

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
Main threat to freedom	Corporate power, monopolies, economic inequality	Government overreach
Property rights	Concerned about concentrated wealth dominating others	Concerned about government taking/regulating property
Role of state	Enable real freedom via regulation, safety nets	Minimal; market solutions
Key figures	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

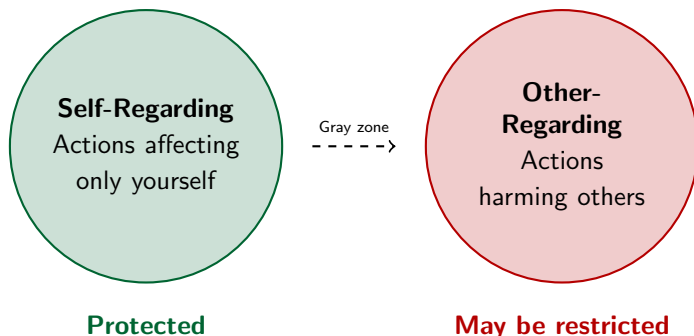
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What counts as “harm”? Is being offended the same as being harmed?

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

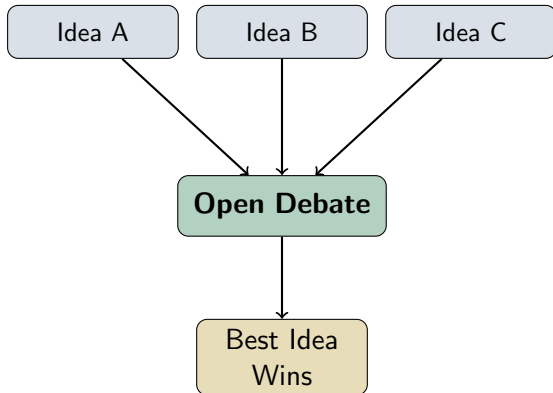
“He who knows only his own side of the case knows little of that. His reasons may be good, and no one may have been able to refute them. But if he is equally unable to refute the reasons on the opposite side, if he does not so much as know what they are, he has no ground for preferring either opinion.”

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

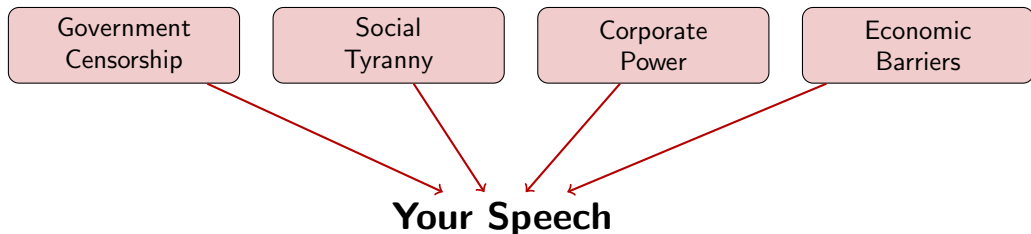
Threats to Free Speech

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

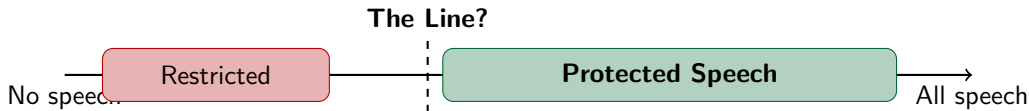
The Limits of Free Speech

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

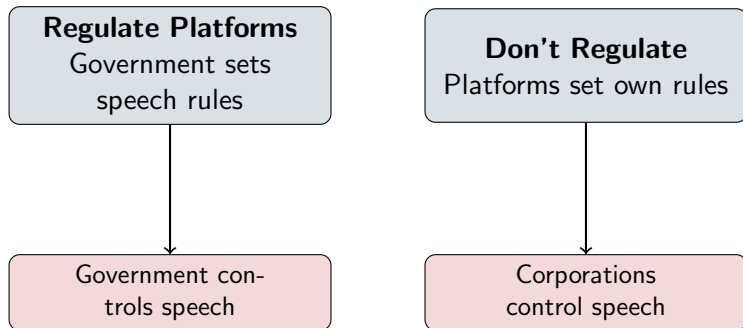
- Unprecedented reach: Billions of users worldwide
- Unprecedented speed: Information spreads in seconds
- Unprecedented scale: No human can review all content
- New questions Mill never imagined

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)

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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”

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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
Disclosure requirements	AI must identify itself as AI (no impersonation)
Liability frameworks	Developers/deployers responsible for AI-caused harms
Content restrictions	AI systems must refuse certain outputs
Transparency mandates	Explain how AI generates responses
Watermarking	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?