

## Philosophies of Intellectual Freedom

Intellectual Freedom is widely and correctly held to be one of the central achievements of the Enlightenment tradition in Western European thought. While the Enlightenment crystallized the modern conception of freedom of thought and conscience, the elements of this unique historical compound can be found in traditions of church scholarship and debate in the major religions of the West, in the culture of the university (Maguire 1998), in the history of public controversies involving the expression of ideas, toleration of religion, and the limits of the power of the state. Intellectual freedom places fundamental value on the autonomy of the individual to hold and express beliefs without fear of political or social punishment. This requires valuing mind and inquiry. The possession of knowledge, especially foreknowledge, is valued as divine or a sign of contact with the divine by many human cultures. Western sources for thinking about the value of mind and inquiry go as far back as values of Periclean Athens and Platonic thought. Political and social cultures which have grown from the Enlightenment and its precursors have generally enshrined intellectual freedom in a set of more recognizable freedoms – especially freedom of speech, freedom of religion, and freedom of association. These relatively new political freedoms come to us from a broader political philosophical discourse of the self and involve an elaborate scheme of legal protections of the individual against the power of the state.

But they also come together in expression in the social culture of intellectual freedom. We can start our investigation informally by asking, “What is it like, fundamentally, to grow up in a culture of intellectual freedom?” The average individual in a contemporary political community shaped by basic liberties such as intellectual freedom rarely experiences this freedom through formal interaction with political and legal institutions. Rather, to grow up in a social culture with intellectual freedom, especially when it is not resisted by family or religious culture, is to acquire a distinctive sense of the acceptability of maintaining one’s independence of thought and privacy of thought. It involves hearing affirmations of one’s right to think differently and to develop one’s own thinking. It involves experience of a culture of discussion and debate. A child in such a culture expects to be encouraged to develop a personal point of view as a part of his or her growth, and an adult in such a culture expects equal respect for his or her beliefs and tolerance for legitimate differences of opinion.

In the social culture of intellectual freedom, the development of intellectual autonomy is typically taken seriously and both social norms and legal rules support the detailed social construction of the autonomous self. In this sense, intellectual freedom almost entails a commitment to education and a concept of personal intellectual development. Inquiry is valued fundamentally in the social culture of intellectual freedom, at least in words and aspirations. In addition to formal learning, social etiquette and conversational values presume that nothing is in principle excluded from inquiry. One may learn that it is not respectful to challenge your dear old uncle's views over the holiday meal, but you would not learn that there are views which cannot be challenged, which cannot be investigated or written about and discussed among free adult participants. By contrast, we know that individuals who grow up in cultures without intellectual freedom or in which such freedom was interrupted, for example, in Soviet era Eastern European countries, China, or some modern Arab and Muslim political states, may feel the importance of this freedom as deeply, but learn a very different set of rules -- rules about what topics it is never acceptable to speak publicly about, as well as what views are unacceptable to hold. The briefest sketch, even if it presents somewhat simple contrasts, shows us that intellectual freedom permeates the social practices of a culture's concept of the self and the model of the individual's development. Philosophers tend to want to know what rationales or theories support the culture's self-image and practice. Specifically, what foundations can we give our idea and practice of intellectual freedom?

On a practical level, the social culture of intellectual freedom is sustained by a political and legal structure that articulates it, administers it, and protects it. As a political achievement, intellectual freedom requires protections and legal remedies for unjust treatment for one's opinions and expression and against efforts to censor expression or unjustly limit access to information and discussion. Of course, the perpetrator of these injustices is often the state, so the political culture of intellectual freedom also typically includes a legal and juridical framework for challenging actions of the state which contravene its commitment to the basic liberties associated with intellectual freedom, especially speech, religious exercise, and association.

A philosophical investigation of intellectual freedom seeks to explore and evaluate our best understandings of and justifications for intellectual freedom. To do this, we must work from an accurate characterization of the historical, social, and political traditions within which it developed. Intellectual freedom has a history. Because its advocates generally see it as one of the best ideas in human history, there is a natural temptation to enlarge the historical narrative, to suppose that its roots are as broad and deep as the Western tradition itself. The trial of Socrates might be suggested as the first great

moment in the history of intellectual freedom in the West, but we will see that that is a complicated statement to assess.

We must also acknowledge, at the start of the inquiry, that intellectual freedom exists in a dynamic relationship with other political and social forces. Our description of the social culture of intellectual freedom above was something of an idealization. One's religious experience, family life, and social economic status will affect how prominent the concept of intellectual freedom is in one's life. One's life experiences and temperament will matter. For example, outspoken academics who rely on the job protections of tenure and citizens or public figures who exercise their free speech rights to say something controversial experience their intellectual freedom in different ways from each other and from most of their peers who do not engage in such expression. Good philosophical accounts take into account both the idealizations of theory and the realism and complex phenomenology of our experience.

While Enlightenment thought is a major focus of our philosophical analysis, a richer and more diverse political history is implicated in the Enlightenment development of intellectual freedom than we will have space to consider in this article. The history of the professional author, the religious wars and revolutions of Europe in the 17<sup>th</sup> and 18<sup>th</sup> centuries, the rise of science in public discourse, and the growth of knowledge during this period all contribute in complex ways to the formation of the modern concept of intellectual freedom. We will mention some of these themes as we gather resources for the main philosophical analysis of intellectual freedom, but each of these topics has a specific and detailed relationship to intellectual freedom that is better addressed in other articles in this collection.

In the present article I will survey briefly some of the major philosophical expressions of the idea of intellectual freedom. Flashes of insight from ancient and modern culture shape the intellectual landscape that takes its current form in the Enlightenment and becomes recognizable to us in the twentieth century as "intellectual freedom." A major focus of our inquiry will be on John Stuart Mill's defense of "liberty of thought and discussion" in *On Liberty*, which, I argue, gives a pivotal synthesis of historical themes along with a theoretical framework that should inform contemporary discussions and controversies in intellectual freedom. Contemporary competing views, especially from John Rawls and the social contract tradition of political rights will be set in juxtaposition with Mill's work. After the survey of historical philosophical sources for the concept of intellectual freedom, which occupies section one below, the philosophical work of our inquiry will remain largely still to do. Do the philosophical resources of the past and present still provide a secure foundation for intellectual freedom? What are the principle philosophical problems or challenges in articulating the value or scope of intellectual

freedom? Have the past twenty years of the internet and the growth of digital media changed anything fundamentally about our understanding of or reasonable aspirations for intellectual freedom? Good answers to these questions, which are attempted in sections two and three, depend upon a balanced philosophical examination of competing viewpoints.

Before searching the historical record for philosophical insights and resources, it might be useful to say something about the value of philosophical investigation of intellectual freedom. First, there is the possibility of increased self-understanding about the idea itself. We sometimes assume that if a concept or idea is central to social and political life then it must be well understood, but this is not always the case. Philosophical analysis can help with definitions and self-awareness about discrepancies in meaning of even seemingly well known and widely held concepts such as intellectual freedom. But the specific value of understanding foundations goes beyond this kind of clarity. When librarians, lawyers, academics, and others advocate the rights and liberties associated with intellectual freedom in particular controversies – a contested book, a cancelled speech, an unjust dismissal, they need to know what ideas their advocacy commits them to. When librarians advocate the right to read as part of a commitment to intellectual freedom, for example, is it because they believe they we should all share a commitment to a certain kind of activity (reading), becoming a certain kind of person (a reader), or is reading purely instrumental to other goals, such as becoming a better citizen or increasing personal or social well-being through development of imagination or acquisition of knowledge? Or is the basis of our commitment more formal than this. Do we advocate intellectual freedoms as a matter of the right of the individual, apart from any theory of the utility of it? Each of these justifications will take us to different commitments, only some of which are compatible with each other. Our best account of intellectual freedom should not only be self-consistent but also aspire to the sort of objectivity that compels assent. If we lack a compelling account of the objective value of intellectual freedom, we will have nothing persuasive to say in response to the objector who feels that our advocacy is arbitrary or based more on hopes and theories than reality.

Ultimately, there are very practical reasons for wanting to clarify the foundations of intellectual freedom. As we shall see, at times the basis of intellectual freedom has been given in theological terms, anthropological terms, political terms, and even epistemological terms. There is nothing specifically wrong with any foundational defense of intellectual freedom that includes insightful and true premises and a solid rationale, but if the goal is to locate the best philosophical theory about intellectual freedom (or features of the best theory), as it is in this philosophical inquiry, then we need to pay particular attention to the presuppositions at work in various defenses of this idea. We should try to ground our

contemporary understanding of intellectual freedom in the best justified theory available. Presumably clarity about the basic nature and grounding of intellectual freedom will help us determine which battles to engage in the name of this umbrella freedom. It may also help us to discern a future for intellectual freedom in light of a rapidly changing information environment. The best philosophical theory of intellectual freedom for our day and place will ultimately combine a historical retrieval of insights and ideas with our best contemporary understanding of the value of freedom of conscience and expression.

## I. Philosophical Resources for Intellectual Freedom

When we look for historical sources and philosophical resources for thinking about intellectual freedom, most of the evidence that we easily recognize as such does seem to come from a specific and well known strand of the Western tradition, the one beginning in Greek culture of sixth century B.C.E. and running through the development of Western European political history.<sup>1</sup> Social codes and practices concerning who may speak in a group or under what conditions one has a “claim” to say something (and protection after saying it) are probably universal among human societies. Intellectual freedom is not reducible to a set of social codes and practices, but as we have already seen, they can be partially descriptive of it. In saying that intellectual freedom is a tradition of the West, we are focusing on the unique development of these social and political practices as they lead to their mature expression in the Enlightenment.

In this review of historical viewpoints, I will illustrate what I take to be a standard historical view: that the tradition of intellectual freedom of the Enlightenment brought together ancient and longstanding values about the importance of deliberation, tolerance, speech, and expression with the modern political tradition of universal rights. Within a relatively very short span of Western political history, and in no small part because of widespread experience of violent and persistent religious and political warfare, the political self in many European states became a bearer rights or other legal protections for liberty of thought and conscience. In the philosophical parallel to this political history, European intellectuals produced major statements and treatises on the importance of knowledge, expression, and tolerance, especially from the beginning of the 17<sup>th</sup> century to the end of the end of the 19<sup>th</sup>. In reconstructing some ideas from this tradition, we will be supplying ourselves with resources for the philosophical analysis in section two of the inquiry.

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<sup>1</sup> It will help to use a broad conception of this tradition. As Swan points out, there are elements of intellectual freedom in Egyptian and Sumerian culture (Swan 280). Also, the “Western tradition” is, famously, not a single or simple thing, and it is what it is in part because of interactions with cultures outside of itself.

Before treating the modern philosophical history we should look at the ancient. The establishment of the status of the citizen in ancient Athens can be taken as a historical starting point for a discussion of the protections for a citizen's participation in public discussion within the Western tradition. In response to social unrest in the early sixth century, the reforms of Solon moved Athens toward establishing the status of the citizen and his (and eventually, under Pericles, her) legal obligations and benefits. Solon's reforms did not completely address the social unrest that motivated them, and toward the end of the sixth century Cleisthenes literally reorganized the political map of Athens to dilute the influence of nobles over poor citizens and to undercut older tribal division of the polity. Crucially, the reforms placed emphasis on local and collective discussion, speech situations in which citizens were expected to advance considerations for laws and policies. (Martin 87) By the time of Pericles, 50-60 years later, additional reforms were undertaken, including measures to allow the poor to take advantage of their democratic opportunity to serve in government (Martin 115). This increased the value of speech as a fundamental technology of political life, and brought with it questions about the protection one enjoyed for candid speech.

In recent decades, attention has been given by classical scholars to the concept of *parrhesia*, or "frank speech" and a related term, "isegoria", both of which are originally associated with Athenian democracy, but which also surface in many places throughout the Graeco-Roman period, including Platonic dialogues, Euripides' plays, Epicurus, and, later, Roman writers such as Seneca and Philodemus, who wrote a treatise, *On Parrhesia*. The problem of frank speech in a world of political tyrants is logically and rhetorically complex. How does a tyrant get candid advice? If he asks you for criticism, how do you know that he will not kill you for your candor? Ancient authors recognized, in addition, that distinguishing frank speech from flattery might be difficult to do rhetorically, especially in a world that does not already protect candor. (Konstan 20)

Konstan cites examples of ancient attitudes toward candor in speech and its role in Athenian democracy. Parrhesia was a recognized right of a citizen to speak in public and related to another concept, "isogoria," which refers to the equality of standing of citizens to address an assembly. Parrhesia has a range of meanings. In the Philodemus text it is principally about the problem of candor between teachers and disciples. Marcus Aurelius echoes this in a reflection on learning the importance of enduring the frank speech of others. Epictetus mentions parrhesia as a political good that might be taken away by bad law. (28) We have good evidence that parrhesia is part of the cultural concept of self in the ancient world and that its usages cut across many categories of social, political, and philosophical discourse.

In Foucault's treatment of parrhesia, both in lectures at the Collège de France in 1981-1982 and at University of Berkeley in 1983, parrhesias is explored across these categories of discourse. In the earlier lectures, Foucault considers, for example, the ancients' awareness of the rhetorical problem of speaking truth to power. How does the Prince distinguish truth from flattery without protecting frank speech? In the lectures at Berkeley, 8 months before his death, Foucault initially gives an analytic treatment of parrhesia. He notes, for example, that parrhesia comes up in contexts in which telling the truth involves a danger. It is connected fundamentally to the decision to expose the self in words that could risk disapproval or punishment from a tyrant, a majority, or another, more powerful citizen or group. Foucault's wide ranging lectures show how the concept of parrhesia arose across six plays of Euripides, the Platonic dialogue *Laches*, and in the public practice of the cynics. Foucault's insight, as usual, is to identify layers and dimensions of social practice which both constitute and interact with philosophical and other hegemonic discourses. One realizes from his treatment why intellectual freedom is fundamentally connected with danger to the self yet also defining for a self.

Shifting from this broad philosophical cultural analysis to "official" philosophical culture, one could say that the spirit of the Platonic dialogues embody a commitment to the value of intellectual freedom, at least in so far as it values mind and inquiry. Plato constantly has the Socrates of the dialogues inviting interlocutors to give candid answers to his questions and to let the argument go wherever it may. The historical Socrates does seem to have spent considerable time in public engaging in open discourse with others about a wide range of topics. His own defense against the charges brought against him is that he was on a religious mission to learn the meaning of the Oracle at Delphi, who declared Socrates to be the wisest human (Plato 7 (21)). This mission compelled him to engage in frank speech (especially questioning) with figures of authority who were regarded as wise. He tries to persuade his peers in the jury that his activity, natural philosophy, is beneficial to Athens. Famously, Socrates declares that he would rather die than stop engaging in philosophy. Socrates deserves his status as a hero of candid speech and commitment to principle. We should note, however, that neither he nor Plato were supporters of their culture's democracy, and it is unlikely that they would respond to a call for universal protections for intellectual freedom with enthusiasm. The spirit of inquiry in the dialogues seems to imply a favorable view of intellectual freedom, especially to a modern ear, but you can believe that some people should engage in free inquiry without believing that everyone should. Plato's endorsement of the noble lie and a stratified society would suggest that he falls in this camp. Plato advocates discussion virtues which are important to a culture of intellectual freedom. He appears to have modeled them within the Academy, if the tone of the dialogues is an accurate guide. But for

Plato, the discussion virtues of free and open inquiry are part of a method for pursuing truth. There is no broader agenda in Plato for promoting liberty for its own sake.

In this selective survey of ancient philosophical resources on intellectual freedom we find the roots of intellectual freedom in the political traditions of Athens which articulate the standing and protection of the citizen. More generally, intellectual freedom is part of the dynamic of truth and power, the relationship of the critic to the tyrant, the dissenter to the state. Even in the case of the tyrant seeking advice, the dynamics of “frank speech” and danger are at work. The logic of this dynamic qualifies the tyrant’s power. Finally, we find it in the open pursuit of the truth modeled in the Platonic dialogues.

These representative, yet briefly presented details of political and cultural life from ancient Greece and the Hellenistic and Roman periods do not paint a complete picture of the overall historical development of intellectual freedom. For example, there are traditions of intellectual discourse, both following from the post-Socratic schools (such as the Cynics) and from major religious traditions, within which open questioning and frank speech were encouraged. These traditions eventually intersect in the history of the University. To the extent that traditions of inquiry are part of the development of modern intellectual freedom, these two sources would be important to discuss, among others. Like the Platonic tradition, they model discussion virtues related to the pursuit of truth. Standing to speak is not conferred as a matter of egalitarian principle or because of a universal individual right, but because one has earned the status to speak or found oneself in a situation requiring a Socratic-like commitment to truth.

The historical transition to modern European thought through the Renaissance and the early Scientific Revolution looks, in retrospect, like the incubation period of the modern concept of intellectual freedom. The recovery (and re-invention) of ancient culture in the Renaissance included a retrieval and revalorization of Greek and Roman heroes of speech and principle such as Socrates, even as it would eventually find its own heroes ranging from Galileo to renaissance heretics such as Giordano Bruno. Francis Bacon’s 1605 treatise, *The Advancement of Learning*, is an early work (possibly the first published in English) imagining the growth and spread of knowledge from the new methods of science. Baconian thought about progress in knowledge, like the general culture of scientific inquiry which follows in the rest of the 17<sup>th</sup> and 18<sup>th</sup> centuries, increasingly presumes that inquiry must be freed from prior constraints, such as those imposed by traditional culture and our lack of independent thought. In the same spirit, almost 200 years after Bacon, Kant will boldly declare, in *What is Enlightenment?*, that the age of Enlightenment promises nothing less than the liberation of humankind from its bondage



through ignorance. “Nothing is required for this enlightenment, however, except freedom; and the freedom in question is the least harmful of all, namely, the freedom to use reason publicly in all matters.” (Kant ) Kant directly connects freedom of conscience and expression with the use of reason and the spread of knowledge for the improvement of human well being.

By the time of Bacon’s treatise, a revolution had already occurred within Christianity in form of the Protestant schism. Luther’s advocacy of direct study of the bible had obvious and direct implications for the need for free intellectual culture. While the right of conscience within religious thought was not invented by Protestants, the Reformation placed new emphasis on the individual’s personal relationship to the Bible. That relationship came to be thought of as a protected matter of individual conscience within a congregation of worshippers. The achievement of a universal culture of intellectual freedom in Europe would have to wait through wars of religion, the growth of social consensus about religious tolerance and separation of church and state, but the introduction of a less hierarchical, less Platonic model of the pursuit of religious truth, such as we find in Protestantism, clearly influenced the growth of intellectual freedom in Europe.

A singular text for pursuing this point is Milton’s *Areopagitica*, “A Speech for the Liberty of Unlicensed Printing,” 1644, which offers a religious defense of freedom of the press. Milton argues for liberty of thought and expression because it is crucial for the purpose of revealing the meaning of God’s creation. He advocates state protection for non-seditious speech and a general protection of freedom of conscience. Like Locke in his *Letter on Toleration*, he allows for suppression of Catholic thought, but Milton’s work represents an important treatment of intellectual freedom from a religious philosophical perspective (Jones 1949). Later Enlightenment statements of religious freedom, such as Jefferson’s, will echo this argument from religious purpose.

Some of the best philosophical resources for the modern conception of intellectual freedom come from statements of the need for religious toleration in light of political experience. John Locke’s famous *Letter on Toleration*, 1689, and Thomas Jefferson’s *Bill for Establishing Religious Freedom* (1779) and *First Inaugural Address* (1801) are among the more important sources for seeing both continuity with the past and new arguments. Locke’s letter comes after the religious conflicts which led to the Glorious Revolution of 1688. Fear about the growing influence of France and Catholicism came to a head with the accession of James II and his pro-Catholic policies, including the 1687 Declaration of Indulgence, also known as the Declaration for the Liberty of Conscience, which promoted freedom of religion. As is well known, the Glorious Revolution brought the Protestant, William of Orange to the

throne and restructured both the relationship of the monarch to parliament and the relationship of religion to government.

Locke begins his argument for religious toleration much as Jefferson will almost 100 years later, by invoking religious arguments. The Gospels should be sufficient, Locke implies, to show Christians that faith must work by persuasion rather than force. Locke argues that allowing the magistrate to enforce a single religion's norms by law creates more social unrest than separating, as much as possible, the duties of civil government from the proper office of religion – the care of souls. While Locke expresses concern (as will Mill almost 200 years later) about the dual loyalties of Catholics, it is important to note that at the level of belief, Locke supported toleration. Most of the things we would want to prevent a religious group from doing (Locke considers a faith that might want to sacrifice babies), can be justified without proscribing religious belief. The idea that a stable society can allow great latitude of belief would not have seemed as intuitive to Locke's audience as it might to a contemporary citizen of a stable rights-based democracy. But Locke asserts this even of a religion whose believers Locke's contemporaries might otherwise distrust. "If a Roman Catholic believe that to be really the body of Christ which another man calls bread, he does no injury thereby to his neighbor. If a Jew does not believe the New Testament to be the word of God, he does not thereby alter anything in men's civil rights." We will see Mill's even stronger version of these principles of separation and tolerance, but it is important to note that Locke conceives of matters of private belief and faith as protected by our fundamental liberties. Locke considers numerous arguments of the day for letting the government enforce a common religion and morality, but he consistently shows that limited state involvement in religion makes the most sense of social life given the long history and recent experience of man, especially in matters of religious conflict.

Jefferson drafted *The Virginia Act For Establishing Religious Freedom* three years after drafting the *Declaration of Independence* and ten years before supporting the Bill of Rights as amendments to the U.S. Constitution. A reading of this short text, in conjunction with his First Inaugural Address, shows both continuities and differences with Locke's Letter. Like Locke, he begins by invoking a religious argument, "that Almighty God hath created the mind free, and manifested his Supreme will that free it shall remain, by making it altogether insusceptible of restraint." He echoes several of Locke's arguments concerning separation of civil government from religion.

Perhaps because of the occasion of Jefferson's text, which introduces an affirmation of religious freedom as a legislative act, there is a more specific concern with the implications of religious practices for a citizen's standing. The act itself is worth quoting in full to show this concern, which is similar to Locke's, but more pronounced.

We the General Assembly of Virginia do enact, that no man shall be compelled to frequent or support any relig[i]ous Worship place or Ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief, but that all men shall be free to profess, and by argument to maintain their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities. (Jefferson, quoted in Mumford 1949)

In addition to proscribing compulsion, there is a focus on the positive expression of the individual's views and beliefs and the danger that religious belief could either enlarge or diminish someone's power as a citizen. Consistent with the idea of *parrhesia*, Jefferson's act is intended to provide protection for the potentially dangerous practice of frankly expressing or living out one's views about religion. Significantly, this protection is needed from both government and one's peers, whose social behaviors could be as tyrannical as an oppressive ruler.

One finds a similar echo of *parrhesia* in Jefferson's First Inaugural Address, in which he said, "If there be any among us who would wish to dissolve this Union or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it." Jefferson is boasting that this form of government, which would protect even those who advocate its dissolution, is ultimately "the strongest Government on earth" [Jefferson 143]. In both this quote and in his earlier bill, Jefferson affirms freedom of speech and conscience as part of a process of engaging and combating error. As we see, this philosophical dimension of intellectual freedom becomes more prominent in Mill's thought in *On Liberty* (1859) and in very recent interpretations of it.

John Stuart Mill's short treatise, *On Liberty*, was not written in the haste of an immediate political crisis. It was an enlargement, worked on over a period of about 5 years, of a shorter essay on the same topic, the limits of the authority of the state over the individual.<sup>2</sup> Mill wants to know the legitimate principles defining and governing basic human liberties. He thinks of human liberty in term of three domains: the "inward domain of consciousness," the "liberty of tastes and pursuits," and freedom

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<sup>2</sup> The circumstances of authorship are of more than passing interest to our inquiry. The text was authored during a relatively short period of time in which Mill was finally married to his long time partner, Mrs. Harriet Taylor, and enjoyed relative seclusion with her from society. Their relationship was a scandal, but Mill credits her with tremendous influence on his thought, including the entire argument for his famous, *The Subjugation of Women*. It is hard to imagine that Mill would not be thinking of his own need for liberty of association and intellectual partnership, and its constraint by social traditions, as he worked on *On Liberty* in close quarters with Harriett, during the last five years of her life. (Shields 1956, xi-xii) *On Liberty* is important to understanding intellectual freedom in part because it includes a social philosophy of individuality, not just a political treatise defending abstract principles of right.

of association. It is important to note that Mill includes thought, expression, and conduct in his concept of liberty (Mill CW XVIII, 226). The introductory chapter frames the political question of the limits of the state over the individual in terms of the following famous principle: “. . . 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.” (Mill CW XVIII, 223)

The central and most famous arguments relevant to intellectual freedom occur in the next Chapter, entitled, “On Liberty of Thought and Discussion.” There Mill presents central and distinctive arguments for promoting liberty of thought and discussion of ideas, whether they are true or false. Mill follows that with a chapter, “Of Individuality,” which discusses the general value of individuality given our natures and the value to society of allowing so-called “experiments in living.” (Mill CW XVIII, 261) The text concludes with two more chapters. One frames the *social* question of the limits of society over the individual by distinguishing between circumstances in which an individual must bear negative social consequences for his or her views or free acts (such as shunning) and our obligations to tolerate others and avoid making their lives “uncomfortable.” (Mill CW XVIII, 279). The last chapter considers quite a few practical applications of the main philosophical principles of the text, including cases involving truth in advertising, medications and poisons, compulsory education, and other matters. From the structure of the discussion alone it should be clear that Mill sees himself addressing basic liberty at both the political and social levels. He is concerned, for example, about the state acting against an individual who speaks out against it or holds an unpopular opinion, but he is also wondering how we are supposed to relate to each other socially if we disagree fundamentally with each other’s views or lifestyle. We might say this is the problem of living out a commitment to human liberty in a world in which an individual’s actual commitment to truths and values may place one at odds with fellow members of the society, and quite naturally lead one to want to shun or act against those whose differences are perceived as a threat.

The main argument in Chapter Two of “On Liberty” may be summarized as follows: The silencing of the expression of opinions is a bad thing in every case. It is bad when the opinion is false, when it is true, and when there is a mix of truth and falsehood in it. In the first case, that the opinion is false, silencing it is bad for two specific reasons. First, it “robs the human race” of the opportunity to determine for itself that the opinion is false. But second, it assumes that we can know with absolute certainty that an opinion is false. This requires that we believe ourselves to be infallible. Mill argues eloquently that an assumption of infallibility about one’s opinions is a bad basis for finding truth, a bad basis for justifying limiting *others’* pursuit of truth, and incompatible with what we know about how

humans come to have any certainty about their knowledge at all. We only get justified certainty by following principles of “corrigibility, open-mindedness, and epistemological modesty.” (Finnochiaro 2005, 90) These principles are crucial to finding and maintaining truth, therefore an attitude of infallibility, which would be needed to limit expression, is not justified in itself or as a basis for limiting inquiry or expression.

Mill considers many objections here, but one early one is particularly important for our discussion. Suppose a group or society replies to Mill by saying that they are not assuming infallibility by acting on their views, but only acting on beliefs they honestly hold to be true. Could they then limit expression of other views? After all, judgment is there to use and it might even be our duty to stand up for what we believe is true or to prevent the dissemination of claims we believe to be false, especially if we regard them as dangerous. It may not be assuming infallibility so much as the right to act on views one believes true (Mill CW XVIII, 230). One might imagine a case in which someone does have the requisite epistemic humility, but has good reason to think that the harms of not acting on one’s knowledge are greater than the benefit of leaving some questions open. In response to this kind of challenge, Mill develops part of a theory of truth, which we will be able to trace through his discussion. He distinguishes between asserting a view because it has survived a process of validation and refutation on the one hand and assuming it true for the purpose of preventing future refutations or challenges to its validity on the other. Mill argues that if you pay attention to how the human mind works, you will realize that we only come to truth or certainty at all by a social process of discussion, interpretation, and the collision of our ideas with others.

“The steady habit of correcting and completing his own opinion by collating it with those of others, so far from causing doubt and hesitation in carrying it into practice, is the only stable foundation for a just reliance on it; ...” (Mill CW XVIII, 232)

The argument, then, is that the person who advocates suppression of inquiry because he claims to have the truth is not acting consistently with the process that produces truth, even if he is not assuming infallibility. That is not to deny that there will still be situations in which we must restrict or regulate speech. For example, when considering applications in the last chapter, Mill advocates restrictions on commercial speech when the potential for harm is great (Mill CW XVIII, 294).

Later in the chapter Mill considers the hypothetical case in which the opinions in question are actually true. Surely in that case we are entitled to close off discussion of dissenting views. But here Mill adds significantly to his theory of truth, really a “social epistemology,” a theory about how social life advances or hinders the pursuit of truth. He argues that our understanding of truth depends upon a

continuous process of interpretation and discussion without which the truth would be a “dead dogma, not a living truth” (Mill CW XVIII, 243, Finocchiaro 91). Even if we need to enforce restrictions on, say, the sale of poisons, we need to keep reviewing and thinking about truths in order to maintain a social understanding of the nature of the truth on which our restriction is based. The point, then, is not that we never restrict or condition liberty, but that we never assume that a truth we hold, whether about the harms of some prohibition, or even about the basis of liberty itself, does not need continual review, rethinking, and restatement.

What follows in the text is one of the most passionate and well reasoned accounts of the importance of continual and ongoing discussion of beliefs that we are certain are true. Mill implies that the person who merely learns truths, without engaging in the dialectical process which produces them, has a deficient understanding. Every truth depends, for its complete understanding, on the explication of its grounds and of diverse points of view about it. Mill describes the difference between rote learning of truth and the active engagement of the mind in understanding a truth to help make his point (Mill CW XVIII, 242-252).

The last case, in which the opinion is partially true and partially false, is the easiest for Mill to address. After all, in such cases, we are clearly in the process of sorting out true and false claims, arguments, and theories. In the typical case there are partial truths to be distilled from larger claims, as well as claims judged likely or certainly to be false. Again, Mill has a very temporal and social model of truth and discourse here: “...in revolutions of opinion, one part of the truth usually sets while another rises” (Mill CW XVII, 252) In discussing this case, he uses the example of how robust and open discussion of Christian morality, for example, might reduce religious and philosophical misunderstanding. (Mill CW XVIII, 256-257).

Part of the elegance of Mill’s argument lies in the way he systematically considers cases in which we might be tempted to extend the power of the state to suppress opinion. Throughout the main argument, he is concerned about assumptions which arguments for suppression make about the nature of truth and theories about how truths are discovered, held, justified, and applied. These two concerns underlie the four major sub-arguments Finocchiaro finds in Chapter Two (Finocchiaro 2005, 95). First, there is the assumption of “infallibility,” which comes up most directly in the case of suppression of “known” falsehoods, but which also occurs as a temptation when we have universal acceptance of truths. The positive argument would be: Human knowledge is generally fallible. If we appreciate the fallibility of knowledge we will value social practices which favor the discussion and review of many ideas and beliefs, including some which we are sure are false. Second, Mill places fundamental value on

the giving of supporting reasons for a view (presenting views with justifying or explanatory rationales) as a means of knowing truth and sharpening our understanding of error. Not only is this a common Enlightenment conceit, which we found in Bacon and Kant, but Mill's exposition clearly shows that he is thinking about the production of truth as a social process which requires various kinds of tests and challenges. Third, Mill argues that we cannot maintain the practical meanings of ideas without thinking them through in ongoing critical discussion. This is a more basic point than the previous one since he is claiming something about the minimum requirements for even *maintaining understanding* of ideas, much less winnowing truth from its mixture with falsehood. Finally, Mill bases some of his arguments on a view about the typical case in which we find that truth and falsity are mixed. The general fact that our views and competing views often both have partial truth and insight should clearly argue in favor of supporting intellectual freedom.

There is much more to Mill's argument for intellectual freedom than the central arguments of Chapter Two, "On Liberty of Thought and Discussion" suggest. In his fascinating discussion of individuality, Mill offers a set of arguments for the importance of individuality and the correlative importance of a society tolerating different lifestyles. Individuality relates to the second and third domains of intellectual freedom, the "liberty of tastes and pursuits" and "freedom of association." For what good is it to express an idea and not be at liberty to pursue it in one's life and with other like-minded individuals? But Mill goes further than arguing against restrictions on intellectual freedom that would limit individuality. He also believes that individuality is a measure of the vitality of a free society. We should want individuality in others, even if we are ourselves traditionalists or conformists. (Mill CW XVIII, 267) Individuality can wax or wane in a society and Mill argues that we should want genuine individuality and avoid excessive conformism. In this famous passage Mill advocates so-called "experiments in living." His worry about the chilling effect of custom on individuality is again reminiscent of Bacon's critique of tradition.

When Mill returns to his larger argument in Chapter 4, "Of the Limits to the Authority of the Society over the Individual," his focus is on how society should treat viewpoint and lifestyle diversity. In the introduction he had argued for limiting the state's interference with fundamental liberties. Now he asks how our social relations ought to accommodate diversity. Mill's views on this are still inspiring to many. He acknowledges that society can punish people by exclusion and shunning, and that sometimes this is justified. "We have a right, also, in various ways, to act upon our unfavorable opinion of anyone, not to the oppression of his individuality, but in the exercise of ours." (Mill CW XVIII, 278) On the other hand, Mill argues that we owe a kind of civility and fairness even to those whose views and behaviors

we regard as flawed. If the effects of their actions are purely self-regarding, we might take into account that the person may already be bearing the punishment of their mistaken beliefs and actions. In any case, we should acknowledge that even the negative examples of others' folly are valuable to us. In a Millian society, we would adopt social attitudes toward others and their self-regarding behaviors that parallel the restraint and toleration implicit in the way we handle differences of opinion about truth and knowledge.

Mill's *On Liberty* deserves its reputation as a critical text in the development of the modern conception of intellectual freedom. His position brings together ancient themes in intellectual freedom, such as parrhessia, with contemporary understanding of the need for universal liberties, the importance of limiting state and social coercion in protecting these liberties as rights, and the Enlightenment ideal of promoting human and social well-being through the growth of knowledge. These are crucial elements of our contemporary understanding of intellectual freedom, and Mill's synthesis of them is clear and relevant to contemporary discussion, as we shall see in Section III. Also, it is remarkable how much of Mill's reasoning is focused on a view about how truth and knowledge are produced through social interaction, a social epistemology. Mill's ultimate goal may be to defend liberty, but many of the reasons we ought to defend liberty turn out to have to do with the fact that limitations of liberty tend to be justified using beliefs or attitudes that are inimical to the discovery, validation, and understanding of new truths, on which the progress of society depends.

But Mill's defense of freedom of thought, expression, and conduct is hardly the last major defense of these values among recent or modern philosophers and jurists. Mill's discussion has a focus on thought and expression that is unique for its time and gives it a deserved pre-eminence in discussions of intellectual freedom. But for the general defense of rights, the main tradition of the Enlightenment is not the positivist and utilitarian one running from Comte through Mill to the present. Rather, the more extensive tradition of justifying basic liberties as rights comes to the Enlightenment from the earlier tradition of natural law. The Enlightenment developed the idea that our basic rights are justified by supposing them to be the result of a "social contract" which reflects the principles of justice that "any rational person" would agree to.

The social contract tradition was developed in diverse ways through the writings of philosophers such as Hobbes, Locke, Kant, and Rousseau. In the twentieth century, John Rawls is credited with reviving the tradition by conceiving of the original contract as a hypothetical situation in which we try to determine basic principles of justice. In order for the agreement to reflect our rational judgement, as opposed to our judgement biased by particular facts about ourselves and our place in society, we are to



imagine that we choose principles of justice from behind a “veil of ignorance” – in other words, without knowing our ethnicity, natural abilities, share in good fortune, etc. We do, however, retain knowledge about human nature and psychology as we consider various principles. In his major works, *A Theory of Justice*, *Political Liberalism*, and *Justice as Fairness*, Rawls establishes this framework and tries to show that rational agents would choose two basic principles of justice. First, they would choose a scheme of equal basic liberties which would include “freedom of thought and liberty of conscience; political liberties (for example, the right to vote and to participate in politics) and freedom of association, as well as rights and liberties specified by the liberty and integrity (physical and psychological) of the person; and finally, the rights and liberties covered by the rule of law” (Rawls 2001, 44; cited in Amdur 2008, 106). Basic liberties are contrasted, for example, with secondary rights such as those governing the sorts of property that can be owned. Basic liberties can only be restricted in order to promote liberty. So, for example, we cannot restrict someone’s liberty (to protest, for example) because it threatens economic development, but we could restrict liberty if its exercise limited others’ liberties. As Robert Amdur notes, both Mill and Rawls put a high value on freedom of conscience and on free thought and discussion (Amdur 2008, 107) so it is reasonable to ask what difference their distinct justifications might make to the actual practice of intellectual freedom, when competing values are at stake.

As we turn to critical issues in the philosophical discussion of the foundations of intellectual freedom, we will engage Rawls’ specific criticism of Mill. For now, however, we have put on the table most of the philosophical resources we will need to work with in the second section, where we will begin the philosophical part of the inquiry, the goal of which is to determine the best philosophical justifications for intellectual freedom.

## II. Two Philosophical Problems in Intellectual Freedom

We want clarity about the foundations and theory of intellectual freedom for all of the reasons identified at the outset – to know what situations really involve intellectual freedom, to justify public practices connected with intellectual freedom, and to know how to develop our ideas of intellectual freedom in relation to new knowledge and technology. As an historical and cultural concept, intellectual freedom and the rights which support it need continual discussion and assessment, especially as our critical understanding of the Enlightenment deepens in light of our cultural experience. The present offers both new versions of old problems and new problems. Our intellectual freedom controversies are not identical to the problems of religious toleration growing out of the wars of religion

in Europe, but we clearly have an analogue of that problem in contemporary challenges by European Muslims to the culture of free speech and expression. In a global information environment, philosophical inquiry offers the only non-arbitrary approach to these challenges.

In our own era, two kinds of foundational problems have become prominent. First, there are significant differences between rights-based and utility-based defenses of intellectual freedom. The contest of arguments between rights theorists, such as Rawls, and modern day defenders of Mill needs to be joined. After presenting recent versions of the argument from the professional literature, I will argue that there is no simple choice between the two distinct theoretical approaches, and that the differences between them are often exaggerated, at least in the case of intellectual freedom. Put positively, there may be a coherent “dual foundation” to intellectual freedom which fuses both traditions to some extent.

Second, a traditional goal of justification regarding basic liberties is to find “neutral foundations” – that is, a basis for intellectual freedom that is neutral with respect to different concepts of the good life. If our advocacy of intellectual freedom is based on a particular theory of persons or the best way to live, even a theory with considerable evidence held by a majority of people, then we might wonder if it can ever claim more authority than the collective bias that represents it. Are there entirely neutral foundations for intellectual freedom? I will argue that the search for entirely neutral foundations for intellectual freedom is mistaken. We ought to search for a broad and overlapping consensus regarding the most neutral principles possible, but we ought to also use our best current knowledge of human nature to inform principles and practices. There are real limits to the neutrality of foundations. As we will see, the problem of limits to neutral theoretical principles for intellectual freedom parallels the problem of the limits of neutrality in librarianship. Our best resolution to these foundational issues will help justify a contemporary understanding of intellectual freedom.

Returning to the first problem, defenders of traditional theories of human rights argue persuasively that persons have rights by virtue of their intrinsic nature. Respecting rights involves respect for the intrinsic value of the individual. Contemporary theorists of rights, such as Rawls, argue that if we exclude morally irrelevant information by adopting a perspective behind the “veil of ignorance,” we will all actually discern the same principles of justice needed to realize the conditions of respect for our nature. Notice that nothing in this account refers to the production of human happiness. Rights traditionally rest on obligations to respect the intrinsic value of human nature. This theoretical position corresponds to the intuition we have that respecting free speech rights, for example, requires us to allow speech that is offensive, and that thereby diminishes human happiness. Maybe the KKK and

its supporters are happier on the day they march through town, but the overall happiness of the community might plummet. For the traditional defender of rights, these effects are strictly irrelevant. Thus, the defense of rights is traditionally thought to be based on a deontological (or duty-based) theory of value.

Since the development of utilitarian thought in the 19<sup>th</sup> century, especially since its statement in Mill's *Utilitarianism* (1863), there has been an alternative way of thinking about rights. Utilitarians are committed first and foremost to the principle of utility, which obligates us to promote human well-being, again, avoiding commitment to intrinsic value. The warrant for this principle depends upon some version of the following two basic claims: 1) that each person's happiness is as valuable to that person as every other person's happiness is to them; and 2) that the goal of human society is fundamentally the promotion of human well being. In other words, utilitarianism is committed to the equality and priority of human well being. Promoting human well being as a matter of moral duty commits the utilitarian to an *extrinsic* theory of value. Our moral choices involve acting on values by which human beings seek to promote their happiness. Utilitarians recognize rights, but they defend them as policies for promoting human well-being. They generally argue that if the traditional defender of rights is honest about the situations in which violating someone's rights would be justified, (imagine an armed citizen trying to decide whether to kill someone who is about to detonate a nuclear bomb), she would reconsider her commitment to intrinsic value, or at least to an absolute defense of rights without considerations of utility. For most utilitarians, respecting rights is good policy for promoting human well-being, but not a source of intrinsic or absolute value.

The rights theorist, not surprisingly, will claim that the utilitarian is misunderstanding the basic reason why members of a society would insist on protections for basic liberties. We could value rights as a means to achieve happiness, but the real rationale for acknowledging rights is that by doing so we represent ourselves to each other as moral persons. A commitment to basic rights is fundamentally about recognizing a set of moral facts about individuals and making this recognition part of the basis for our social contract. In other words, the contractarian rights theorist, such as Rawls, is saying that a rational person would put the recognition and equal protection of basic rights ahead of any cooperative venture for promoting happiness. The former is something I should want guaranteed, recognized and protected apart from any effort I make to secure the latter. The basic criticism, then, is that the utilitarian cannot provide a firm enough foundation for the basic liberties underlying intellectual freedom, "...the case for liberty is itself precarious, relying as it does on the result of utilitarian calculations. Even if the calculations appear to support liberty today, tomorrow a new set of calculations

could demonstrate that repression produces greater overall utility.” (Amdur 2008, 108) Martha Nussbaum echoes this criticism when she writes that Mill makes free thought and discussion “hostage to contingent facts concerning what best promotes truth and progress” (Nussbaum 2004, 326; cited in Amdur 2008, 108).

The theoretical tensions between rights theories and utilitarian theories are, in an important sense fundamental and irresolvable. There really are different choices and motivations for advocates of each theory, and the basic theories of value seem incompatible. We find similar versions of this theoretical dispute in the library literature on defenses of intellectual freedom. In a 1990 *Library Trends* article, David Ward eloquently defends a traditional rights-based view. In addition to the general arguments already discussed, Ward argues that a rights theory can distinguish better between, for example, our negative duty to refrain from censorship (his example was the case involving censorship of the *Satanic Verses*) and our positive duty to promote expression. Ten years later, Tony Doyle’s article, “A Utilitarian Case for Intellectual Freedom in Libraries,” makes a thorough set of reply arguments to Ward and the traditional view in general. Doyle considers it an advantage of the utilitarian approach that it *does* give us a basis for affirming positive duties to promote truth and exchange of ideas. After all, a limitation of rights theories for the advocate of intellectual freedom is that they traditionally do not give fundamental value to the positive promotion of truth and discussion. Respecting rights traditionally involves more restraint than active promotion of specific ends. Yet, this exchange does more than duplicate the traditional arguments for or against utilitarian and deontological thought on rights. Doyle’s response highlights the possibility that the advocate of intellectual freedom may have a broader agenda than the rights theorist. Intellectual freedom, for Mill as for most advocates today, involves more than respecting the features of our nature that make us want to exchange ideas and information. It involves actually promoting and encouraging expression and conduct (Mill’s “experiments in living”).

While there may be no way to resolve the fundamental conflict between utilitarians in general and rights theorists in general, recent commentators on the conflict between Rawls and Mill provide us new ways of thinking about this problem as it arises for the defense of intellectual freedom. Specifically, in the case of intellectual freedom, we may be able to say that the differences between these two thinkers’ theories of value may not be as great or consequential as typically supposed. Mill does seem to throw down a challenge early in *On Liberty* when he writes, “I forgo any advantage which could be derived to my argument from the idea of abstract right, as a thing independent of utility. I regard utility as the ultimate appeal on all ethical questions; but it must be utility in the largest sense,

grounded on the permanent interests of man as a progressive being” (Mill CW XVIII, 224). Clearly, he is a utilitarian, but he is also appealing to a conception of human nature that he considers anything by contingent. Robert Amdur argues that Mill has multiple defenses for intellectual freedom, not just a utilitarian one. As Amdur points out from a passage in which Mill discusses the basic value of choosing, “Mill’s point is not simply saying that people who choose for themselves are likely to make “better” choices than others could make for them, but also that choosing itself is important. One becomes a fully developed human being only when one makes choices for oneself.” (Amdur 2008, 109) After discussing Rawls’ criticisms of Mill, and especially Rawls’ later reworking of his theory of the priority of liberty, Amdur concludes, “In reworking his argument for the priority of liberty, Rawls seems to be relying on something very similar to Mill’s ideal of the person.” (114)

Henry West, writing on, “Mill’s Case for Liberty,” argues, as do other commentators such as Gerald Gaus, that Mill has both an intrinsic and extrinsic theory of value. Mill can coherently claim, says West, that human development of a certain sort is necessary to genuine human happiness and that development is therefore intrinsically valuable. The conditions which bring about that development – free and open discussion and information flow – could then be valued both for facilitating development and the pursuit of well-being. (West 34) This could be part of what Mill means by appealing to the “*permanent* interests of man as a progressive being.”

Of course this does not permanently settle disputes between traditional social contract theorists of rights and utilitarian theorists of rights. In the traditional framework of Enlightenment thought, it might be considered incoherent to advocate a dual foundation for basic liberties. After all, as soon as someone introduces *two* foundations for an idea, we can reasonably ask which of those foundations should be appealed to in a particular case. As in our earlier example, how should we decide between the happiness of the KKK and the happiness of a whole town?

On the reading we have been developing, this kind of question would never be posed. Mill defends intellectual freedom as essential to *both* our recognition of the intrinsic value of developing deliberative abilities *and* our recognition of the role that these developed abilities play in securing human happiness. In a Millian society, the marching of the KKK is a positive opportunity for people to review and refresh their commitments to the truths of equality.<sup>3</sup> This is a psychologically challenging position because it requires us to defeat our immediate impulse to judge, with confidence, the falsity

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<sup>3</sup> Hate speech is still a challenging problem for both approaches since hate speech can incite behavior that violates rights as well as diminishing human happiness. But as Jonathan Riley claims in “Racism, Blasphemy, and Free Speech,” Mill can argue that the net social benefits of a liberal doctrine of free speech are greater than the short term harm to even deeply held feelings about respect for persons.

and worthlessness of the offensive speech and to tacitly infer that exposure to falsehood is bad for human well-being. But we need to recall that for Mill's position, false views are never really worthless because they stand as opportunities for sharpening our understanding of truth. Likewise truths are never self-sufficient, but always in need of rehearsal. For Mill the progress of society toward a greater happiness depends several key commitments, including our adoption of habits of mind that look at differences of viewpoint as opportunities to develop our deliberative skills and make or reinforce real human choices, and an approach to individuality which takes it as a partial measure of the society's progress toward greater well-being. The dual foundations approach commits us to a basic endorsement of the development of human capacities for deliberation in distinction from their ability to produce utility, as well as a confidence that this development is an essential means to promote human well-being. While Mill abjures appeal to "the abstract idea of a right," he relies heavily on a concrete conception of human development and progress. He uses basic liberties as a way of protecting this conception of human choice, much as a rights theorist might protect autonomy or privacy rights (e.g. Mayes and Alfino 2003). Philosophers today who advocate a "capabilities approach" to virtue theory might be seen as contemporary kindred spirits to Mill in spite of their deeper theoretical differences. (Nussbaum 2000, 2004; Sen 1991)

But this leads us to the second major theoretical problem facing philosophies of intellectual freedom today, and that is the neutrality problem. The version we confront in the immediate case is this: If we have to believe everything Mill says about either human development or social progress to endorse his case for Liberty, then we will have to acknowledge that his theory is not at all neutral with respect to different conceptions of the good life. Mill's ideology of progress is inspiring to those who share his view, but after all, a traditionalist of one sort or another might argue that developing the capacity for rational autonomous choice is not an unqualified good because it often leads people to question their family, ethnic, or religious culture. From the perspective of the traditionalist, the Millian society might not look neutral. Mill's frequent and overtly expressed disdain for tradition might be cited as evidence of his partiality. It clearly reflects the author's Enlightenment bias in favor of the use of reason and empirical methods to examine and, in many cases, debunk traditional thought.

The traditional defense against this kind of non-neutrality charge, which is available to both the Rawlsian and the Millian, is that the traditionalist should want a system of equal liberty because it is the one in which his or her views (and lifestyle) are likely to receive the most protection. This is clearly a rational choice, but it may not be the traditionalists' first choice, which might have been to influence the society fundamentally rather than just be tolerated by it. Just as the defense of intolerance must allow

us to be intolerant of it, so also one must be allowed to be non-neutral about neutrality itself. Mill achieves what scholars on the question of neutrality in liberalism call “first-level neutrality” – his position is neutral with respect to different conceptions of the good life. But commentators acknowledge that his defense of liberty, what might be called “second-level neutrality” is anything but neutral, in spite of Mill’s own intention to avoid principles based merely on “preference”. (Gaus 2008, 92) As Gaus and others have pointed out, Mill takes a very modern view of what counts as a harm (harm to the body) and this leads him to discount psychic or spiritual harm that, say, a vegetarian might feel from knowing that others are eating meat, or that a religionist might feel knowing that his fellow citizens are heretics or non-believers. In applying a utilitarian perspective to what counts as a harm, critics have argued, the Millian is abandoning neutrality. (Gaus 2008, 93)

A broader version of this criticism of Mill was made by Sir Karl Popper in his *The Poverty of Historicism*. Popper was insightfully attentive to the hidden assumptions in Mill’s historical narrative of human social progress, which we have already noted permeate the text of *On Liberty*. Such historicist and utopian theories assume that trends and regularities in human history are like laws of nature. Popper’s skepticism about this assumption is still relevant today, though his thesis might now be considered over broad. But if Mill’s justification of neutrality is ultimately based on a particular, and now dated, view of progressivism, then what hope is there for second-level neutrality in our justification of intellectual freedom?

At first glance the problem of “neutral justifications for neutrality” might seem hopelessly distant from the actual disputes of librarians or other information professionals. Typical challenges to neutrality are challenges to first-level neutrality. A patron challenges a book, or a student challenges the choice of topics in a course, for example. But groups and individuals do sometimes make deeper critiques of the culture of intellectual freedom and these critiques are often just below the surface in censorship challenges. Behind attacks on intellectuals and others during the McCarthy era, we find an ideology with an inflated sense of its own certainty about its vision of cultural imperatives, just as Mill would have predicted.

Still, one might challenge the assumption that it is always or usually best to be exposed to a wide range of perspectives to develop one’s conception of the good life. Traditional followers of revealed religions, are, to some extent, *conserving* truths against their potential adulteration by a broader heterogeneous culture. From the perspective of some interpretive approaches, the fewer points of view (false views) the better. What can believers in intellectual freedom say to such groups about the neutrality of our justifications for neutrality? This is the problem of second-level neutrality as

applied to intellectual freedom, and there should be no doubt that it is a real problem in contemporary cultural conflicts today.

Here we might suspect that the rights theorist has a smaller problem than Mill. Rawls, for example, could argue that basing the social contract on a rational choice situation (the choice of principles from behind the veil of ignorance) is more neutral than Mill's elaborate theories about social progress, which indeed seem dated. From behind the veil of ignorance we would not know if we were members of a persecuted or accepted religion or subgroup, so we would rationally opt for equal liberty. But just as one can question a reliance on a particular theory of progress, one can dispute the norms of rationality behind the Rawlsian model. If someone held strong enough beliefs about their religion, for example, they might see both acceptance of mutual protection and a pluralistic "contest of experiments in living" as an ignoble failure of faith knowledge in action.

The best approach to the problem of second-level neutrality for intellectual freedom is to acknowledge, as we have already, that complete neutrality is probably an illusion. Some norms of rationality might always be challenged and any updated theory of progress will still be quite speculative and gather some of its authority from shared cultural experience. But the strategy for reducing the sting of the charge of non-neutrality should be to minimize the degree and speculative character of any assumptions. By focusing on local and testable claims about the effect of theory or policy on human well-being, we might avoid the worst of the dangers of non-neutrality.

There are resources for such a defense of neutrality in Mill's work, especially in light of recent scholarship on this issue. Essentially, we can pair down Mill's somewhat extravagant theories of progress to a few simple claims that might enjoy widespread or universal support. David Brink argues, for example, that Mill's core defense of freedom of expression could be focused on the need to develop our capacities for deliberation and choice, to which Mill assigns a fundamental and, perhaps, intrinsic value. Like Frederick Rosen in "The Philosophy of Error and Liberty of Thought," Brink connects Mill's defense of intellectual freedom to his work on informal logic and epistemology. Rather than focus on Mill's arguments for the utilitarian effects of truth on social progress, this interpretation suggests that Mill has a kind of "social epistemology" – a view about the way truth is produced by social processes. Evidence for this reading is not hard to find. The entire organization of the argument for freedom of thought and expression is based on the truth conditions of the beliefs in question. Neutrality can be justified in terms of rights and utility, but it can also be more narrowly justified as a way of developing the capacities for judgment that simultaneously serve the individual and a social process for evaluating truths. As Gaus puts it, we have "shared epistemic interests" (Gaus 2008, 98) in social processes that



produce truth. We can justify a minimal non-neutrality by acknowledging this shared interest and acknowledging (as we did in the case of beliefs in general) that there are no infallible accounts of how to achieve truth. This justification of neutrality is independent of a specific method of achieving truth, but it does presuppose a commitment to the idea that truth matters in the broadest sense. Whether the truth one ultimately advocates turns out to be compatible with Mill's own philosophy or not, to the extent that we have a common interest in the pursuit of truth and we acknowledge differences in truth claims and ways of living, we will need some model to accommodate difference. To be sure, this is not a neutral view, it is a kind of epistemology, a commitment to at least a *kind* of theory about truth and the conditions of its production (that they involve social communication, freedom of association, and experimentation in lifestyles). If a challenger to this view accepts the premise that we have shared epistemic concerns, but disputes elements of Mill's specific view of truth, the floor remains open for discussion, re-examination, and reconsideration. In other words, by endorsing a general commitment to knowledge and inquiry and an attitude of open-ended revisability about the actual norms and methods for determining truth, a Millian can claim partial neutrality about the justification of neutrality, while still offering a default theory of how truth is produced or maintained. We do not so much need to be utilitarians or social progressivists to justify neutrality as we need to believe in the fundamental importance of the pursuit of truth (both theoretical and practical) and the absence of any absolute and infallible approach to knowledge. Even the person who believes themselves to possess such knowledge should be able to acknowledge that its demonstration is not an accomplished fact. This way of approaching neutrality provides the best justification for intellectual freedom because it allows us to take advantage of the "dual foundations" approach to the rights/utility problem while minimizing the criticism that one has to believe in a highly contingent theory of progress or a specific moral theory.

Basing intellectual freedom in part on a commitment to the intrinsic value of deliberative capacities and in part on a commitment to truth and inquiry may make the theory seem more open-ended and neutral than it might be in practice. Regarding the first commitment, we do have at least some agreement, across many different conceptions of the good life, that the development of deliberative capacities is intrinsically and extrinsically valuable. Contemporary virtue theorists advocating the "capabilities approach" have developed a broad theory of the importance of human capabilities to the exercise of obligations and values. This theory fits with contemporary research in moral psychology. Challenges to common or universal perceptions of human capabilities and their value can be made, but neutrality cannot involve putting out of action everything that we know about ourselves and how we develop the ability to make deliberative choice. (We can hold our views

tentatively and in openness to counter-evidence, but we must have a view about truth and inquiry to answer these or any questions.) Regarding the second commitment, we do not start with a completely open-ended question about how to conduct an inquiry. If someone challenges a physical theory of, say, evolution or antibiotics, there are epistemic norms, criteria for the adequacy of a scientific hypothesis, for trying to resolve the challenge. In less scientific areas, such as matters of pursuing the good life or maintaining beliefs about ultimate realities, we have fewer shared epistemic norms. Yet it is still our public standards for truth, which share many of the main features of scientific thinking, rather than an arbitrary preference that should commit us to intellectual freedom as a model for inquiry, even when the questions are not scientific. In our commitment to truth and inquiry, neutrality does not require us to pretend that we have no framework or structure for making knowledge claims of particular kinds, only that our self-awareness of fallibility (which in an older language would be “epistemic humility” and in a contemporary idiom might be connected with the problem of “making decisions under conditions of uncertainty”) prevents us from installing any epistemology or conception of the good life as absolutely normative. This is another way of saying that neutrality requires epistemic humility but not universal skepticism.

There are a number of practical values to this approach to the foundations of intellectual freedom and to neutrality. As noted already, it allows us minimize the theoretical difference between rights theories and utilitarian theories by focusing on the best account we can give of how humans develop deliberative capacities. We can value those capacities intrinsically and for their ability to facilitate the pursuit of happiness. We can value deliberative capacities in others even when they use those capacities to live in ways that we find demonstrably inferior or false.

In its non-neutral commitment to truth and inquiry, Mills’ theory of intellectual freedom accomplishes something truly significant in the history of thought on intellectual freedom. As we said at the outset, the history of intellectual freedom can be thought of as the record of human cultures coming to value mind and inquiry. I think that is the reason intellectual freedom has its own distinctive development within the academy in the form of academic freedom and tenure. By treating inquiry as a broadly distributed social process, by thinking of every individual as engaged in inquiry about the best way to live, Mill invites us extend universally the kind of respect and protection that we traditionally reserve for academics. The internet gives physical presence to this idea of a web of information which individuals can learn to access for decision making and to express and experience culture.

The librarian or other information professional working from this framework for intellectual freedom should ideally be able to work with anyone committed to the pursuit of truth through a process

of epistemic justification. By endorsing authoritative knowledge sources and representing established methods of inquiry and justifications of knowledge (along with challenges and controversies, of course), the librarian is not violating neutrality. As my co-author Linda Pierce and I argued in an earlier work, neutrality in librarianship cannot entail passivity and agnosticism about truth and authoritativeness, but neither can it tolerate the canonization of some set of beliefs or theories as infallible. (Alfino and Pierce 1997, 131) Professional advocates for intellectual freedom, especially librarians, have fundamental obligations to respect the decisional autonomy of others while accurately representing the authoritativeness of diverse credible points of view and knowledge claims. The interpretation of intellectual freedom which emerges from the two philosophical problems we have been working on in this section helps us understand these obligations precisely because it models the pursuit of truth and knowledge as part of the fabric of our social life. To be “free” intellectually is not only a matter of the absence of constraint, but also the positive liberty to develop capabilities for deliberation and choice within a social world that both supports this pursuit and the underlying information flows and human investigatory processes that make it possible for information to resolve uncertainty and find truth.

### III. Using a Philosophical Theory of Intellectual Freedom to Address Current and Emerging Problems

One of the benefits of putting our ideas on strong foundations, especially cultural and historical ideas, is that we may be better prepared to handle new questions that inevitably emerge from changes in the culture, the state of knowledge, and other historical contingencies. Some challenges to intellectual freedom are of the same type as in Mill’s day, though technology, and experience in the last 160 years, often adds additional degrees of complexity. For example, Mill already warned in simple examples about the need to regulate potentially dangerous substances (and information about them) or regulate claims about food products to prevent fraud. Freedom of speech has never been a simple part of intellectual freedom, especially in relation to democratic electoral processes, which seem to raise concerns about the relative power of different parties’ access to media. And while Millian social reformers advocated public education, they could not have imagined that something like the Internet would be part of our social epistemology. We asked at the outset whether and how the revolution in digital information has changed our understanding of intellectual freedom. In this brief section, I want to discuss some challenges to intellectual freedom in the digital age and consider how the “social

epistemology” view of intellectual freedom developed in Section II might help us address current problems.

For this discussion, four contemporary problems in intellectual freedom will be used to illustrate both traditional and novel features of intellectual freedom in the digital age: first, the recent freedom of speech case in the U.S., *Citizens United vs. Federal Election Commission*; second, the censorship cases that arise routinely for Google in their negotiations with specific countries seeking to suppress specific search results; third, attempts to maintain open networks through “net neutrality rules”; and fourth, the question of positive information rights of access to knowledge and culture.

Many commentators have felt that laws that regulate speech in the electoral process in the U.S. have been on a collision course with the First Amendment for some time. After all, laws such as the Bipartisan Campaign Reform Act of 2002 forbade corporations from television electioneering right before primary elections for Federal offices. In the case, a private non-profit corporation, *Citizens United*, sought distribution of an anti-Hillary Clinton video close to a Democratic Party presidential primary. The FEC forbade the distribution (which was through pay-per-view cable) and the group appealed to the Supreme Court, which overturned the BCRA’s restrictions, presumably allowing corporations to spend unlimited funds to electioneer for or against particular politicians right up to election day.

The case is so new and controversial that it will be some time before its legacy is understood. Much of the focus of criticism has fallen on the court’s willingness to grant free speech rights to corporations, which is a departure from a long history of legal and juridical practice. For our purposes, and from the interpretation intellectual freedom we have developed, the emphasis for reflection should fall on the empirical claims that opponents of the decision (and the original advocates of campaign regulation) made, that unequal access to the media during an election process will have a distorting effect on the voters’ deliberations. As the majority points out in their decision, allowing news media, which are dominated by a few powerful corporations, unlimited access to the election process while excluding a citizens’ group which forms a corporation to produce a video seems counter-intuitive for anyone worried about unequal access. Perhaps a less restrictive form of regulation (allowing corporate speech but regulating it) would actually improve the ability of voters to deliberate. In any case, if our interpretation is fruitful and germane to this controversy, it will lead the discussion toward questions about the quality of information in the information network rather than abstract questions about whether a corporation really is or is not a person for the purposes of political speech.

As we can see from our study, questions about the relative power of speakers (corporate or otherwise) have been a traditional feature of intellectual freedom discussions, back to the concept of parrhesia. Likewise, censorship cases are a traditional source of challenge to intellectual freedom. Internationally, many governments make requests of Google to suppress content deemed unacceptable to the government or culture. Google filters search results pointing to pro-Nazi and Holocaust-denial sites in France, Germany, and Poland, for example, because in each of those countries it is unlawful to publish such content. It has a more difficult time deciding how to comply with requests from authoritarian or repressive governments (Goldman 2010). In negotiating with countries over filtering, Google and similar services face a trade-off between compliance and access. After all, countries can simply block Google in its entirety. Governments have always played a predominant role in censorship cases, so this might look like a traditional censorship case. However, the ability to control electronic access through filtering of search results represents a new frontier of censorship.

In the traditional paradigm, it was always the nation-state that was the reference point for the controversy. Intellectual freedom typically involved controversies between authors or groups within the country and their government about a particular work. To be sure, there have always been “outside agitators” to blame for unwelcome new ideas. But now we have emerging global practices of free flow of information that develop outside of the consideration of national policy. Social networks and email communication have a spontaneity, robustness, and cost structure that threaten the traditional paradigm of information control through national policy. Google is, in one sense, like a publisher, but the relationship of search engines to the internet makes it symbolic of global access to information. As long as there are relatively easy and widely available ways to work around government restrictions (such as Virtual Private Networks), this controversy will remain somewhat symbolic. In one future the value of access to global information becomes so important that the nation-state’s claim to regulate it withers away. In another future, governments might attempt extensive filtering. Many technologists believe that the first alternative is most likely, but we will have to see.

Another area of concern for advocates of intellectual freedom today is the relationship between private information service providers (ISPs) and national governments. Advocates of information rights promote so-called “net neutrality rules” which obligate internet service providers (ISPs) to treat all legal content on their networks equally, not blocking competitor’s products, for example. Advocates of net neutrality argue that the network itself should not be commercialized or biased toward specific products. In the US, the FCC has advocated net neutrality, following new priorities from the Obama administration, but its authority to do so was challenged in a recent court decision (Zapler 2010). The

rules themselves are controversial within the communications industry, and the Electronic Frontier Foundation, which acknowledges the problem of net neutrality, also believed that the FCC lacked authority to enforce the rules. While advocates of information rights have reason to be concerned about the loss of neutrality through commercialization of ISPs (especially in 3G networks), they also fear the power of a regulatory authority that could enforce neutrality. As with government mandated search engine filtering, it is early to tell whether a loss of net neutrality would greatly diminish access.

In both of these cases, traditional approaches to intellectual freedom remain relevant. Reasonable differences of opinion may arise over whether particular types of offensive content should be filtered from mainstream search engine results. Sometimes commercialization produces greater access. But no reasonable justification exists, at least within the tradition of intellectual freedom, for a government to deny access to knowledge, historical records, or political information that would help support the autonomous decision-making of its citizens. Both internet filtering and commercialized networks may pose threats to intellectual freedom in digital media. In these three examples the focus is consistently on the effect of law, policy and practice on the quality of the network, conceived as a socially distributed decision support resource. Whether we theorize the problem in terms of rights or utility, the value of autonomous and authoritative decision making is at stake in many controversies over intellectual freedom.

Our fourth example, however, involving alleged positive information rights of access to knowledge and culture, poses more novel challenges to both traditional and recent interpretations of intellectual freedom. Initially, arguing that we have rights to access information and culture is about as counter-intuitive within the Enlightenment tradition as arguing that we have a right to a certain level of welfare. Rawls is typical of the rights' tradition's articulation of fundamental liberties as rights involving negative duties, duties which enjoin other's from interfering with us, but do not obligate others to act on our behalf. Mill also reflects Enlightenment thinking about the independence of the individual. Recall, for example, that for Mill the state is only justified in interfering with individual who are causing harm to others. But contemporary theorists have argued that access to information and culture through digital media represents a basic commitment of a society to respect for the autonomy of the individual.

In support of these values, which are of course drawn from the Enlightenment political tradition, a positive information rights advocate argues that we have a positive duty to promote the individual's access to informational and cultural resources. For pragmatic reasons, this argument is especially strong when focused on digital resources, which have relatively low costs of access.

Julie Cohen's important paper, "Information Rights and Intellectual Freedom," makes a positive information rights argument, challenging our concept of what intellectual freedom should commit us to in a global networked environments and markets. Cohen wants to challenge the assumption that a fully "propertied" approach to intellectual freedom, one that eliminated "fair use" for example, is the best way to promote intellectual freedom. While mainstream thought on copyright has long held that the emergence of intellectual property and markets for information has been beneficial to intellectual freedom, contemporary efforts, both nationally and internationally to revise copyright laws to account for digital media have led in some cases to negative effects on information freedom, especially in the area of fair use.

To appreciate Cohen's argument it is important to understand that she thinks of intellectual freedom in terms of the promotion of "autonomy and decisional independence." Autonomy for her is not merely the abstract possibility of being "self-legislating," but an embodied and variably realized set of capacities to engage in informed deliberation and decision making about one's life. She points out that traditional rights defenses, including Rawls, have emphasized the protection of autonomy through arguments against constraints against liberty, but a complete understanding of autonomy as an actual capacity requires us to consider also positive means for promoting it by assuring the quality and accessibility of "information flows". As Cohen puts it: "Intellectual freedom is a function of the autonomy that individuals enjoy with respect to information flows to, from, and about them." (Cohen 2010) If autonomy is thought of in this way, then supporting information rights, and by extension intellectual freedom, is not just a matter of avoiding negative constraints (such as censorship), but involves assessing information markets in terms of their effectiveness in improving deliberative decision making for individuals.

For Cohen in 2001 some of the culprits in limiting information rights were related to the Digital Millennium Copyright Act and international agreements defining copyright infringement. In some cases, the legal and political processes governing these agreements seemed to be unjustifiably eliminating areas of copyright free use of intellectual property. In her new work she explores a broader range of considerations about the implications of over-privatization of digital content (Cohen 2010). She identifies with the capacities view of human flourishing mentioned earlier (Nussbaum 2004 & Sen 1991) and uses this view to give more content to the idea of autonomy and the development of the self. Intellectual freedom includes more than discrete knowledge that individuals need to govern themselves and their practical affairs. It also includes the ability to access and "play" with culture. But this kind of intellectual freedom requires that property rights be kept "incomplete" in the tradition of fair use

allowances. With greater sensitivity to the constitutive power of networks to shape the self, and with a more developed sense of human flourishing, Cohen argues, we can ask more critical questions about how intellectual property rights in digital content affect the self and the development of autonomy in the self (Cohen 2010).

#### IV. Conclusion

Intellectual freedom was originally about establishing the “standing” and protection of individuals to speak candidly. We might even say that its root value is the importance of being able to tolerate candid expression. In that sense, the problems of parrhesia remain central to modern context. As we have seen, Enlightenment thought on intellectual freedom grows out of a similar practical problematic – the need to tolerate diverse religious viewpoints and to promote the growth and spread of knowledge following the scientific and political revolutions of that period. While philosophical and political theory tracks this problem in both the traditions of rights and utility, a real innovation of Mill’s approach, highlighted in recent scholarship, was the re-focusing of the problem of liberty on the conditions needed to pursue inquiry through a social network which would value individuality and individual discernment of the truth. In light of the role of information networks in education and contemporary life generally, we could say that Mill’s approach was prescient. In contemporary intellectual freedom controversies, we are often concerned about the quality of, access to, and equality of access to information resources which enable individuals to develop their autonomy and capabilities.

In this shift of focus to the conditions of inquiry, we may also be moving, as recent information rights advocates have argued, toward an acknowledgement of positive information rights. Believing in intellectual freedom without assuring that individuals to have access to the best resources for inquiry and decision-making may be as problematic as valuing education, but not valuing widespread access to it.



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