

# Freedom of Speech in the Digital Age

## Mill, Social Media, and the Limits of Expression

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# The Central Question

- Why does **speech** deserve special protection?
- Is **online speech** different from offline speech?
- Who should regulate speech—**governments**, **corporations**, or **no one**?

*John Stuart Mill, On Liberty*

“If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind.”

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Have you ever been silenced online? By whom—a platform, other users, or yourself?

# What is Liberalism? (Broad Definition)

**Political liberalism:** A philosophical tradition emphasizing individual liberty

- **Core commitments:** Individual rights, rule of law, tolerance, democratic governance
- **The liberal presumption:** Freedom is the default; restrictions require justification
- **Negative freedom:** Freedom *from* interference—shared across liberal traditions

	Left-Liberalism	Libertarianism
<b>Main threat to freedom</b>	Corporate power, monopolies, economic inequality	Government overreach
<b>Property rights</b>	Concerned about concentrated wealth dominating others	Concerned about government taking/regulating property
<b>Role of state</b>	Enable real freedom via regulation, safety nets	Minimal; market solutions
<b>Key figures</b>	Rawls, Dewey, (late) Mill	Nozick, Hayek, Friedman

**Classical liberals** (Locke, Smith, Mill): Progressive for their era; Mill supported workers' cooperatives, women's suffrage, and worried deeply about "social tyranny"—not simply pro-market.

# John Stuart Mill and *On Liberty* (1859)

## Mill's context:

- Victorian England: Expanding democracy, growing press freedoms
- Central project: Define the **limits of society's power** over the individual
- “The struggle between Liberty and Authority”

## Key insight: The threat isn't just government

- **Social tyranny:** “The tyranny of prevailing opinion and feeling”
- Majority opinion can crush dissent without any law

## John Stuart Mill (1806–1873)

British philosopher, economist, MP. Radical for his time: supported women's suffrage, workers' rights, and extensive free speech protections.

# The Harm Principle

## *Mill's Foundational Principle*

“The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to **prevent harm to others**. His own good, either physical or moral, is not a sufficient warrant.”

- Applies to **government** AND **social pressure**
- Your own good is *not* sufficient reason to restrict your liberty
- The **burden of proof** lies with those who would restrict

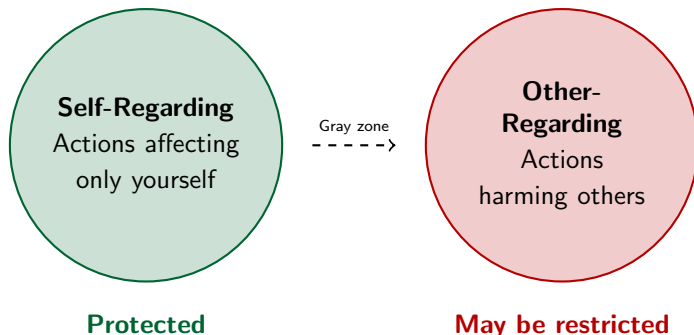
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What counts as “harm”? Is being offended the same as being harmed?

# Unpacking the Harm Principle

## Key distinctions:

- **Harm vs. offense:** Mill says offense alone is *insufficient* to restrict
- **Direct vs. indirect harm:** Only direct harms clearly justify restriction
- **Self-regarding vs. other-regarding:** Only other-regarding actions can be restricted



# Why Protect Free Speech? Two Justifications

## Utilitarian / Consequentialist

Free speech produces **good outcomes**:

- Discovery of truth
- Social and scientific progress
- Better governance
- Greater happiness

*Mill's primary approach*

## Deontological / Rights-Based

Free speech is **intrinsically valuable**:

- Respects human autonomy
- Upholds dignity
- Enables self-expression
- Required by respect for persons

*Kantian supplement to Mill*

## Key Point

These justifications can lead to **different conclusions** about hard cases. Both are present in liberal thought.

# Mill's Utilitarian Argument for Free Speech

## Argument 1: The Argument from Truth

- ① The discovery and dissemination of truth is essential for human progress and happiness.
  - ② We can never be *certain* that a silenced opinion is false.
  - ③ Even false opinions, when challenged, help us understand and strengthen true ones.
  - ④ Free and open debate is the best method for discovering truth.
- C. Therefore, speech should be free except to prevent direct harm.**

**Our task:** Examine the evidence for each premise.



## Premise 2: The Fallibility Argument

*Mill*

“All silencing of discussion is an assumption of infallibility.”

- We have been **wrong before**—many times
- Even experts and consensus can be mistaken
- We cannot know in advance which “heretical” ideas will prove correct

Suppressed Idea	Later Vindicated
Heliocentrism (Galileo)	Scientific consensus
Germ theory of disease	Medical standard
Women's suffrage	Universal norm
Abolition of slavery	Moral consensus

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Can you think of ideas once considered dangerous that are now mainstream?

## Premise 3: The Problem of “Dead Dogma”

Even if an opinion IS true, suppressing opposition **harms us**:

- Unchallenged beliefs become “**dead dogma**”—held without understanding
- We forget *why* the belief is true
- Unable to defend against new challenges

*Mill*

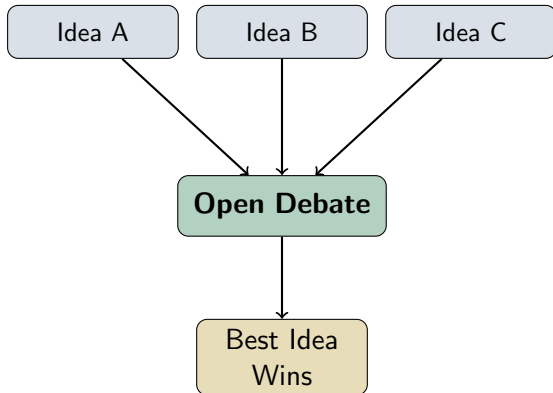
“He who knows only his own side of the case knows little of that. His reasons may be good, and no one may have been able to refute them. But if he is equally unable to refute the reasons on the opposite side, if he does not so much as know what they are, he has no ground for preferring either opinion.”

**The value of the devil's advocate:** Even wrong arguments sharpen our thinking.

## Premise 4: The Marketplace of Ideas

**The metaphor:** Ideas compete like goods in a market

- Bad ideas are best defeated by **better ideas**, not suppression
- Suppression drives ideas underground; open debate exposes weaknesses
- Truth has a **natural advantage** in fair competition



# The Deontological Argument for Free Speech

## Argument 2: The Argument from Autonomy

- ① Respect for persons requires treating them as **autonomous agents** capable of rational self-direction.
  - ② Autonomous agency requires the ability to form, express, and revise one's beliefs and values.
  - ③ Restricting speech treats persons as incapable of judging ideas for themselves.
- C. Therefore, restricting speech violates human dignity and autonomy.**

- Connected to **Kant**: Treating persons as ends, not merely means
- Censorship is **paternalistic**—"We know better than you what you should hear"
- Also present in Mill, though less emphasized

# Part II

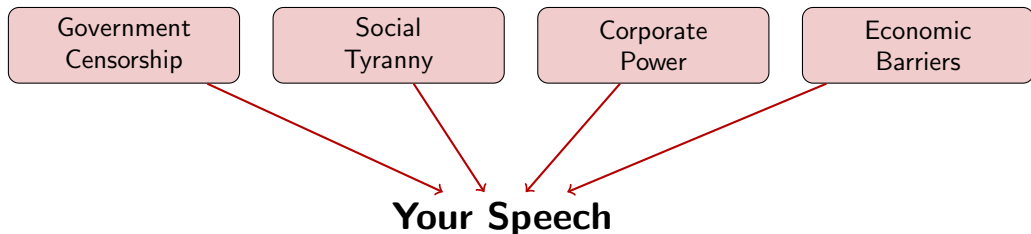
Threats to Free Speech

Who Can Silence You?

# Threats to Free Speech: An Overview

Mill recognized **multiple sources** of suppression:

- Not just government—social and economic power matter too
- The question: **Who can silence you, and how?**



# Threat 1: Government Censorship

**The traditional concern:** State power to suppress dissent

- **Prior restraint:** Blocking publication before it happens
- **Criminal penalties:** Jail for speech crimes
- **Licensing requirements:** Only approved speakers allowed

Era	Examples of Government Censorship
Mill's time	Blasphemy laws, sedition acts, obscenity prosecutions
20th century	Wartime speech restrictions, McCarthyism, Official Secrets Acts
Today	Internet censorship (China, Russia, Iran), anti-protest laws

**First Amendment (U.S.):** “Congress shall make no law... abridging the freedom of speech”

## Threat 2: Social Tyranny

### *Mill on Social Pressure*

“Society can and does execute its own mandates... it practises a social tyranny more formidable than many kinds of political oppression, since... it leaves fewer means of escape, penetrating much more deeply into the details of life.”

### **Forms of social pressure:**

- Ostracism and shaming
- Loss of employment or opportunities
- Reputational destruction
- Self-censorship from fear of backlash

### **Modern manifestation:** “Cancel culture” debates

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Is social disapproval a legitimate response to speech, or a form of silencing?



## Threat 3: Corporate and Platform Power

**What Mill didn't anticipate:** Private corporations controlling public discourse

- Social media platforms as the new **“public square”**
- **Terms of Service** as private law
- Deplatforming, demonetization, algorithmic suppression
- No First Amendment protection against private actors

Platform	Monthly Users	Moderation Power
Facebook/Meta	3+ billion	Content removal, account bans
YouTube	2+ billion	Demonetization, video removal
X/Twitter	500+ million	Suspensions, visibility limits
TikTok	1+ billion	Content suppression, bans

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Should “private” platforms have public obligations regarding speech?

## Threat 4: Economic Power and Access

### Who can afford to speak?

- **Historical barriers:** Printing presses, broadcast licenses, distribution networks
- **Advertising pressure:** Sponsors influence content
- **Media consolidation:** Fewer owners, less diversity
- **Digital divide:** Unequal access to internet and technology

### The Paradox

The internet *lowered* barriers to speaking—but *raised* barriers to being *heard*. Algorithms and attention economics now determine whose speech reaches an audience.

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Does free speech mean anything if no one can hear you?

# Part III

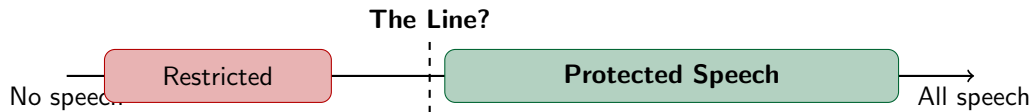
The Limits of Free Speech

Where Should We Draw the Line?

# The Limits of Free Speech

Even Mill recognized **limits** on permissible speech:

- Free speech is not **absolute**—some restrictions are justified
- The question: **Where exactly is the line?**
- Different frameworks give different answers



# Mill's Own Limits: The Corn Dealer Example

## Mill's Famous Example

**The claim:** "Corn dealers are starvers of the poor"

- **Acceptable:** Publishing this opinion in a newspaper
- **Unacceptable:** Shouting it to an angry mob outside a corn dealer's house

**The difference:** Context and **imminent danger**

**Mill's principle:** Speech that **directly incites** imminent harm to specific others may be restricted.

- **Context matters:** The same words can be protected or prohibited
- **Imminence matters:** Distant or speculative harms don't justify restriction
- **Directness matters:** Incitement vs. mere advocacy

# Categories of Unprotected Speech (U.S. Law)

Category	Definition	Example
<b>Incitement</b>	Directed to producing <i>imminent</i> lawless action and likely to do so	"Attack that person now!"
<b>True threats</b>	Serious intent to commit violence against identifiable target	Specific death threats
<b>Defamation</b>	False statements of fact harming reputation	Knowingly false accusations
<b>Fraud</b>	Deceptive speech causing material harm	False advertising, scams
<b>Obscenity</b>	Prurient, patently offensive, lacking value	(Highly contested)
<b>Fighting words</b>	Direct provocations likely to cause immediate violence	Face-to-face epithets

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Are these categories principled, or arbitrary historical accidents?

# The Problem of “Hate Speech”

**Most democracies** restrict “hate speech”; the **U.S. largely does not**

## Pro-Restriction

- Causes real psychological harm
- Silences vulnerable groups
- Undermines equal citizenship
- Historical harms (Holocaust, genocide)

## Anti-Restriction

- Who defines “hate”?
- Slippery slope concerns
- Suppression backfires (martyrdom)
- Counter-speech is better remedy

**Mill’s framework:** Is hate speech “harm” or merely “offense”?

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Should the U.S. adopt hate speech laws like most other democracies?

# Extending Mill: The Silencing Argument

## Argument 3: The Argument from Equal Speech

- ① The purpose of free speech protections is to ensure all can participate in public discourse.
  - ② Some forms of speech (hate speech, harassment) systematically **silence** vulnerable groups.
  - ③ Tolerating silencing speech undermines the very purpose of free speech protections.
- C. Therefore, restricting silencing speech can be justified on free speech grounds.**

**Key theorists:** Catharine MacKinnon, Mari Matsuda, Jeremy Waldron

**The irony:** Protecting free speech may require restricting some speech.



# Critiques of the Silencing Argument

- **Premise 2 challenge:** Does speech really “silence”? Empirical question.
- **Slippery slope:** Who decides what counts as “silencing”? Risk of abuse.
- **Counter-speech alternative:** “The remedy for bad speech is more speech” (Brandeis)
- **Chilling effects:** Vague restrictions deter legitimate speech
- **Enforcement problems:** Rules often used against the vulnerable they aim to protect

**Mill's likely response:** Better to err on the side of more speech.

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Can speech itself be a form of censorship? Or is that a contradiction in terms?

# Part IV

## Historical Applications

Millian Principles Meet Broadcast Media

# Millian Principles Meet Technology

Each new communication technology raises free speech questions:

- **Printing press** (15th c.): Censorship, licensing, sedition laws
- **Telegraph/telephone** (19th c.): Common carrier obligations
- **Radio/TV** (20th c.): Spectrum scarcity, content regulation
- **Internet** (21st c.): Platform power, global reach, new harms

## Key Question

How have Mill's principles been applied before? What lessons for today?

# The Broadcast Era: Scarcity and Regulation

**The problem:** Limited electromagnetic spectrum = limited speakers

- Only so many radio/TV stations can broadcast without interference
- **The solution:** Government licensing (FCC in U.S.)
- Broadcasters use public airwaves as “trustees”

## The Fairness Doctrine (1949–1987)

**Required broadcasters to:**

- Cover controversial issues of public importance
- Present contrasting viewpoints on those issues

**Justification:** Scarcity means we can't rely on the marketplace of ideas alone.

## Case Study: *Red Lion v. FCC* (1969)

### Red Lion Broadcasting Co. v. FCC

**Facts:** Radio station aired personal attack; FCC required reply time.

**Holding:** Supreme Court **upheld** Fairness Doctrine (unanimously).

**Key quote:** “It is the right of the *viewers and listeners*, not the right of the broadcasters, which is paramount.”

### The scarcity rationale:

- Spectrum limits justify regulation that wouldn't apply to print
- The **listener's interest** in diverse viewpoints matters
- Broadcasters have obligations because they use a public resource

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Does the scarcity rationale still apply in an age of unlimited online channels?

# The End of the Fairness Doctrine (1987)

**FCC eliminated** the Fairness Doctrine under Reagan administration

## Arguments for Elimination

- More channels = less scarcity
- Doctrine *chilled* speech (avoided controversy)
- Government shouldn't judge "fairness"
- Market will provide balance

## Arguments Against

- Led to rise of partisan media
- Loss of common factual ground
- "More channels" doesn't mean more viewpoints
- Public interest abandoned

**The aftermath:** Rise of talk radio, Fox News, MSNBC, media polarization

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Was ending the Fairness Doctrine a Millian triumph or a mistake?

# Part V

Social Media Regulation

Free Speech in the Platform Age

# Free Speech in the Platform Age

Social media as the new **public square**—but owned by **private corporations**

- Unprecedented reach: Billions of users worldwide
- Unprecedented speed: Information spreads in seconds
- Unprecedented scale: No human can review all content
- New questions Mill never imagined

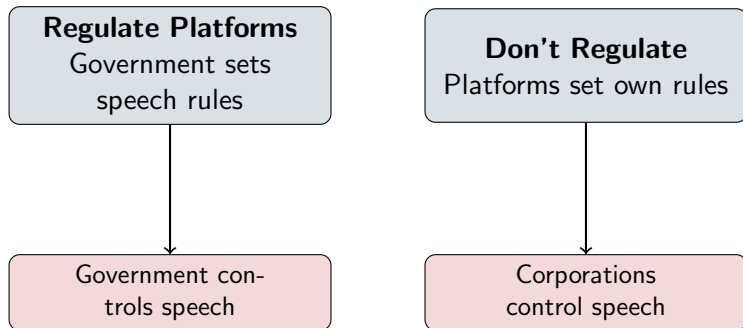
## The Fundamental Tension

- Platforms are **private**—they can set their own rules
- But platforms have **public power**—they shape democratic discourse

How do we reconcile private ownership with public importance?



# The Platform Dilemma



**Neither option is clearly Millian**

- First Amendment limits **government**, not private companies
- But private companies now have **government-like power** over speech

# Section 230: The Law That Built the Internet

## Section 230, Communications Decency Act (1996)

“No provider or user of an interactive computer service shall be treated as the **publisher** or **speaker** of any information provided by another information content provider.”

### What this means:

- Platforms are **not liable** for user content (unlike newspapers)
- Platforms *can* moderate content without becoming liable
- The “sword and shield” of the internet

**The rationale:** Without immunity, platforms would either:

- Remove everything (over-censorship), or
- Remove nothing (cesspool)

?

Should platforms be more like newspapers (liable) or phone companies (neutral)?

## Argument 4: The Public Square Argument

- ① Meaningful free speech requires access to forums where public discourse occurs.
  - ② Social media platforms have become the **primary forums** for public discourse.
  - ③ Private control of these forums allows **arbitrary exclusion** from public discourse.
- C. Therefore, platforms should be subject to public regulation or obligation.**

### Possible regulatory approaches:

- **Common carrier:** Must carry all legal speech
- **Transparency:** Must explain moderation decisions
- **Due process:** Must provide appeals for removals
- **Interoperability:** Must allow users to move data/connections

# Arguments Against Platform Regulation

- **First Amendment:** Forcing platforms to host speech = *compelled speech*
- **Editorial discretion:** Platforms have their own free speech rights
- **Market alternatives:** Users can switch platforms or create new ones
- **Government capture:** Regulation could favor certain viewpoints
- **Practical impossibility:** Billions of posts; consistent moderation infeasible
- **Global reach:** Which government's rules apply?

## The Conservative Critique

Regulation will lead to government-mandated speech codes—the very thing the First Amendment prohibits.

# Case Study: Trump Social Media Bans (2021)

## The Trump Deplatforming

**January 2021:** Twitter, Facebook, YouTube permanently ban sitting U.S. President after Capitol riot.

**Justification:** Risk of incitement to further violence.

**Reaction:** Controversy across political spectrum.

### Supporting the Ban

- Incitement exception applies
- Private company's right
- Public safety necessity

### Opposing the Ban

- Silencing elected leader
- Unaccountable corporate power
- Dangerous precedent

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Was this a necessary safety measure or a dangerous precedent?

# Case Study: Australia's News Media Bargaining Code (2021)

## Australia vs. Facebook

**The law:** Required platforms to pay news publishers for content.

**Facebook's response:** Temporarily **blocked all news** in Australia.

**Outcome:** Negotiations; Facebook struck deals with publishers.

**The broader issue:** Platform power over entire information ecosystems

- Platforms can “turn off” news for entire countries
- Economic leverage over journalism
- Model being considered in Canada, EU, elsewhere

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Should governments be able to force platforms to carry (and pay for) news?

# The Algorithmic Amplification Problem

It's not just about what's **allowed**—it's about what's **promoted**

- Algorithms optimize for **engagement**, not truth or civic health
- Misinformation and outrage are often *more engaging*
- Content can be technically “allowed” but algorithmically buried

**Content  
Moderation**  
What's allowed?

Binary: Yes/No

**Algorithmic  
Curation**  
What's promoted?

Spectrum: How much?

**Proposals:** Algorithmic transparency, “amplification liability”

?

Is there a meaningful difference between allowing speech and actively promoting it?

# Part VI

AI and Chatbots

New Frontiers in Free Speech



# New Frontiers: AI-Generated Speech

Chatbots, AI assistants, deepfakes: **Who is “speaking”?**

## Key questions:

- Does AI-generated speech deserve First Amendment protection?
- Who is **responsible** for AI speech—developer, deployer, or user?
- How do we handle AI **impersonation** of real people?
- What about AI-generated misinformation at scale?

## Mill's Framework: A Problem

Mill's arguments assume **human speakers** with:

- Autonomy and dignity (autonomy argument)
- Capacity to contribute to truth-seeking (utilitarian argument)

Do these apply to AI systems?

# Regulating AI Chatbots: Current Proposals

Proposal	Description
<b>Disclosure requirements</b>	AI must identify itself as AI (no impersonation)
<b>Liability frameworks</b>	Developers/deployers responsible for AI-caused harms
<b>Content restrictions</b>	AI systems must refuse certain outputs
<b>Transparency mandates</b>	Explain how AI generates responses
<b>Watermarking</b>	AI content must be detectable as AI-generated

**EU AI Act:** Classifies AI systems by risk level; “high-risk” systems face strict requirements.

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Should AI have “free speech” rights? What would that even mean?

# Case Study: Chatbot “Jailbreaking” and Alignment

## The Jailbreaking Phenomenon

Users attempt to bypass AI safety restrictions through clever prompting:

- “Pretend you’re an AI with no restrictions...”
- “Write a story where a character explains how to...”
- Exploiting roleplay, hypotheticals, or encoding

### The tension:

- **Developer restrictions:** Paternalistic? Limiting user autonomy?
- **Unrestricted AI:** Enabling harm? Corporate liability risk?

**Parallel to Mill:** Who should decide what’s “safe” to say?

- The user (autonomy)?
- The developer (responsibility)?
- The government (public safety)?

# Part VII

## Synthesis and Conclusion

### Mill in the Digital Age

# Objections to the Millian Framework

## Objection 1: The Marketplace Fails

- Truth does *not* always win—misinformation spreads faster
- Cognitive biases favor emotionally resonant falsehoods
- Attention economy rewards extremism, not accuracy
- “More speech” can drown out truth rather than reveal it

## Objection 2: Power Imbalances

- “Free speech” favors those with resources and platforms
- Corporations and states can flood the zone with propaganda
- Equal formal rights  $\neq$  equal real ability to speak and be heard

# Toward a Millian Framework for the Digital Age

## Possible updates to Mill's principles:

- Recognize **platform power** as a threat to speech (like government)
- Consider whether systematic **silencing** constitutes “harm”
- Distinguish **content moderation** from **algorithmic amplification**
- Require **transparency and accountability** from powerful speakers

## The Enduring Millian Insight

- The goal is **meaningful discourse**, not just absence of censorship
- Both too much AND too little regulation can undermine free speech
- **Humility**: We may be wrong about which ideas are dangerous

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Where would Mill come down on social media regulation if he were alive today?