favour of free speech norms, they often do so with the Millian argument in mind.

It is worth examining, then, what the norms established by the Millian argument are, and whether they are worth endorsing. Additionally, considering the relevance of free speech norms

⁷ Adrienne Stone and Frederick Schauer, “Introduction,” in *The Oxford Handbook of Freedom of Speech*, ed. Adrienne Stone and Frederick Schauer (Oxford: Oxford University Press, 2021), xiii.

⁸ Vincent Blasi, “Classic Arguments for Free Speech,” in *The Oxford Handbook of Freedom of Speech*, ed. Adrienne Stone and Frederick Schauer (Oxford: Oxford University Press, 2021), 28.

⁹ Christopher Macleod, “John Stuart Mill”, *The Stanford Encyclopedia of Philosophy* (Summer 2020 Edition), Edward N. Zalta (ed.), <https://plato.stanford.edu/archives/sum2020/entries/mill/>.

¹⁰ (Great Britain: Penguin Books, 1985), 76.

¹¹ John Skorupski, *Why Read Mill Today?* (New York: Routledge, 2006), 39.

¹² Eric T. Kasper and Troy A. Kozma, “Absolute Freedom of Opinion and Sentiment on All Subjects: John Stuart Mill’s Enduring (and Ever-Growing) Influence on the Supreme Court’s First Amendment Free Speech Jurisprudence,” *University of Massachusetts Law Review* 15, no. 1 (2020): 5.

to the issue of progressive protests, it is worth further examining how those norms ought to function in the context of progressives and marginalised people responding to speech which they consider regressive or bigoted. In this paper, I conduct both of these examinations. The first half of my analysis (chapters 1 and 2) is dedicated to clarifying Mill's thought, while the second half (chapters 3 and 4) focuses on the issues that arise when his ideas are applied in the context of progressive protests. In conducting these analyses, I shall seek to clarify and evaluate both the liberal and progressive stances on free speech norms and provide an idea of how we can possibly move forward from the current political quagmire.

Roadmap

In chapter 1, I assess Mill's justification for free speech norms. In doing so, I focus on the first branch of the Millian argument, in which Mill argues that human fallibility requires us to live under free speech norms in order for our beliefs to be held in a way that allows them to be properly called true.¹³ Upon concluding that this justification is well-founded, I turn in chapter 2 to examine the scope of the norms that it establishes. Within that discussion, I argue that a proper interpretation of '*On Liberty*' (which involves a departure from commonly accepted views regarding Mill's so-called 'harm principle') reveals that Millian free speech norms necessarily extend to protect regressive and bigoted speech from interference in almost all circumstances. This conclusion presents a serious *prima facie* issue for progressive protestors, as it appears as though their actions often run contrary to a well-justified set of norms and thus warrant some manner of condemnation.

However, in chapter 3, I push back against this idea by drawing on a contemporary critique of free speech norms and their impacts upon marginalised people. I present video essayist Natalie

¹³ Mill, *On Liberty*, 77.

Wynn (creator of the popular YouTube channel ‘ContraPoints’)¹⁴ as an important interlocutor for Mill who lays two serious charges against the kind of free speech norms he defends. First, that such norms are unjust insofar as they make burdensome demands of marginalised people that are not shared by members of majority groups; and second, that such norms hinder the advancement of marginalised peoples’ rights, as they forbid conduct that has historically played a significant role in such advancement.¹⁵

Thus, at the conclusion of chapter 3 we are left with a rather vexing puzzle. On the one hand, the free speech norms established by the Millian argument seem well-justified. On the other, said norms appear to create serious problems for marginalised people. This tension could arguably be resolved by evaluating the ideals upon which the Millian argument is based and weighing them against the importance of justice for marginalised people. If such an approach were followed, it might turn out that Mill’s free speech norms, while incredibly valuable in their own way, ought to be abandoned in favour of the greater good (a strategy that Mill, as a famously utilitarian thinker,¹⁶ may have himself endorsed). Or, if the inverse were found to be the case, justice for marginalised people would have to be discarded in favour of upholding free speech norms at any cost (as is often recommended by members of the ‘Intellectual Dark Web’).¹⁷

However, that is not the approach I take in this paper. Instead, in chapter 4, I aim to keep Mill’s free speech norms intact whilst minimising their negative impact on marginalised people. I do so by drawing upon and modifying John Rawls’ account of civil disobedience to create a justification for disobeying free speech norms in particular circumstances.¹⁸ Theories of civil

¹⁴ “ContraPoints,” YouTube, accessed October 22, 2023, <https://www.youtube.com/@ContraPoints>.

¹⁵ Natalie Wynn, “The Witch Trials of J.K. Rowling,” YouTube, April 18, 2023, <https://m.youtube.com/watch?v=EmT0i0xG6zg&pp=ygUTI2ZpcnN0bGFkeW9mbGVuZGluZw%3D%3D>.

¹⁶ Macleod, “John Stuart Mill”.

¹⁷ Bari Weiss, “Meet the Renegades of the Intellectual Dark Web,” *The New York Times*, May 8, 2018, <https://www.nytimes.com/2018/05/08/opinion/intellectual-dark-web.html>.

¹⁸ John Rawls, *A Theory of Justice: Revised Edition* (Cambridge: Harvard University Press, 1990), 319-331.

disobedience provide persuasive arguments for the proposition that correcting longstanding injustice within a predominantly just legal system sometimes requires breaking the laws created by that system.¹⁹ I analogously contend that Mill's well-justified free speech norms may be permissibly disobeyed by victims of longstanding injustice seeking to advance their fundamental rights. In other words, although Millian free speech norms remain binding for the majority of people, they are temporarily suspended for marginalised people in situations where their basic livelihood is being called into question.

Chapter 1: Mill's Justification

Attempting to explain and defend the Millian argument as part of a larger discussion is a daunting task. Mill's defence of free speech norms could easily be (and has been) the subject of entire volumes.²⁰ As such, it is important to keep in mind that the aim of the following two chapters is not to provide a comprehensive outline of Mill's reasoning, nor to defend it against any and all objections. Instead, my goal is to provide a well-reasoned account of Mill's thought that supports two key conclusions. First, that Mill provides good reasons for thinking that free speech norms are highly desirable (discussed in this chapter); and second, that a proper interpretation of Mill entails that such norms must, in his view, extend to protect the speech of regressive bigots against interference from progressive protests in almost all circumstances (discussed in chapter 2).

1.1. Truth Worth Having

If I were to distil the central thrust of the Millian argument into a single sentence, it would be the following: Mill believes that maximum freedom of expression is beneficial for society

¹⁹ Candice Delmas and Kimberley Brownlee, "Civil Disobedience," *The Stanford Encyclopedia of Philosophy* (Fall 2023 Edition), Edward N. Zalta & Uri Nodelman (eds.), <https://plato.stanford.edu/archives/fall2023/entries/civil-disobedience/>.

²⁰ K.C. O'Rourke, *John Stuart Mill and Freedom of Expression: The Genesis of a Theory* (New York: Routledge, 2001).

because such freedom is a necessary precondition for people to be able to properly call their beliefs true. Essentially, Mill thinks that regardless of what a given view says, we always gain something by allowing it to be expressed.²¹ Furthermore, what we gain is not some trivial benefit, but rather the ability to justifiably feel as though our beliefs about the world are true.²² In other words, Mill claims that societies governed by free speech norms allow for beliefs to be held in the right kind of way, whilst societies without such norms do not.²³ For the sake of brevity, I shall hereafter refer to ‘beliefs held in the right kind of way’ as ‘truth worth having’.

I note that this label of truth worth having is (as far as I am aware) my own invention. I have chosen to use it for two reasons. The first is that more widely used terms such as knowledge are often subjects of extensive philosophical debate and therefore possess a variety of technical definitions.²⁴ By avoiding such terms, I prevent a given reader from objecting to Mill’s thought on grounds such as ‘Mill says that X is required for knowledge, but this shows that he does not really understand what knowledge is!’ Instead, by introducing a new term to describe what Mill sees as being the right way to hold beliefs, I allow for that term to take on a meaning which precisely conforms with the Millian argument.

The second reason is that truth worth having succinctly captures the thrust of Mill’s argument in a simple ordinary language phrase. Although people may often call their beliefs true, Mill claims that they can only *justifiably* do so if those beliefs are held in a certain way. In other words, people who do not hold their beliefs in the right sort of way will certainly have a notion of truth, but that notion (according to Mill) will not be one that is worthy of the name or worth having. For those who dislike the introduction of new terms, truth worth having can be thought

²¹ Mill, *On Liberty*, 76.

²² *Ibid*, 81.

²³ *Ibid*, 97.

²⁴ Jonathan Jenkins Ichikawa and Matthias Steup, "The Analysis of Knowledge", *The Stanford Encyclopedia of Philosophy* (Summer 2018 Edition), Edward N. Zalta (ed.), <https://plato.stanford.edu/archives/sum2018/entries/knowledge-analysis/>.

of as interchangeable with ‘justified belief’, noting that the requisite justification is that which is outlined in the Millian argument.

Truth worth having is importantly distinct from what we might normally call truth in everyday parlance. Putting the many nuances of epistemology to one side (to prevent this paper from falling down one of the deepest rabbit-holes in philosophy) it seems reasonable to say that when most people describe a belief as true, they mean that it reflects how the world actually is, or at least how the world is according to our best current knowledge. For example, my belief that grass is green is labelled true because grass seems to actually be green, or at the very least our best current knowledge describes it as such. In other words, the everyday meaning of truth is about *what* we believe.

Truth worth having, on the other hand, is about *how* we hold our beliefs. It does not focus on whether people come to the right conclusions, but rather whether they hold their beliefs in the right way. This distinction is clearest when one considers a world in which truth (defined according to the everyday meaning above) is abundant, but truth worth having is not. For example, in a society where citizens unquestioningly memorise the teachings of a benevolent AI superintelligence, we may reasonably question whether the beliefs of the citizenry are being held in a way that is desirable, regardless of how accurately those beliefs describe the world. Even if we grant that the beliefs propounded by the AI are completely true insofar as they reflect how the world is, they will not constitute truth worth having (in Mill’s view) because they are held in a dogmatic and uncritical fashion.²⁵

Mill’s focus on truth worth having emerges from two distinct streams within his views regarding the nature of human beings. The first, which I shall discuss later in this chapter, relates to Mill’s views regarding human limitations. Essentially, Mill thinks that we can never

²⁵ Mill, *On Liberty*, 97.

be truly assured that a given conclusion is the right one, so all we can do is focus on holding our belief in such conclusions in the right way.²⁶ In other words, Mill provides what he sees as strong *epistemic* reasons for caring about truth worth having.

The second stream within Mill's thought that leads him to focus on truth worth having is his concept of human flourishing or, as he describes it, 'utility in the largest sense, grounded on the permanent interests of man as a progressive being.'²⁷ Essentially, Mill thinks that holding beliefs in the right way is essential for 'the mental well-being of mankind (on which all their other well-being depends)'.²⁸ This goes beyond considerations of what is best for us in terms of our rational and epistemic obligations, and instead appeals to what is best for human beings overall. Thus, Mill also provides what he sees as strong *ethical* reasons for caring about truth worth having, where 'ethical' is understood as meaning something that is constitutive of or contributing towards the good life.²⁹

This concept of human flourishing forms the foundation of Mill's utilitarian ethical framework,³⁰ which underlies the entirety of the Millian argument.³¹ Mill makes this clear in his statement that,

'I forego any advantage which could be derived to my argument from the idea of abstract right, as a thing independent of utility.'³²

However, while this undoubtedly makes it appropriate for a discussion of the Millian argument to feature an evaluation of Mill's ethics more broadly, such an evaluation would be a monumental task. More importantly, it would require a significant departure from '*On Liberty*'

²⁶ Mill, *On Liberty*, 81.

²⁷ Ibid, 70.

²⁸ Ibid, 115.

²⁹ Skorupski, *Why Read Mill Today?*, 18.

³⁰ Ibid, 18-24.

³¹ Ibid, 39.

³² Mill, *On Liberty*, 69-70.

and its discussion of free speech norms which, as I indicated at the beginning of this chapter, already cannot receive a comprehensive outline within the confines of this paper. As such, I shall focus on the epistemic reasons that Mill provides within the Millian argument itself. However, it should still be noted that these epistemic reasons are in fact underscored and supported by broader ethical considerations.

What we need to examine, then, is whether Mill's idea of truth worth having is persuasive, and furthermore whether it is connected to free speech norms in the way that Mill claims. After all, if it turns out that free speech norms have nothing to do with how we hold our beliefs, then Mill's argument crumbles. Or, even if one accepts Mill's claim that free speech norms allow for people to hold their beliefs in a *certain* way, there is still the remaining question of whether that ought to be considered the *right* way. To conduct these examinations, we must take a closer look at the content of the Millian argument.

1.2. *Human Fallibility*

The Millian argument is divided into two distinct branches.³³ To allow for sufficient discussion of the other issues I seek to address in this paper, I shall limit my analysis in this chapter to the first branch of the Millian argument. Although this may seem like a worrying limitation for my discussion of Mill's thought, it is worth noting that the first branch 'suffices on its own' to justify free speech norms.³⁴ Although the other arguments contained in the second chapter of '*On Liberty*' serve to bolster Mill's reasoning and provide additional justification for his normative recommendations, the argument contained within the first branch (if accepted) is enough to demonstrate that free speech norms are highly desirable.³⁵

³³ Mill, *On Liberty*, 76.

³⁴ Christopher Macleod, "Mill on the Liberty of Thought and Discussion," in *The Oxford Handbook of Freedom of Speech*, ed. Adrienne Stone and Frederick Schauer (Oxford: Oxford University Press, 2021), 8.

³⁵ *Ibid.*

Within the first branch, Mill claims the following:

‘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.’³⁶

Essentially, Mill believes that we can only have assurance that a given belief is true if ‘the means of setting it right are kept constantly at hand.’³⁷ In other words, for truth worth having to be realised, we need to live in social conditions which allow for new, alternative views that may change our mind to be brought to our attention without interference. I shall hereafter refer to the existence of such conditions as ‘Mill’s criterion for truth worth having’. When this criterion is met, we gain the assurance that our currently held beliefs are not as they are simply because relevant information is being kept from us.

Mill’s reasons for thinking that this criterion is necessary are rooted in his broader philosophy regarding human beings and how they acquire knowledge about the world.³⁸ While there is much that can be said regarding exactly how that philosophy informs Mill’s views on free speech,³⁹ it is sufficient for our purposes to focus on Mill’s belief that human beings are inherently fallible.⁴⁰ In other words, Mill thinks that we can never know for certain whether we are right or wrong.

Mill contends that this is so because all of our beliefs are based on incomplete sets of evidence that may be subject to further expansion.⁴¹ Since we are not born into the world as all-knowing beings, our judgments about the world can only be informed by evidence that we have

³⁶ Mill, *On Liberty*, 79.

³⁷ *Ibid*, 80.

³⁸ Macleod, “Mill on The Liberty of Thought and Discussion,” 4.

³⁹ John Skorupski, *John Stuart Mill* (New York: Routledge, 1989), 376-83.

⁴⁰ Mill, *On Liberty*, 81.

⁴¹ Macleod, “Mill on The Liberty of Thought and Discussion,” 5-6.

previously encountered throughout our lives.⁴² This means that there is always the potential for more evidence to arise in the future that may lead us to reconsider our judgements.⁴³ This is so even for our most deeply rooted beliefs, even though many people often do not act as though that is the case.⁴⁴ Although I may be extremely confident that a belief of mine is correct, even to the point where I have based my life or career around it, I still ought to revise or discard that belief if new evidence comes to light that makes it untenable. We may reasonably question whether it is psychologically likely that people will act this way, but is still the case that, from a purely rational perspective, they ought to do so.

This is a rather intuitive idea. Although I am very confident in my belief that the sky is blue on sunny days, that belief is based on a limited body of evidence including my perceptions of the sky and others' descriptions of it. If I woke up tomorrow and received extensive and rigorous evidence that I and everyone else I know had been unwittingly involved in an experiment where special lenses were placed on our eyes as infants to make sky appear blue when it is in fact green, I ought to be compelled to change my beliefs regarding the sky's colour. Because my ability to gather evidence about the world is inherently limited (insofar as I can never know everything that there is to know) I must always leave myself open to new evidence which may expand my knowledge and lead me to revise even my most foundational beliefs.

Furthermore, even if I were to somehow perform the impossible task of familiarising myself with all the evidence that will ever be available for a given subject, my interpretation of that evidence and thus the conclusion I draw from it would still be a live issue.⁴⁵ Individuals can view the same body of evidence and come to different conclusions. For example, one person can look at a crop circle and conclude that Earth has received extra-terrestrial visitors, whilst

⁴² Macleod, "Mill on The Liberty of Thought and Discussion," 5-6.

⁴³ Ibid.

⁴⁴ Mill, *On Liberty*, 77-78.

⁴⁵ Macleod, "Mill on The Liberty of Thought and Discussion," 6.

another can look at the very same circle and conclude that local teenagers have too much time on their hands. As Mill put it, ‘very few facts are able to tell their own story’.⁴⁶ Thus, any interpretation of evidence will suffer from the same incompleteness as the evidence itself. Although we may feel very confident in our interpretation of a given set of facts, there is always the potential for a better, previously neglected interpretation to be brought to our attention.

This inescapable fallibility leads Mill to claim the following:

‘The beliefs which we have most warrant for have no safeguard to rest on but a standing invitation to the whole world to prove them unfounded. If the challenge is not accepted, or is accepted and the attempt fails, we are far enough from certainty still, but we have done the best that the existing state of human reason admits of: we have neglected nothing that could give the truth a chance of reaching us; if the lists are kept open, we may hope that, if there be a better truth, it will be found when the human mind is capable of receiving it; and in the meantime we may rely on having attained such approach to truth, as is possible in our own day. This is the amount of certainty attainable by a fallible being, and this the sole way of attaining it.’⁴⁷

In other words, truth worth having requires people to live under social conditions which allow for new evidence and interpretations to be brought to their attention without interference. Since our beliefs may always be revised in response to new or previously neglected information, we can only have confidence in them under conditions which make such information readily available. I can be confident in my belief that the sky is blue only insofar as I have assurance that if evidence comes to light which disputes that belief (such as proof of the aforementioned colour-change lens conspiracy) it will be made available to me. If I were living in a society where evidence of that kind was suppressed, then there would always be a concern that my

⁴⁶ Mill, *On Liberty*, 80.

⁴⁷ *Ibid*, 81.

belief only exists because certain information that would otherwise change my mind is being kept from me.

1.3. Free Speech Norms and Truth Worth Having

Now that we have established where Mill's criterion for truth worth having comes from, let us turn to consider whether it is connected to free speech norms in a way that actually justifies the existence of such norms. Upon first glance, this question may seem rather pointless or tautological. After all, free speech norms (as defined in the introductory) are social norms that do not allow people to suppress expressions of opinion by reacting to them in an aggressive or intolerant way. Is this not the exact social condition that Mill's criterion for truth worth having requires, meaning that the connection between that criterion and free speech norms is self-evident?

Not quite. Recall that Mill's criterion for truth worth having stipulates that evidence which may lead people to rationally change their minds must not be kept from them. This arguably leaves room for opinions which have no chance of rationally changing anyone's mind to be justifiably suppressed. In other words, Mill's criterion may allow for opinions which appear completely and obviously false to receive condemnation and backlash that runs contrary to free speech norms. Although free speech norms would dictate that someone who expresses a completely outlandish opinion should not be shunned or silenced, Mill's criterion seemingly permits such a reaction in cases where the opinion has no chance whatsoever of being true.

However, as Mill himself explains, it is impossible for human beings to actually identify an opinion as completely false for the purpose of justifying its suppression.⁴⁸ Just as we can never know for certain whether a new piece of evidence is on the horizon that may change our beliefs, we can also never know whether an existing piece of evidence may be understood in a new

⁴⁸ Mill, *On Liberty*, 77.

way that similarly prompts a shift in our thinking. If this uncertainty were to somehow be overcome, and someone were genuinely able to say that there is no chance of a given piece of information ever being accepted by anyone, then suppression of that information may be justified. However, Mill does not believe that such a task is actually possible for inherently fallible human beings.⁴⁹

Instead, all human beings can do is have a feeling of personal certainty that a given piece of information is false, which is not enough to warrant suppression. As Mill put it:

‘To refuse a hearing to an opinion because they are sure that it is false is to assume that *their* certainty is the same thing as *absolute* certainty. All silencing of discussion is an assumption of infallibility.’⁵⁰

In other words, for us to be able to justifiably suppress speech on the grounds that it is false, humans would have to be fundamentally different beings. More specifically, we would have to be infallible beings, rather than fallible ones. Only in those circumstances could suppression of information occur without the risk of preventing people from learning the truth.⁵¹

Since an exception cannot be made out for false opinions, Mill’s criterion for truth worth having gives rise to a need for free speech norms that extend to protect all expressions of opinion (subject to the exceptions explored in chapter 2).

1.4. *Is Truth Worth Having Really Worth It?*

What remains for us to examine, then, is whether truth worth having is something that we really ought to care about. This is not a straightforward question, as complete liberty of contradicting opinion almost certainly entails allowing people to express ideas that we find ridiculous or

⁴⁹ Mill, *On Liberty*, 81.

⁵⁰ *Ibid*, 77.

⁵¹ Piers Noris Turner, “Authority, Progress and the ‘Assumption of Infallibility’ in *On Liberty*,” *Journal of the History of Philosophy* 51, no. 1 (January 2013): 93-117.

repulsive, and perhaps even those which are actively harmful (see chapter 2). Furthermore, it requires us to acknowledge and act in accordance with the idea that even our most deeply held convictions may be subject to revision in light of further evidence.

This is especially concerning when it comes to matters of politics and morality. The prospect of having to listen to someone argue that women are innately inferior to men is not appealing in the slightest. Nor is the idea of consciously holding that my belief in the equality of the sexes may need to be revised if new evidence emerges. Instead, I want to declare it as an undeniable moral truth that I shall always unwaveringly believe. Furthermore, I do not feel overly worried at the prospect of living under a social condition in which misogynistic speech can never occur. On the contrary, it sounds like a rather ideal situation that may very well have benefits for my mental wellbeing.

Unfortunately, despite these inclinations, Mill's argument from fallibility holds true. If I were to carve out an exception for misogynistic speech and allow for its suppression on the grounds that it is, by my lights, complete hogwash, then I would be making the very mistake Mill identified as being commonplace among those who seek to suppress speech: I would be mistaking *my* certainty for *absolute* certainty.⁵² In other words, I would be effectively claiming that I am somehow immune to the inherent limitations of human fallibility. It is worth noting that we are yet to examine whether suppressing misogynistic speech would be permissible on other grounds such as its potential to cause harm to women (see chapter 2), but the fact remains that suppressing it due to its apparent falsity would involve a problematic lack of appreciation for human limitations.

As Mill explains (at some length) history is on his side of the argument here.⁵³ Many, if not most societies throughout history have held certain beliefs to be sacred and undoubtable.

⁵² Mill, *On Liberty*, 77.

⁵³ *Ibid*, 84-87.

However, as time has passed, many of these sacred tenets have been overturned, and the previously suppressed ideas that contradicted them have risen to become widely accepted views. Rather than claiming that we are the exception to this historical trend and asserting that we, unlike every preceding society, have arrived at the one true way of looking at things, perhaps we ought to take a more cautious approach and allow the free expression that Mill claims our fallibility requires.

This is not to say that we will find such a state of affairs particularly comfortable, nor that we will not be constantly tempted to shut down those who offer views that contradict our own. Adhering to free speech norms is simply a necessary act of humility that we must perform in order to avoid falling into the dogmatic trap that has plagued many of the societies which have come before ours. This point was perhaps most eloquently expressed by United States Supreme Court Justice Oliver Wendell Holmes Jr, who stated:

‘Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or your power, and want a certain result with all your heart, you naturally express your wishes in law, and sweep away all opposition. To allow opposition by speech seems to indicate that you think the speech impotent... or that you do not care wholeheartedly for the result, or that you doubt either your power or your premises. But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas...’⁵⁴

Essentially, as much as we may not like it, history has shown that if we want to avoid unwittingly falling into dogmatic error, we need to live under conditions in which alternative perspectives can always be expressed.

⁵⁴ *Abrams v. United States*, 250 U.S. 616 (1919), 630.

It may be argued the risk of falling into dogmatic error is an acceptable price to pay in exchange for getting rid of bad or harmful ideas. In other words, people may say that is acceptable to live in a society which is epistemically problematic, but otherwise enjoys desirable levels of social justice, equality, or some other metric of societal success.⁵⁵ Mill does not have much to say in reply to such an argument beyond his assertion that,

‘In the opinion, not of bad men, but of the best men, no belief which is contrary to truth can be really useful’.⁵⁶

In other words, Mill mostly takes it as a given that truth worth having is inherently desirable.⁵⁷

This is likely because, as noted earlier in section 1.1, Mill believes that truth worth having is supported by the broader ethical consideration that it is essential for human flourishing. As flagged in that section, it is not feasible for this ethical justification to be explored within the limits of this paper. However, I believe it is fair to say that many people who would be willing to abandon truth worth having in exchange for promoting other societal goods would also believe that truth worth having shares little to no connection with those goods. They would instead view the trade-off as being one that involves discarding an abstract epistemic ideal and receiving more tangible benefits in return. Thus, for people who deny the value of truth worth having, the Millian argument is unlikely to be persuasive on its own.

While a supplementary argument could potentially be raised to dissuade those who are willing to abandon the ideal of truth worth having, that is not a task that I shall undertake in this paper. As outlined in the roadmap above, in chapter 4 I shall attempt to offer a solution that maintains Mill’s free speech norms and their promotion of truth worth having whilst also minimising the

⁵⁵ William P Marshall, “The Truth Justification for Freedom of Speech,” in *The Oxford Handbook of Freedom of Speech*, ed. Adrienne Stone and Frederick Schauer (Oxford: Oxford University Press, 2021), 56.

⁵⁶ Mill, *On Liberty*, 82-83.

⁵⁷ Macleod, “Mill on the Liberty of Thought and Discussion,” 11.

problems they create. As such, any further weighing of the value of truth worth having against other societal goods will not be of much help to my discussion. Rather than subordinating some goods to others, I intend to preserve and promote both truth worth having *and* other goods such as social justice and equality.

Chapter 2: The Scope of Mill's Norms

Let us then turn to examine the scope of the free speech norms that Mill recommends. While it is clear from our discussion in the previous chapter that Mill provides good justification for wide-ranging free speech norms, it remains to be seen how those norms should apply in practice. Considering this paper's focus on the issue of progressive protests in response to speakers deemed regressive or bigoted, that practical assessment can be distilled into two crucial questions. First, whether progressive protests of the kind mentioned in the introductory contravene Mill's free speech norms (discussed in section 2.1); and second, whether those norms extend to protect the speech of regressive bigots (discussed in sections 2.2-2.4).

2.1. Social Tyranny and Progressive Protests

Mill makes it clear from the outset of '*On Liberty*' that his arguments aim to establish broad societal norms rather than specific legal limitations of state power. In the chapter preceding the Millian argument, he claims that:

'Society can and does execute its own mandates; and if it issues wrong mandates instead of right, or any mandates at all in things with which it ought not to meddle, it practises a social tyranny more formidable than many kinds of political oppression, since, though not usually upheld by such extreme penalties, it leaves fewer means of escape, penetrating much more deeply into the details of life, and enslaving the soul itself. Protection, therefore, against the tyranny of the magistrate is not enough; there needs

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...'⁵⁸

It is this appreciation for the power of 'social tyranny' that leads Mill to express his thesis regarding freedom of speech in the following terms:

'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.'⁵⁹

In other words, Mill cares a great deal about how groups of private individuals respond to speech which they dislike. This leads him to argue in favour of strict ethical norms which dictate that such groups ought to respond to speech with tolerance in almost all circumstances.

Mill notably (and somewhat frustratingly) does not explicitly outline the kinds of actions that constitute impermissible interference with expression according to his free speech norms.⁶⁰ However, he does provide some helpful commentary on what *does not* count as impermissible interference, which we can use to sketch a rough outline of the behaviour that does.⁶¹ The most helpful piece of such commentary for our purposes is Mill's claim that:

We have a right...to act upon our unfavourable opinion of anyone, not to the oppression of his individuality, but in the exercise of ours. We are not bound, for example, to seek his society; we have a right to avoid it (*though not to parade the avoidance*), for we have a right to choose the society most acceptable to us. We have a right, and it may be our duty, to caution others against him, if we think his example or conversation likely to have a pernicious effect on those with whom he associates... In these various modes

⁵⁸ Mill, *On Liberty*, 63.

⁵⁹ *Ibid*, 75 (emphasis added).

⁶⁰ Macleod, "Mill on the Liberty of Thought and Discussion," 13.

⁶¹ *Ibid*.

a person may suffer very severe penalties at the hands of others, for faults which directly concern only himself; but he suffers these penalties only insofar as they are the natural, and, as it were, the spontaneous consequences of the faults themselves, not because they are purposely inflicted on him *for the sake of punishment*.⁶²

Essentially, Mill allows us to avoid those whose opinions we disapprove of, and even to privately recommend that our peers do the same. However, he seemingly denies us the right to ‘parade’ that avoidance or respond in a way that negatively impacts the speaker ‘for the sake of punishment.’⁶³

It is these two factors; parading avoidance and responding in a way that is intended to punish the speaker, that I shall focus on in my discussion of progressive protests and their compatibility with Mill’s free speech norms. I have thus far been rather vague in my description of what I have referred to as ‘progressive protests’. I have done so because a definition tailored to the discussion at hand may have initially seemed arbitrarily limited in the absence of background knowledge regarding the Millian argument. If I were to have said at the outset, for instance, that my definition of progressive protests does not include actions such as sit-ins, it would not have been apparent why such an exclusion was justified. From now on, however, let it be clear that when I use the term progressive protests, I mean actions carried out by progressives and members of marginalised groups that involve parading avoidance of bigoted speakers and/or responding to their speech in a punitive way.

It is rather uncontroversial to say that much of the political activity carried out by progressives and marginalised people in recent decades fits this definition. This is especially the case for actions that have given rise to free speech controversies of the kind mentioned in the introductory. One prominent example that shall be explored further in chapter 3 is members of

⁶² Mill, *On Liberty*, 144 (emphasis added).

⁶³ Ibid.

the LGBTQI+ community and their progressive allies protesting and/or disrupting events involving proponents of trans-exclusionary views. Such protests often go far beyond merely recommending that peers avoid such speakers, and instead act as a call for society to condemn, shun or deplatform them.⁶⁴ They are, in other words, quintessential parades of avoidance that aim to punish speakers for having views that are considered immoral and/or harmful in the eyes of protestors.

Clearly, then, unless an exception can be made that applies to such scenarios, progressive protestors are acting contrary to Millian free speech norms. This presents a problem for such protestors because, as we have seen in the previous chapter, those norms are well-justified. However, as was noted several times in that chapter, we are still yet to address how Mill's free speech norms interact with what is arguably his most influential idea, often referred to as the 'harm principle'.⁶⁵ Thus, before we can conclude that progressive protests violate Millian free speech, we must first examine whether Mill's norms actually extend to protect the speech of those against whom such protests are directed.

2.2. *Bigots vs Corn-Dealers*

One might expect such an examination to begin with a discussion of whether regressive or bigoted speech actually causes harm. There is, after all, a vast amount of academic literature dedicated to that topic, with many philosophers providing sophisticated accounts of how speech can be actively harmful,⁶⁶ and many others disputing them.⁶⁷ However, analysis of these

⁶⁴ Weaver, "Trans Activists Disrupt Kathleen Stock Speech at Oxford Union".

⁶⁵ David van Mill, "Freedom of Speech", *The Stanford Encyclopedia of Philosophy* (Spring 2021 Edition), Edward N. Zalta (ed.), <https://plato.stanford.edu/archives/spr2021/entries/freedom-speech/>.

⁶⁶ Jeremy Waldron, *The Harm in Hate Speech* (Cambridge: Harvard University Press, 2012); Rae Langton, "Speech Acts and Unspeakable Acts," *Philosophy and Public Affairs* 22, no. 4 (Fall 1993): 293-330; David Dyzenhaus, "John Stuart Mill and the Harm of Pornography," *Ethics* 103, no. 3 (April 1992): 534-551; Mary Kate McGowan, *Just Words: On Speech and Hidden Harm* (Oxford: Oxford university Press, 2021).

⁶⁷ Daniel Jacobson, "Freedom of Speech Acts? A Response to Langton," *Philosophy and Public Affairs* 24, no. 1 (Winter 1995): 64-79; Eric Barendt, "What is the Harm of Hate Speech?" *Ethical Theory and Moral Practice* 22, no. 1 (2019): 539-553.

disagreements is ultimately unnecessary for the purpose of my discussion. As I have indicated both in the initial roadmap and at the beginning of chapter 1, I contend that a proper interpretation of Mill dictates that his free speech norms necessarily extend to protect harmful speech in almost all circumstances. As such, the question of whether bigoted speech is harmful has little to no bearing on my argument. If it is not harmful, then Millian free speech norms certainly protect it against interference. If it is harmful, then I argue that Millian norms still protect it in all but the most limited of circumstances.

To those who are acquainted with Mill's work, this conclusion may seem somewhat bizarre. After all, Mill famously declares at the outset of '*On Liberty*' that:

'The object of this essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties or the moral coercion of public opinion. That principle is that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others.'⁶⁸

Viewed in isolation, this passage clearly suggests that Mill believes actions which cause harm to others may be permissibly interfered with. In other words, he seems to dedicate the entirety of '*On Liberty*' to establishing and explaining a 'harm principle' (hereafter referred to as the 'Millian principle').⁶⁹

⁶⁸ Mill, *On Liberty*, 68.

⁶⁹ David Brink, "Mill's Moral and Political Philosophy", *The Stanford Encyclopedia of Philosophy* (Fall 2022 Edition), Edward N. Zalta & Uri Nodelman (eds.), <https://plato.stanford.edu/archives/fall2022/entries/mill-moral-political/>.

However, such an interpretation experiences significant difficulty when one attempts to reconcile it with the claims of the Millian argument. As we have already seen, Mill states his argument for free speech norms in rather categorical terms. He claims that ‘any doctrine, however immoral it may be considered’ ought to be able to be freely expressed.⁷⁰ Furthermore, the justification he provides for this claim rests on the idea that *complete* liberty of contradicting opinion is a necessary pre-requisite for truth worth having.⁷¹ At no point in the second chapter of ‘*On Liberty*’ does Mill qualify these claims by providing an exception for speech that is harmful.

In fact, such an exception would contradict the argument from fallibility that we explored in chapter 1. As Mill noted,

‘There is the same need of an infallible judge of opinions to decide an opinion to be noxious as to decide it to be false, unless the opinion condemned has full opportunity of defending itself.’⁷²

In other words, the view that a given opinion is harmful is itself a belief that fallible human beings cannot definitively prove for the purposes of justifying suppression.⁷³ Any attempt to do so would be to once again mistake personal or collective certainty for absolute certainty. Such a move is, on Mill’s view, impermissible.⁷⁴ Thus, according to Mill, suppressing an opinion on the grounds that it is harmful, even in circumstances where everyone agrees that is the case, is illegitimate. There must always be room for both the opinion itself and the view that it is not harmful to be expressed.

⁷⁰ Mill, *On Liberty*, 75.

⁷¹ *Ibid*, 79.

⁷² *Ibid*, 82.

⁷³ *Ibid*.

⁷⁴ *Ibid*, 77.

Mill does famously outline one situation in which the expression of an opinion runs afoul of the Millian principle. At the very beginning of the third chapter of *On Liberty*, following his categorical defence of free expression, he states the following:

‘opinions lose their immunity, when the circumstances in which they are expressed are such as to constitute their expression a positive instigation to some mischievous act. An opinion that corn-dealers are starvers of the poor, or that private property is robbery, ought to be unmolested when simply circulated through the press, but may justly incur punishment when delivered orally to an excited mob assembled before the house of a corn-dealer, or when handed about among the same mob in the form of a placard.’⁷⁵

Some have taken this passage to mean that Mill does in fact exclude harmful opinions from the protection of free speech norms.⁷⁶ However, such interpretations fail to appreciate that the loss of immunity to which Mill is referring does not arise from the nature of opinions themselves, but rather ‘the circumstances in which they are expressed’.⁷⁷

To spell this out and bring Mill’s reasoning closer to our discussion of progressive protests against bigoted speech, let us consider what Mill would say about a contemporary example of harmful and despicable speech: neo-Nazism. If I encounter a neo-Nazi advocating for the establishment of a white ethnostate, how would Mill want me to respond? As we have seen, if the neo-Nazi’s speech is protected by free speech norms, Mill would *not* want me to respond with a parade of avoidance, nor some other punitive measure. Whether the speech is so protected depends (according to the corn-dealer example outlined above) on the circumstances in which the neo-Nazi is speaking.

⁷⁵ Mill, *On Liberty*, 119.

⁷⁶ Daniel Jacobson, “Mill on Freedom of Speech,” in *A Companion to Mill*, ed. Christopher Macleod and Dale E. Miller (New Jersey: John Wiley & Sons, 2016): 446-447.

⁷⁷ Mill, *On Liberty*, 119.

If the neo-Nazi is writing their opinion in a newspaper column, or sharing it in conversation with friends, or even shouting it into a packed auditorium as part of a public debate, Mill would hold that they are under the protection of free speech norms, and that I ought to respond accordingly. Just as corn-dealer haters can circulate their rhetoric through the press without interference, so too can the neo-Nazi freely advocate for their beliefs in public forums. However, if the neo-Nazi were to deliver an impassioned speech to a crowd of armed comrades gathered within an ethnically diverse neighbourhood, Mill would hold that free speech norms do not apply, and that I am therefore allowed to interfere. Only where speech occurs in a context that makes it ‘a positive instigation to some mischievous act’ does Mill allow for the punishing of speakers.⁷⁸

2.3. *Sticks and Stones?*

This leaves us in a rather confusing position regarding the Millian principle. Mill’s categorical statements within the Millian argument and the corn-dealer example make it clear that he believes opinions cannot be suppressed based on their content, but rather only the context in which they are expressed. However, this is difficult to reconcile with his earlier statement that ‘power can be rightfully exercised over any member of a civilised community... to prevent harm to others.’⁷⁹ Although resolving this tension is not strictly necessary for my discussion of Mill’s free speech norms and how they operate in the context of progressive protests, it is still worth briefly examining for the purpose of shoring up my interpretation of Mill’s thought. After all, if my understanding of the Millian argument runs contrary to common views regarding Mill’s most famous idea, then I will need to explain why that is justified if my arguments are to be persuasive.

⁷⁸ Mill, *On Liberty*, 119.

⁷⁹ *Ibid*, 68.

The tension between the Millian principle and Mill's context-based exception to free speech norms can potentially be resolved without departing from the common interpretation of that principle being 'a harm principle, on which there is reason...to interfere with all and only actions harmful to non-consenting others.'⁸⁰ One must simply take Mill to be relying on the assumption that speech performed in contexts other than 'corn-dealer cases' can never be harmful. In other words, Mill can be interpreted as believing the adage 'sticks and stones may break my bones, but words will never hurt me' and therefore feeling as though his endorsement of (mostly) unrestricted free discussion is completely compatible with a harm principle.⁸¹

However, Mill never makes the claim that expressions of opinion are incapable of causing harm at any point in his discussion in '*On Liberty*'.⁸² This is a glaring omission, as the topics of speech and harm (as we have seen) feature very prominently within that discussion. It is therefore difficult to conclude, considering how obviously relevant an assertion of speech's harmlessness would be to Mill's argument, that Mill accidentally fails to make such an assertion due to an oversight.⁸³ Instead, I contend that the lack of such a claim should be taken to indicate that it is not something that Mill is relying upon in his argument.

Furthermore, although I cannot afford to provide a proper discussion of the issue here, there may be good reason to think that Mill believes speech *is* harmful in many cases. If one looks to Mill's other works beyond '*On Liberty*', and in particular to his essay '*The Subjection of Women*',⁸⁴ there are fertile grounds for developing an interpretation of Mill in which certain harms (such as the subordination of women) can be perpetuated via acts of expression.⁸⁵ For example, pornography that eroticises inequality between men and women can be seen as

⁸⁰ Jacobson, "Mill on Freedom of Speech," 441.

⁸¹ *Ibid*, 443.

⁸² Macleod, "Mill on the Liberty of Thought and Discussion," 18.

⁸³ *Ibid*, 18.

⁸⁴ John Stuart Mill, *The Subjection of Women* (London: Longmans, Green, Reader, and Dyer, 1869).

⁸⁵ Dyzenhaus, "Mill and the Harm of Pornography," 548.

harming the fundamental interest in autonomy that Mill believes women (and all human beings) possess.⁸⁶ There are undoubtedly many nuances that must be carefully explored before one can safely conclude from this line of thought that Mill thinks speech is capable of causing harm. However, the fact that such an interpretation is even plausible casts some doubt on the idea that Mill implicitly assumes that such harm is impossible in ‘*On Liberty*’.

2.4. *The Revised ‘Principle of Liberty’*

Because interpreting Mill as believing that speech is incapable of harm is rather dubious, reconciling his categorical endorsement of free discussion with the other claims in ‘*On Liberty*’ requires a re-examination of the Millian principle. More specifically, it requires an account which challenges that principle’s status as a harm principle. If developing such an account were the main object of this paper, I would provide an outline of the various formulations of the Millian principle that can be derived from the text of ‘*On Liberty*’, accompanied by an evaluation of their interpretive merits.⁸⁷ However, for my purposes it will be sufficient to simply explain the interpretation that best makes sense of the Millian argument as I have described it.

In agreement with Daniel Jacobson, I contend that the Millian principle ought to be understood not as a harm principle, but rather as a ‘principle of liberty’ that operates according to a distinction between self-regarding and other-regarding action.⁸⁸ Under this principle, actions which are self-regarding cannot be interfered with, but actions that are other-regarding can. Importantly, some self-regarding actions can be harmful to others.⁸⁹ Thus, according to this

⁸⁶ Dyzenhaus, “Mill and the Harm of Pornography,” 549.

⁸⁷ See Jacobson, “Mill on Freedom of Speech,” 440-453.

⁸⁸ *Ibid.*, 444-445

⁸⁹ *Ibid.*

view of the Millian principle, some harmful actions may nevertheless be protected against interference.

Jacobson primarily derives this view from the following passage in *'On Liberty'*:

'I fully admit that the mischief which a person does to himself may seriously affect, both through their sympathies and their interests, those nearly connected with him and, in a minor degree, society at large. When, by conduct of this sort, a person is led to violate *a distinct and assignable obligation* to any other person or persons, the case is taken out of the self-regarding class and becomes amenable to moral disapprobation in the proper sense of the term.'⁹⁰

Although we may take harmful actions that 'seriously affect' others or society at large, they only become other-regarding and therefore deserving of interference or 'moral disapprobation' when they 'violate a distinct and assignable obligation'.⁹¹ In other words,

'What makes an act that would otherwise be self-regarding fall out of that class, and lose its immunity, is not that it does harm but that it violates an obligation. This doctrine implies that not all harms are violations of rights...'⁹²

As Jacobson explains, this interpretation reflects the fact that Mill was not chiefly concerned with preventing individuals from befalling harm, but rather with circumscribing 'a sphere of liberty where the individual is sovereign and cannot rightfully be subject to coercion.'⁹³

Jacobson offers several compelling reasons for thinking that it is persuasive both as a matter of textual interpretation and on its own merits as a guiding principle for liberal societies.⁹⁴

⁹⁰ Mill, *On Liberty*, 148 (emphasis added).

⁹¹ Ibid.

⁹² Jacobson, "Mill on Freedom of Speech," 445.

⁹³ Ibid.

⁹⁴ Ibid, 440-453

However, the advantage that is most relevant to our discussion is its ability to explain the categorical nature of Mill's free speech norms without implying that Mill endorsed the 'sticks and stones' view of harm outlined above. Essentially, the 'sphere of liberty'⁹⁵ that Mill is attempting to demarcate using the Millian principle includes 'the fullest liberty of professing... any doctrine'⁹⁶ because Mill believes expressing one's opinion is always a self-regarding action even when it is harmful to others (except in circumstances that make it a 'positive instigation to some mischievous act').⁹⁷ In other words, Mill's categorical free speech norms are perfectly compatible with the Millian principle if one takes him to be saying that speech is an inherently self-regarding act that, while potentially harmful to others, does not violate a 'distinct and assignable obligation' in the way that other-regarding actions do (except in corn-dealer cases). This assertion may seem rather questionable, as it is not obvious why hateful or otherwise harmful speech ought to be considered incapable of violating distinct obligations owed to others. Why should speech of all things be viewed as inherently self-regarding, when it seemingly has the power to seriously affect others? Mill does provide something of a reply to this concern. As part of a separate discussion regarding whether it would be permissible for a society to forbid drunkenness on the grounds that it violates people's 'right of security, by constantly creating and stimulating social disorder',⁹⁸ Mill claims the following:

So monstrous a principle is far more dangerous than any single interference with liberty; there is no violation of liberty which it would not justify; it acknowledges no right to any freedom whatever, except perhaps to that of holding opinions in secret, without

⁹⁵ Jacobson, "Mill on Freedom of Speech," 445.

⁹⁶ Mill, *On Liberty*, 75.

⁹⁷ *Ibid*, 119.

⁹⁸ *Ibid*, 157-158.

ever disclosing them; for the moment an opinion which I consider noxious passes anyone's lips, it invades all the 'social rights' attributed to me...'⁹⁹

Essentially, Mill does not support the existence of 'social rights' or obligations that seriously interfere with individual liberty, and specifically uses the example of protection against harmful opinions to illustrate that point.

This singling out of speech as something which ought not to be curtailed by the social rights of others likely arises from Mill's belief that freedom of speech is impossible to separate from freedom of thought.¹⁰⁰ As is made clear in the quotation above, Mill does not think it is satisfactory for individuals to freely hold opinions in secret. Instead, for people to be able to hold their opinions in a way that is desirable, they need to be able to express them. This harkens back to the reasoning we explored in the previous chapter, where Mill places strong epistemic and ethical value on people being able to live under conditions where they can think and reason effectively.

For Mill, because ideal social conditions require that people be able to speak their minds and engage with every kind of opinion, no right against hearing harmful opinions can ever be legitimately established. As such, speaking one's mind cannot constitute an other-regarding violation of a distinct obligation, as no such obligation can exist. Instead, all expressions of opinion (other than those that occur within 'corn-dealer contexts') are inherently self-regarding, even if they are harmful. Thus, the Millian principle, when understood in a way that comports with the Millian argument, does not exclude harmful speech from the protection of Mill's free speech norms.

2.5. *Mill's Verdict for Progressive Protestors*

⁹⁹ Mill, *On Liberty*, 158.

¹⁰⁰ *Ibid*, 74.

Now that we have clarified the liberal position regarding free speech norms (or, more accurately, one of the most influential liberal positions out of the many that exist) we can better understand why contemporary liberals often condemn the actions of progressive protestors. Those who agree with the Millian argument would naturally disapprove of actions that violate the free speech norms it establishes. Furthermore, this disapproval does not arise out of any misunderstanding of free speech, but rather an appreciation for the justifications that support it. Although people may often reply to liberals by arguing ‘free speech does not include hateful or harmful speech’¹⁰¹ it is clear that, for Millian liberals, such replies are mistaken.

What we next need to examine, then, is whether there are other replies to Mill’s arguments that are worth taking seriously. More specifically, we need to see if the progressive side of the free speech divide offers compelling reasons to doubt whether the liberal endorsement of free speech norms is, all things considered, a good idea. In other words, we need to engage in the very practice that Mill so strongly recommended: consulting alternative perspectives and assessing whether we ought to reform our beliefs as a result.

Chapter 3: ContraPoints

On April 18, 2023, Peabody award winning video essayist¹⁰² and ‘ex-philosopher’¹⁰³ Natalie Wynn published a video essay via her YouTube channel ‘ContraPoints’ titled ‘*The Witch Trials of J.K. Rowling*’.¹⁰⁴ More than 115 minutes long and boasting a transcript of over 18,000 words,¹⁰⁵ Wynn’s essay addresses a variety of topics ranging from the life of anti-LGBTQI+

¹⁰¹ Nadine Strossen, *HATE: Why We Should Resist It With More Free Speech, Not Censorship*, (Oxford: Oxford University Press, 2018), 3.

¹⁰² “ContraPoints,” Award Profile, Peabody Awards, accessed October 22 2023, <https://peabodyawards.com/award-profile/contrapoints/>.

¹⁰³ “Natalie Wynn,” Twitter, accessed October 22, 2023, <https://twitter.com/ContraPoints>.

¹⁰⁴ Natalie Wynn, “The Witch Trials of J.K. Rowling,” YouTube, April 18, 2023, <https://m.youtube.com/watch?v=EmT0i0xG6zg&pp=ygUTI2ZpcnN0bGFkeW9mbGVuZGluZw%3D%3D>.

¹⁰⁵ Natalie Wynn, “Transcripts / The Witch Trials of J.K. Rowling,” ContraPoints, accessed October 22, 2023, <https://www.contrapoints.com/transcripts/witch-trials>.

activist Anita Bryant to the arguments put forth by radical feminist Andrea Dworkin in her book *'Right Wing Women'*.¹⁰⁶ The undeniable centrepiece of the video's analysis, however, is the podcast produced by Westboro Baptist Church escapee Megan Phelps-Roper, also titled *'The Witch Trials of J.K. Rowling'*.¹⁰⁷ Wynn characterises Phelps-Roper's podcast as 'more than seven hours of apologetics'¹⁰⁸ for British author J.K. Rowling's transphobic views and accuses Phelps-Roper of depicting LGBTQI+ protests against those views as 'an irrational mob of enraged, shrieking, sexually violent fanatics.'¹⁰⁹

As part of her sweeping rejection of Phelps-Roper's Rowling-sympathetic, anti-protestor narrative, Wynn provides an engaging contemporary exploration of the question with which this paper began: how should progressives respond to speech which they consider regressive or bigoted? She frames that inquiry in the following (less polite, and more sarcastic) terms:

'there's an even broader question here about whether we can justifiably react to anything with scorn and condemnation. Is "canceling" ever warranted? Is it right to condemn racism, homophobia, and misogyny, or should we allow spokespeople for these prejudices a respected position in the free marketplace of ideas, where we can all sit around debating the legitimacy of gay marriage or the possible merits of a white ethnostate. Is the Final Solution a myth promulgated by the International Jew? Are yoga pants to blame for sexual violence? Wouldn't the taxpayer save a lot of money if there weren't so many disabled people? Who knows! These are open questions, let's sit down with people on both sides, on many sides, and have a calm, civil conversation about it for the rest of our goddamn lives.'¹¹⁰

¹⁰⁶ (London: Women's Press, 1983).

¹⁰⁷ "The Witch Trials of J.K. Rowling," The Free Press, accessed October 22, 2023, <https://www.thefp.com/witchtrials>.

¹⁰⁸ Wynn, "Witch Trials," 25:57-26:04.

¹⁰⁹ Ibid, 26:58-27:11.

¹¹⁰ Ibid, 49:18-50:11.

In short, Wynn makes it abundantly clear that she is critical of impartial, content-neutral free speech norms such as those proposed by the Millian argument.

Although they are not expressed in a traditional academic format, I contend that Wynn's thoughts on this issue are worth taking seriously as a work of political philosophy. She herself is a transgender woman who has spent years using her master's degree in philosophy to create content that challenges arguments perpetuated by the alt-right and other conservative groups.¹¹¹ As such, she occupies the unique position of being a philosophically trained member of a marginalised group who frequently engages in public discourse and is thus intimately aware of how it functions in practice. Additionally, Wynn's '*The Witch Trials of J.K. Rowling*' (hereafter referred to simply as '*Witch Trials*') has, at the time of writing, over 4.2 million views on YouTube. This level of engagement far exceeds that of most academic scholarship,¹¹² and makes Wynn's essay an important and influential contribution to contemporary thought.

In this chapter, I present Wynn as an interlocutor for Mill by exploring and evaluating her claims regarding the impact of free speech norms. In doing so, I focus on two distinct arguments raised in '*Witch Trials*' regarding the problems that such norms present for marginalised people. The first, which I call the unfairness objection, is explored in section 3.1. The second, which I call the enfeeblement objection, is explored in section 3.2.

3.1. *The Unfairness Objection*

In the fifth chapter of '*Witch Trials*' Wynn makes the following observation:

'valuing dispassionate intellectualism above all else can cause problems, especially where topics of social justice are concerned. Because it can lead you to the kind of toxic

¹¹¹ Andrew Marantz, "The Stylish Socialist Who Is Trying To Save YouTube From Alt-Right Domination," *The New Yorker*, November 19, 2018, <https://www.newyorker.com/culture/persons-of-interest/the-stylish-socialist-who-is-trying-to-save-youtube-from-alt-right-domination>.

¹¹² James A. Evans, "Electronic Publication and the Narrowing of Science and Scholarship," *Science* 321 (2008): 395-399.

centrism that asks, why are marginalized people so unwilling to have calm, philosophical debates about whether they should have rights? Are they afraid of dangerous ideas?’¹¹³

She further claims that this ‘toxic centrism’ often leads to marginalised people who refuse to engage in such ‘calm, philosophical debates’ being viewed by liberals as hysterical or otherwise worthy of disapproval.¹¹⁴ Wynn, however, denies the legitimacy of such disapproval on the grounds that it is an unduly harsh way to respond to vulnerable people failing to meet requirements that are unrealistic and burdensome. She expresses this view through the following rhetorical questions:

‘Is it really "hysteria" to react with strong emotions when your basic inclusion in society is up for debate? Aren't there certain situations where strong emotions are warranted?’¹¹⁵

In other words, Wynn claims that free speech norms are often problematic insofar as they ask too much of people. More specifically, they unreasonably require individuals to suppress certain emotions in situations where they are likely to arise and perhaps even warranted.

However, Wynn does not stop her objection here. If she did, then it could arguably be dismissed by the reply that rules of conduct often have to be demanding in order to secure higher goods. We saw an example of such an approach in the passage quoted from Justice Oliver Wendall Holmes Jr in section 1.4. As was made clear in that extract, it seems reasonable for liberals to claim that free speech norms, uncomfortable and demanding as they may be, have nevertheless been proven necessary throughout the course of history.

¹¹³ Wynn, “Witch Trials,” 57:43-58:08.

¹¹⁴ Ibid, 58:20-58:32.

¹¹⁵ Ibid, 58:58-59:09.

Wynn's objection is less susceptible to such a reply, however, as she claims that requiring marginalised people to respond to bigots with tolerance is not only demanding, but also *unfair*. She demonstrates this point by referring to a segment from 'The Joe Rogan Experience' in which the eponymous host debates the legitimacy of same-sex relationships with conservative political commentator Ben Shapiro.¹¹⁶ After drawing attention to several comments from viewers praising the debate's calm and dispassionate manner,¹¹⁷ Wynn states the following:

'it's easy for two straight men to have a dispassionate theoretical conversation about the "ethics" of homosexuality because it's not their lives and their relationships that are up for debate. These people don't understand the emotional burden placed on marginalized people who are asked to defend their rights. Like if you're straight, do you want to publicly debate whether your marriage is valid? imagine how they'd react if there was a powerful political movement to criminalize penetration or revoke their right to marry. Add in a lifetime of ostracism, family rejection, bullying and discrimination, and maybe then you'll begin to understand the "hysteria" of a lot of queer people.'¹¹⁸

Essentially, Wynn claims that free speech norms are unfair insofar as they make demands that are much harder for some people to follow than others.

This concern somewhat mirrors one raised by Katharine Gelber in the debate surrounding counterspeech.¹¹⁹ Counterspeech is speech performed in response to harmful speech with the intent of ameliorating its negative effects.¹²⁰ It is often recommended by liberals as being the proper way to respond to harmful speech, in contrast to censorship.¹²¹ However, the problem with this approach, as Gelber points out, is that it unfairly burdens those who are frequent

¹¹⁶ Wynn, "Witch Trials," 59:09-59:44

¹¹⁷ Ibid, 59:45-1:00:28.

¹¹⁸ Ibid, 1:00:28-1:01:25.

¹¹⁹ Katharine Gelber, "Speaking Back," in *The Oxford Handbook of Freedom of Speech*, ed. Adrienne Stone and Frederick Schauer (Oxford: Oxford University Press, 2021), 258.

¹²⁰ Ibid, 249.

¹²¹ Strossen, *HATE*, 158.

targets of harmful speech (such as racial minorities, LGBTQI+ people, etc).¹²² More specifically, it unfairly requires them to disproportionately shoulder the responsibility of redressing the harms that have been perpetuated against them.¹²³

Although it is certainly possible for those who disagree with harmful speech but are not themselves targeted by it to perform counterspeech, history has shown that, in practice, responsibility usually falls to the targeted.¹²⁴ Targets of harmful speech are therefore doubly victimised. They not only have to deal with the impacts of the speech itself, but also a disproportionate share of the burden of replying to it.

Wynn has a similar worry about double victimisation via disproportionate burdening, but where the second source of victimisation is not the responsibility of having to speak back, but rather the frustration of having to speak back in a constrained way. As was indicated in her comments regarding ‘The Joe Rogan Experience’ quoted above, Wynn believes that the rights of majority groups such as heterosexual people often receive ‘assumed protection’ via popular consensus that places them beyond the realm of debate.¹²⁵ As such, members of majority groups are not frequently burdened with the distressing experience of having to listen to their basic rights being questioned, and furthermore having to respond to such questioning in the restrained manner required by free speech norms. However, the same cannot be said for marginalised people, who are often required to engage in this arduous process due to their rights lacking such assumed protection.

Wynn makes the further point that this inequality means obeying free speech norms as a marginalised person is not only difficult, but also degrading. She illustrates this using the example of gay political commentator Dave Rubin, who frequently engages in calm,

¹²² Gelber, “Speaking Back,” 258.

¹²³ Ibid.

¹²⁴ Ibid.

¹²⁵ Wynn, “Witch Trials,” 1:23:04-1:13:15.

dispassionate conversations with openly homophobic guests who characterise his sexuality as something religiously sinful and comparable to alcoholism.¹²⁶ Wynn expresses her views regarding Rubin as follows:

‘I think a lot of straight people look at Dave Rubin and they say “finally, a reasonable gay person who doesn't scream ‘bigot!’ at everyone who disagrees and can actually have a civil conversation.”

But that's not what I see. I look at Dave Rubin and I see a spineless, bootlicking doormat who won't even defend his own family from the most fundamental disrespect.’¹²⁷

In other words, Wynn seems to claim that obeying free speech norms as a marginalised person comes at the cost of sacrificing one's basic pride and integrity as a human being.

By being required to constantly ‘play nice’ in debates concerning their basic rights, marginalised people are to some extent treated as lesser, despite the apparent neutrality of free speech norms. They become designated ‘debate topic people’ whose identity can be dispassionately dissected without them being able to interfere beyond the respectful offering of contrary views. Although free speech norms theoretically require anyone and everyone to act this way if their rights become a topic of debate, practical experience shows that this implication is suffered by some people far more than others. In such circumstances, complying with free speech norms, as Rubin does, should not be thought of as praiseworthy. Instead, it should be viewed as submitting to an unjust social order in which one's identity is repeatedly and systematically disrespected.

3.2 The Enfeeblement Objection

¹²⁶ Wynn, “Witch Trials,” 1:01:57-1:03:42.

¹²⁷ Ibid, 1:03:43-1:04:09.

The unfairness objection certainly makes free speech norms seem less desirable than Mill claimed. However, it may still be open for a Millian liberal to reply that although free speech norms sometimes give rise to unfairness, they are nevertheless necessary for society to have a robust sense of truth and therefore move forward in a way that is desirable. With this in mind, let us turn to Wynn's second objection, which questions the extent to which such desirable progress is actually possible under free speech norms.

In a move that somewhat reflects the approach taken by Mill in *'On Liberty'*, Wynn claims that history is on her side of the argument regarding free speech norms. Contrary to suggestions made by Rowling and Phelps-Roper, she rejects the idea that 'the trans rights movement is dangerous and authoritarian in some unprecedented way that makes it different from all past liberation movements.'¹²⁸ Instead, she explains that violating free speech norms has always been an integral part of successful liberation movements, citing the US civil rights movement and 20th century feminism as prominent examples:

'Did suffragettes have calm, civil conversations about whether women are intellectually capable of voting, until all the misogynists were rationally persuaded? No!'¹²⁹

'Do you... think American schools were integrated because all the white people in the South were persuaded that segregation is bad? No...'¹³⁰

In doing so, she suggests that if such movements were to have obeyed free speech norms and tried to calmly debate their way to equality, they would have been incapable of achieving their goals.

It must be noted that Wynn does not present any kind of control group when making this argument. In other words, she does not provide an example of a liberation movement that

¹²⁸ Wynn, "Witch Trials," 1:12:45-1:12:55.

¹²⁹ Ibid, 1:23:34-1:23:44.

¹³⁰ Ibid, 1:25:26-1:25:34

strictly abided by free speech norms and failed. However, this is rather understandable, as it seems likely that if a liberation movement was struggling to succeed whilst adhering to free speech norms, rather than ‘going down with the ship’ and maintaining their commitment to free speech whilst fading into obscurity, they would instead adjust their tactics and depart from free speech norms in order to survive. After all, the primary goal of a liberation movement is to advance the rights of a certain group, not to conform to liberal ideas as closely as possible. Thus, such a control group would be incredibly hard to find.

In addition to her appeal to history, Wynn contends that obeying free speech norms is an ineffective strategy for liberation movements because there is a disjuncture between approaches that are effective for persuading individual people and those that work well in effecting large-scale change. Although she readily accepts that,

‘if you want to change people's minds, then approaching them with compassion and empathy is usually the best way to do that’¹³¹

she ultimately claims,

‘We have to accept that realistically, persuading all the bigots is just not an option. Yes, we should convince as many people as possible, but there will always be bigots, and mocking them, shaming them, or boycotting them, is, I think, a perfectly valid strategy.’¹³²

Essentially, Wynn contends that liberals make a mistake by ruling out the kinds of strategies that are actually effective in shifting societal attitudes. If we sit around waiting for civil discussion to lead to social progress, we may be waiting forever.

¹³¹ Wynn, “Witch Trials,” 51:55-52:03.

¹³² Ibid, 53:40-53:58.

It must be noted that evaluating the extent to which people are reason-responsive insofar as civil discourse serves as a viable option for changing their minds (on both a small or large scale) is a vast topic that cannot be dealt with here, and perhaps within any philosophy paper. Such an investigation seems more suited to the field of cognitive psychology.¹³³ However, Wynn's historical analysis does provide some compelling reasons for thinking that tactics other than rational persuasion may be more effective in large-scale political contexts.

I shall here focus on the kinds of responses to speech that we have already established as impermissible according to Millian free speech norms: parading avoidance and responding in a punitive way. The most salient example that Wynn provides of such tactics being employed is the response of LGBTQI+ activists to notorious homophobe Anita Bryant in the 1970s. Although it is not feasible for me to provide the full details regarding Bryant's views and the protests against her, I believe the following description from Wynn effectively illustrates the kinds of things that occurred:

‘Gay activists routinely compared Anita to Adolph H... they blamed her for hate crimes, they burned her in effigy, they disrupted events she was involved in. They printed toilet paper with her face on it.’¹³⁴

In short, Bryant's homophobic speech was met with an overwhelmingly punitive parade of avoidance from the LGBTQI+ community and their allies.

Among the many lessons Wynn takes from the case of Anita Bryant, the one most relevant to the issue at hand is that although Anita Bryant never changed her mind regarding the legitimacy of homosexual relationships, the rest of the world eventually did. Wynn uses this fact to make

¹³³ John Cook, Ullrich K H Ecker and Stephan Landowsky, “Misinformation and How to Correct It,” in *Emerging Trends in the Social and Behavioral Sciences: An Interdisciplinary, Searchable, and Linkable Resource* ed. Robert and Marlis C. Buchmann (Australia: John Wiley & Sons, 2015): 1-17.

¹³⁴ Wynn, “Witch Trials,” 15:13-15:28.

a broader claim regarding the value of civil discourse compared to progressive protests. She claims that always obeying free speech norms only makes sense,

‘if you assume that changing bigots' minds is the only way to make social progress. Which it isn't. As far as I know, Anita Bryant is 83 years old and she's still homophobic. But even without Anita's blessing, gay rights have somehow managed to progress since the 1970s. Because gay activists didn't need to persuade Anita Bryant, they needed to defeat her. And that's what they did.’¹³⁵

Essentially, Wynn claims that the ability for progressives and marginalised people to ‘defeat’ bigots has been and continues to be an essential element of their capacity to further the cause of social justice. Although it may not be effective in changing the mind of the individual in question, nor permissible according to the requirements of free speech norms, it sends a clear message to the broader population that certain discriminatory attitudes are not to be tolerated within a given society.

Thus, whether we look to how free speech norms function now (as we did when discussing the unfairness objection) or to what violations of free speech norms have accomplished previously (as we just have in outlining the enfeeblement objection) we see that such norms take on a markedly different character when viewed from the perspective of marginalised people. More specifically, we see that bluntly enforcing free speech norms as inviolable social rules presents serious problems for the wellbeing of marginalised people. In other words, we have seen that the progressive side of the contemporary free speech divide is also supported by a rather persuasive justification.

Chapter 4: Disobedient Discourse

¹³⁵ Wynn, “Witch Trials,” 53:14-53:39.

We are therefore left in a rather difficult position. Chapters 1 and 2 have shown that there is good reason for us to desire Millian free speech norms, and that such norms extend to protect the speech of regressive bigots in almost all circumstances. However, chapter 3 has shown us that such protection can also perpetuate the injustices suffered by marginalised people. Thus, although we have a set of rules that seem worth endorsing, we also have a concern that doing so will come at the cost of allowing unfairness and inequality to persist.

Fortunately, we are not required to start from scratch in attempting to solve this problem. The situation outlined above closely resembles that which has been extensively addressed by political philosophers in establishing justifications for civil disobedience. John Rawls, who provides the most widely accepted account of civil disobedience,¹³⁶ defines it as

‘a public, non-violent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government.’¹³⁷

Rawls importantly states that such disobedience is intended to be carried out in the context of,

‘a nearly just society, one that is well-ordered for the most part but in which some serious violations of justice nevertheless do occur.’¹³⁸

I contend that Millian free speech norms are analogously ‘well-ordered for the most part’ but, as we have seen, can also lead to serious injustice. Thus, in order to resolve the current tension between Millian norms and the welfare of marginalised people, we should develop a concept similar to civil disobedience that specifically applies to free speech norms.

In this chapter, I attempt to outline and defend such a concept, which I refer to as ‘disobedient discourse’. I begin in section 4.1 by examining the three conditions that Rawls claims must be

¹³⁶ Delmas and Brownlee, “Civil Disobedience”.

¹³⁷ Rawls, *A Theory of Justice*, 320.

¹³⁸ *Ibid*, 319.

met in order for civil disobedience to be justified. By modifying the first two of these conditions to be more applicable to disobeying free speech norms, and discarding the third, I provide an account of the circumstances in which disobedient discourse can justifiably occur. I then contend in section 4.2 that disobedient discourse provides a way forward from contemporary free speech controversies by encouraging liberals and progressives to focus their attention on factual disagreements rather than simply asserting the supremacy or inviolability of their respective values. I conclude in section 4.3 by briefly assessing the extent to which disobedient discourse interferes with Mill's idea of truth worth having.

4.1. Justifying Disobedience

Much of the literature regarding civil disobedience concerns the types of actions that can be properly defined as civil disobedience.¹³⁹ These discussions focus on exploring the details of the central features of civil disobedience, such as principledness, publicity, non-violence, fidelity to the law, and others.¹⁴⁰ However, since I am attempting to develop a concept that applies in the context of defying free speech norms rather than breaking laws, examination of these details is ultimately unnecessary. Instead, I shall focus on examining the circumstances in which civil disobedience is justified, as that will serve as a useful guide for sketching out the situations in which violating free speech norms is similarly permissible.

Rawls identifies three conditions that must exist in order for civil disobedience to be permissible:¹⁴¹

1. Longstanding Injustice
2. Attempts at Other Remedies

¹³⁹ Delmas and Brownlee, "Civil Disobedience".

¹⁴⁰ Ibid.

¹⁴¹ Rawls, *A Theory of Justice*, 326-328.

3. Coordination with Other Minorities

To lay the groundwork for disobedient discourse, I must outline what each of these conditions means within Rawls' discussion, and further assess their applicability in the context of disobeying free speech norms. To the extent they are applicable, they shall serve as important guides for ensuring that the concept of disobedient discourse is built upon a strong justificatory framework. In other words, they will allow for disobedient discourse to be effectively modelled after a theory that receives great support within contemporary political philosophy.

Longstanding Injustice

Rawls claims that civil disobedience ought to be limited to addressing,

‘instances of substantial and clear injustice, and preferably those which obstruct the path to removing other injustices.’¹⁴²

He does so because he views civil disobedience as something that ought to be directed toward enacting the sense of justice that is held within the broader community.¹⁴³ In other words, civil disobedience should not be allowed to occur as a result of one person's idiosyncratic grievances. Instead, it must only be performed in response to injustices which are to some extent obvious and uncontroversial.

In the context of disobeying laws, this requirement directs attention towards the nature of the law that is the motivation for disobedience. If the specific legal requirement in question is clearly unjust, then civil disobedience is justified (provided that the other criteria for civil disobedience have also been met). A law forbidding people of a certain race from voting,

¹⁴² Rawls, *A Theory of Justice*, 326.

¹⁴³ Ibid.

holding office or owning property, for example, would be one that could be permissibly disobeyed.¹⁴⁴

In the context of free speech norms, however, such an approach does not make a great deal of sense. As we have seen, free speech norms are relatively uniform and content neutral, and therefore very different to specific pieces of legislation. Furthermore, the problems that they pose for marginalised people do not arise from the nature of the norms themselves, but rather from their application in particular contexts. As such, for disobedient discourse, the criterion of longstanding injustice should not be directed towards the norm being imposed, but rather the context in which such imposition is occurring.

In practice, this would involve evaluating the extent to which a given violator of free speech norms actually experiences the degrading double victimisation explored in chapter 3. If an individual is a marginalised person who routinely has their basic rights questioned and debated, then disobedient discourse is justified. On the other hand, if someone defies free speech norms in circumstances where their rights receive the assumed protection afforded to majority groups, then condemnation of that person is still warranted. If a straight man were to protest against a discussion of Andrea Dworkin's critique of heterosexual sex,¹⁴⁵ for example, and claim that he is just as permitted to do so as the gay men who protested against Anita Bryant, he would be mistaken. The criterion of longstanding injustice dictates that disobedient discourse is only viable for genuinely marginalised people seeking to redress injustice of the kind outlined in chapter 3.

Attempts at Other Remedies

The second condition Rawls provides for justified civil disobedience is,

¹⁴⁴ Rawls, *A Theory of Justice*, 327.

¹⁴⁵ Andrea Dworkin, *Intercourse* (London: Arrow Books, 1988).

‘that the normal appeals to the political majority have already been made in good faith and that they have failed.’¹⁴⁶

Rawls importantly notes this condition does not require,

‘that legal means have been exhausted. At any rate, further normal appeals can be repeated; free speech is always possible. But if past actions have shown the majority immovable or apathetic, further attempts may reasonably be thought fruitless, and a second condition for justified civil disobedience is met.’¹⁴⁷

In the context of disobeying laws, this criterion is fairly self-explanatory. Before one disobeys the law on the grounds that it is unjust, one must first attempt to change the law through official means such as the courts or government representatives. Such a requirement creates a desirable level of stability in which people do not leap to unlawful conduct as their first response to injustice.

In the context of violating free speech norms, this condition is also fairly straightforward. However, it is also likely to be met in practically all circumstances where disobedient discourse is performed. If marginalised people were capable of preventing the degradation they experience by politely requesting (in accordance with free speech norms) that their basic rights no longer be questioned, then progressive protests likely would not exist. The reason why marginalised people and progressives resort to parades of avoidance and punitive responses in the first place is that requests for people to no longer debate certain topics are rarely complied with.

The most salient contemporary example of such a request is that which has been repeatedly made by LGBTQI+ activists in relation to ongoing debate regarding transgender identities. The

¹⁴⁶ Rawls, *A Theory of Justice*, 327.

¹⁴⁷ *Ibid*, 327-328.

phrase ‘no debate’ has become something of a slogan for the trans rights movement.¹⁴⁸ However, that has not stopped it from being outright rejected by members of majority groups. J.K. Rowling, for example, has stated the following:

And then we come to the famous two word slogan, the stock phrase, “no debate.” No debate, no debate. We hear it all the time. That alarms me, really alarms me. I can't think of a purer instance of authoritarianism than "no debate".¹⁴⁹

In short, liberal commitments to free and open discussion often dictate that requests for certain topics or identities to not be debated fall on deaf ears. Thus, most if not all instances of disobedient discourse will have been preceded by ‘past actions’ that ‘have shown the majority immovable or apathetic’.¹⁵⁰

Coordination with Other Minorities

Rawls notes that while the conditions of longstanding injustice and attempts at other remedies are usually sufficient to justify civil disobedience, that is not always the case.¹⁵¹ This is because there may be many groups who are all equally entitled to perform civil disobedience at the one time.¹⁵² However, if they all do so simultaneously, they will destabilise the mostly well-ordered legal system against which their disobedience is directed.¹⁵³ In other words, Rawls claims that those who wish to perform civil disobedience need to be mindful of whether other groups are doing so as well, lest they cause the rule of law to crumble.

While this condition makes sense in the context of many groups rebelling against the laws of a governing body, it does not translate well to the context of violating free speech norms.

¹⁴⁸ Wynn, “Witch Trials,” 1:09:33-1:09:38.

¹⁴⁹ Ibid, 1:09:38-1:09:54.

¹⁵⁰ Rawls, *A Theory of Justice*, 328.

¹⁵¹ Ibid.

¹⁵² Ibid.

¹⁵³ Ibid.

Individual speakers are not related to free speech norms in the same way that governments are related to the laws they create. More specifically, speakers are not themselves responsible for establishing, maintaining, and enforcing free speech norms in the way that governments are responsible for establishing, maintaining, and enforcing laws.

Consequently, many groups taking action against a particular speaker does not present the same threat to free speech norms that mass-disobedience does to the integrity of a given legal system. Thus, the criterion of coordination with other minorities can be safely abandoned in the context of justifying disobedient discourse. If anything, a collaborative protest from multiple groups against a single speaker would simply have increased potency.

4.2. Improving Discourse

The key thing to note about the conditions that we have just established for disobedient discourse (i.e. longstanding injustice and attempts at other remedies) is that they ultimately depend on factual claims. In other words, disobedient discourse (if accepted) dictates that the question of whether an individual or group ought to be condemned for violating free speech norms turns upon the circumstances in which such violations occur. If someone violates free speech norms in circumstances that meet the conditions established in the previous section, then they ought not be condemned. If they do so in circumstances that do not meet those conditions, however, then they deserve the stern criticism that liberals currently direct towards progressive protestors.

The concept of disobedient discourse therefore allows for disagreements regarding free speech issues to be discussed in a far more productive manner. Contemporary debates between liberals and progressives regarding the permissibility of progressive protests frequently involve people talking past one another, or at least disagreeing about questions that are very difficult to resolve. Each side of the aisle often insists on the inviolability or supremacy of particular values, with

liberals claiming that free speech norms ought to always be upheld, while progressives argue that social justice should be given top priority. This approach notably does not provide any means of resolving the issue beyond somehow determining that one value is in fact more important than the other, which is difficult when one is dealing with concepts that are hard to quantify.

Factual disagreements, whilst often difficult in their own way and arguably no less prone to controversy, at least provide a clearer means of resolution. If both liberals and progressives accept the concept of disobedient discourse and employ it in their evaluations of people's actions, they will conduct those evaluations from the same starting point and look to similar factors when forming their conclusions. Rather than simply condemning progressive protestors for parading their avoidance of a given speaker, liberals will be encouraged to look to the broader context in which that protest occurred, with a particular focus on the relationship between the speaker's views and the identity of the protestors. Conversely, progressives will be required to show that a given protest was justified by demonstrating that the conditions of longstanding justice and attempts at other remedies were in fact met.

4.3. Assessing the Damage

Although encouraging more effective discussion of free speech issues and allowing marginalised people to fight back against having their basic rights degradingly questioned seems very beneficial, there is an obvious lingering question regarding the potential costs of disobedient discourse. As we saw in chapter 1, Mill provides good reason for thinking that practically all speech needs to be allowed to occur in order for truth worth having to be realised. Does disobedient discourse not breach this categorical principle and thus destroy the primary benefit that Millian free speech norms are meant to provide?

To address this question, it is helpful to visualise what widespread endorsement of disobedient discourse would look like in practice. Although this is a speculative exercise that would undoubtedly benefit from empirical investigation, I believe that reasonable predictions can still be made. The primary impact of widespread endorsement of disobedient discourse would, in my view, be a lessening of condemnatory responses from liberals regarding progressive protests. In other words, when progressives or marginalised people engage in parades of avoidance or punitive responses to speakers, liberals would often be less inclined to criticise their actions, as it would almost certainly be the case that at least *some* of those protests would meet the conditions required for disobedient discourse.

What does this mean for truth worth having? Would a lack of liberal criticism of progressive protests entail that certain opinions will fade from discourse and most people will never encounter them? Recall that Mill endorsed free speech norms on the basis that preventing ideas from reaching members of society was problematic.¹⁵⁴ Thus, the ultimate cost of disobedient discourse depends on whether progressive protests being left uncriticised by liberals actually has such a silencing effect.

This is, once again, a mostly empirical question. It is also an incredibly complex one that is arguably worthy of its own paper. The concept of silencing is one that has received a great deal of discussion within the philosophical literature regarding freedom of speech.¹⁵⁵ This discussion has given rise to sophisticated accounts of what it actually means to be silenced, and the many different ways that such silencing can occur.¹⁵⁶ However, I believe it will be sufficient for present purposes to take a more simplistic approach in assessing the extent to which a lack

¹⁵⁴ Mill, *On Liberty*, 76.

¹⁵⁵ Catharine Mackinnon, *Feminism Unmodified: Discourses on Life and Law* (Cambridge: Harvard University Press, 1987); Caroline West, "Pornography," in *The Oxford Handbook of Freedom of Speech* ed. Arienne Stone and Frederick Schauer (Oxford: Oxford University Press, 2021), 495-496.

¹⁵⁶ Langton, "Speech Acts and Unspeakable Acts," 315.

of liberal criticism regarding progressive protests will prevent certain views from being considered by society at large.

Let us consider the case of J.K. Rowling, whose ‘cancellation’ via progressive protests has been well documented by Wynn, Phelps-Roper, and other sources.¹⁵⁷ Despite being subject to a litany of parades of avoidance and punitive responses to her ideas, Rowling’s views continue to make their way into public discourse. The impact that progressive protests have on Rowling’s views is simply that of making it abundantly clear to both Rowling and others that many people believe her views are unacceptable and worthy of condemnation. However, Rowling’s ongoing ability to express those views suggests that progressive protests are not preventing her from being able to speak in a way that contributes to truth worth having.

It seems unlikely that a lack of condemnation of such protests from liberals (prompted by acceptance of the concept of disobedient discourse) would suddenly change this state of affairs. The ability for speakers such as Rowling to have their ideas be considered by broader society does not seem to rest upon the support they receive from liberal defenders of free speech norms. While such support is undoubtedly helpful insofar as it provides speakers with a sizable group of people willing to misquote Voltaire and defend to the death their right to say what they believe,¹⁵⁸ it is not the sole factor that allows for people’s ideas to be heard. We live in an immensely interconnected world where social media technology allows for even the most radical, bizarre, and repulsive ideas to be consistently injected into popular consciousness.¹⁵⁹ As such, is difficult to see why a lack of criticism towards progressive protests from liberals would suddenly empower such protests to silence people in an unprecedented way.

¹⁵⁷ Pamela Paul, “In Defense of J.K. Rowling,” *The New York Times*, February 16, 2023, <https://www.nytimes.com/2023/02/16/opinion/jk-rowling-transphobia.html>;

¹⁵⁸ “I Disapprove of What You Say, But I Will Defend to the Death Your Right to Say It,” Quote Investigator, June 1, 2015, <https://quoteinvestigator.com/2015/06/01/defend-say/>.

¹⁵⁹ Ed Coper, *Facts and Other Lies: Welcome to the Disinformation Age* (Crows Nest: Allen and Unwin, 2022).

One might reply to this point by saying ‘well what is the point of disobedient discourse if it does nothing at all?’ However, such a reply fails to acknowledge the many benefits that may arise from liberals discontinuing their criticism of progressive protests. The most salient among these is the lessening of an ongoing frustration that liberation movements have repeatedly struggled with throughout history. Renowned civil rights activist Dr Martin Luther King Jr expressed this frustration as follows:

‘I must confess that over the past few years I have been gravely disappointed with the white moderate. I have almost reached the regrettable conclusion that the Negro's great stumbling block in his stride toward freedom is not the White Citizen's Counciler or the Ku Klux Klanner, but the white moderate, who is more devoted to "order" than to justice; who prefers a negative peace which is the absence of tension to a positive peace which is the presence of justice; who constantly says: "I agree with you in the goal you seek, but I cannot agree with your methods of direct action"’.¹⁶⁰

Disobedient discourse therefore works to remove a ‘great stumbling block’ from marginalised people’s ‘stride toward freedom’.¹⁶¹ It not only enables marginalised people to speak out against the degradation they experience in having their basic rights questioned, but also encourages liberal bystanders to avoid making things unnecessarily difficult for them.

Conclusion

In this paper, I have shown that while John Stuart Mill’s argument in the second chapter of ‘*On Liberty*’ is persuasive, it also presents significant problems for marginalised people. Fortunately, the concept of disobedient discourse allows for these problems to be effectively minimised whilst keeping the primary benefits of Mill’s free speech norms largely intact. It

¹⁶⁰ “Letter from a Birmingham Jail [King Jr.],” African Studies Centre – University of Pennsylvania, 16 April 1963, https://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html.

¹⁶¹ Ibid.

also allows for the discourse surrounding free speech issues to become more productive by encouraging liberals and progressives to examine factual questions rather than simply asserting the inviolability of their respective values. This opens the possibility for us to move forward from current political tensions in a way that improves social justice without seriously impacting the epistemic robustness of our beliefs. In other words, we are better able to create the kind of future that Mill himself wanted.

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