

What limits, if any, should be placed upon our freedom of speech?

Freedom of speech has been and continues to be among the most important subjects concerning society and the power of the state. Free speech is a powerful tool that allows people to share their ideas, no matter how opposed to the current socially acceptable ideas, which can make it a tool for progress. However free speech can also be used to spread dangerous ideas that could harm society if they were to become widespread.

In *“On Liberty”* John Stuart Mill states “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.”¹ This is a very liberal position to take on freedom of speech, and I am inclined to agree with this, as it is in opposition of the ‘tyranny of the majority’, in which the majority oppress the minority through overruling and silencing them. This idea of all people having the right to speak no matter how many oppose them is an individualist idea that the rights of the individual should be as important as the rights of the collective.

A possible argument against this idea of strong individual rights, and protection of the individual from the majority is that the majority of people should be protected from harmful ideas that the individual might say, and that the state would be in the right to silence the individual. I would disagree with this however, as protecting the majority at the expense of the minority leads to oppression of people simply because of the ideas that they hold, and is the same principle behind all historic oppression, such as the treatment of the Jewish peoples under the Nazi German regime.

Mill also came up with the idea of the ‘harm principle’, which states that “the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.”² This when applied to speech could be Mill’s limit on free speech, as speech is able to harm certain groups or individuals if used incorrectly. The only problem with this definition is that at what point is your speech directly causing harm to others? You could call for violence against a particular person, though you are not directly performing any violent act against that person, though you are indirectly trying to cause that violent act to take place. I would argue that in the case of directly calling for violence against a particular person, the people who commit the violence should be punished for the crime, as without them the crime couldn’t possibly have taken place. However the person who is calling for the violence should receive a lesser punishment, but should still receive reprimandation by the state. Calling for violence against somebody in my opinion is morally the same as hiring someone to be violent against somebody, as in both cases you are attempting to cause harm, and are fully aware of the harm that you are potentially causing towards that individual.

¹John Stuart Mill, *On Liberty* (Los Angeles: Enhanced Media Publishing, 2016), p. 17.

²John Stuart Mill, *On Liberty* (Los Angeles: Enhanced Media Publishing, 2016), p. 12.

Thus I would suggest that calls for violence against individuals or groups should be restricted by the state, as it protects the rights of the other members of the state, and so this could fall under the harm principle, as it physically protects members of the state from each other, while allowing for certain immoral ideas to be shared in a calm and peaceful environment where they can be discussed.

Which leads me onto another of Mill's ideas on free speech, which is "If the arguments of the present chapter are of any validity, there ought to exist the fullest liberty of professing and discussing, as a matter of ethical conviction, any doctrine, however immoral it may be considered."³ This is to say that any idea should be allowed to be openly discussed, no matter how wrong it is considered by society. An example of this could be calling for the arrest of homosexual people within that society. He would argue that we should in fact debate these people instead of silencing them, as we are strengthening our own convictions of what is right by reminding ourselves of the arguments that oppose this way of thinking. I would add that debating against ideas like the example given brings those ideas into the light of public scrutiny instead of letting them spread underground.

My view is that if an idea is so clearly wrong, then it will not hold up to public scrutiny, and will easily be proven false when given a platform to defend itself, and if it is not clearly proven false, then maybe the idea isn't so wrong. Though a counter argument to this is that if somebody was going to believe this idea anyway then they aren't thinking rationally anyway so won't be swayed by the counter-arguments given. This would mean that they are spreading the idea to a larger audience who otherwise may not have known about this way of thinking. This could cause a harmful ideology to be spread even though it has no logical or rational merit, but instead appeals to emotions. Though in response to this argument, I would say that we need to trust the people within a state to make up their own minds, and hope that they come to the logical and rational conclusion, as without allowing all ideas to be judged upon their merit by society as a whole, then society would never see any progress, and we would be governed by a state run by social Luddites.

Though it is relatively easy to justify criminalizing speech that directly or indirectly causes violence, it is harder to justify criminalizing hate speech, which is defined as "Abusive or threatening speech or writing that expresses prejudice against a particular group, especially on the basis of race, religion, or sexual orientation." I would argue that it is the social responsibility of a member of a state to not use this kind of abusive language, though I would argue that it should not be the responsibility of the state to punish those who would use this form of speech.

Furthermore, I believe that it is not up to the state to be able to decide what kind of speech is offensive, as allowing them this power lets them choose what words that are allowed to be used by the people, and can be used to be tyrannical. It may start with criminalising words against certain groups of people, and then it becomes offensive to speak out against the state. Freedom of speech needs to remain a tool to use against the government by the people, and not the other way around.

³David van Mill, *Freedom of Speech* (2017)

<<https://plato.stanford.edu/entries/freedom-speech/#MilHarPriHatSpe>> [accessed 13 March 2020].

Joel Feinberg put forward the idea of an 'offence principle', which adds onto the harm principle in the way that offensive speech should be criminalized, but to a lesser degree than harmful speech. Feinberg defines the way of mediating the offense principle in this way; "The seriousness of an offense is determined by four standards: the magnitude of the offense, the standard of reasonable avoidability, the Volenti maxim, and the discounting of abnormal susceptibilities."⁴ This sets a concrete set of standards for deciding what speech is offensive and what punishments to give, however it does not take into account who is being offended, as the offence could be that a black person walked into a restaurant where the owner and customers are racists, which would cause a lot of offence to the people inside the restaurant. These people are all grossly offended by this person, however they are the ones who are discriminating. This leaves the possibility of the offence principle protecting the people they are trying to prevent so long as they are in the majority in society.

Another possible argument for restricting offensive speech is that people have the right to not be offended. I disagree that it is against someone's rights to offend them, and so I do not believe that they should receive any legal reprimandation for the things that they say. I instead believe that it is up to those around them to punish them for offensive speech by not interacting with them or using their speech to express how much they disagree with what has been said. I believe this because punishments from the state are not reasonable for the offence committed, while being socially ostracized or known as an offensive person is a direct consequence of their actions, and is far more reasonable than a prison sentence or a fine.

To conclude, it is my opinion that like all things, there should be limits put in place for freedom of speech to a degree. This limit in my opinion is when the speech impacts another person's physical safety, as it is their right not to be assaulted, while I would disagree that it is someone's right to not be offended, so offensive speech should be completely legal, and the state should have zero interference with this form of speech. I also believe that my argument is backed up by John Stuart Mill, as his harm principle can be used in the way that I am describing.

⁴ Joel Feinberg, *Mediating the Offense Principle* ()

<<https://www.oxfordscholarship.com/view/10.1093/0195052153.001.0001/acprof-9780195052152-chapter-2>> [accessed 12 March 2020].

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