

<forthcoming in *Utilitas*>

Truth, Discussion, and Free Speech in *On Liberty* II Christopher Macleod

The argument of *On Liberty* II is generally well known. The chapter, setting aside a brief introduction and conclusion, is made up of three ‘divisions’¹ and runs as follows:

For any opinion considered as a candidate for suppression,

TRUE: that opinion might be true, in which case it should be not be suppressed, (*On Liberty*, XVIII: 229–43),

FALSE: that opinion might be false, in which case it should not be suppressed, for its airing can contribute to a better justification and understanding of the truth, (*On Liberty*, XVIII: 243–52),

PARTIALLY-TRUE: that opinion might be partially-true, in which case it should not be suppressed, for its airing can help us achieve the whole truth (*On Liberty*, XVIII: 252–57),

Therefore: there should be no suppression of the discussion of any opinion.

The effectiveness of the overall argument of course depends on the effectiveness of each of the sub-arguments for TRUE, FALSE, and PARTIALLY-TRUE – and this question has received much attention in the secondary literature.² In this article, I wish

¹ Mill refers to the parts of his arguments as ‘divisions’ at *On Liberty*, XVIII: 243. All quotations from Mill are taken from the *Collected Works of John Stuart Mill*, ed. John M. Robson, 33 vols (Toronto: University of Toronto Press; London: Routledge and Kegan Paul, 1963–91) and given in by (*short title*, volume: page).

² Among the most important recent contributions in this regard are D. Jacobson, Mill on Liberty, Speech, and the Free Society, *Philosophy and Public Affairs* 29.3 (2000), 276–309, J. Riley, J. S. Mill’s Doctrine of Freedom of Expression, *Utilitas* 17.2 (2005) 17(2), 147–179, and P.N. Turner, Authority, Progress, and the ‘Assumption of Infallibility’ in *On Liberty*, *Journal of the History of Philosophy*, 51 (2013), 93–117. For my own interpretation, see C.

to attempt a different approach to *On Liberty* II. Rather than focusing on the detail of these *sub*-arguments, I wish here to consider certain structural features of the argument overall. In particular, I wish to examine what the form that Mill's argument takes can tell us about the scope of "Freedom of Discussion" as defended in *On Liberty* II, and the extent to which we must rely on arguments beyond that chapter to support free-speech rights as they are often understood today.

I begin, in section 1, by highlighting the oddity – often missed – in Mill's appeal to the value *truth* as the ground of the argument Mill offers in *On Liberty* II. Very little of detail is said in that work as to how truth fits into Mill's overall scheme of values, or how it is to be balanced against the existence of other values. I suggest that the most plausible interpretation of the kind of argument that Mill gives in *On Liberty* II limits its aim to that of establishing norms of freedom internal to a specific kind of practice. I go on, in section 2, to consider what the form of argument deployed in *On Liberty* II tells us about the boundaries and nature of that practice – and the extent to which Mill's defence of freedom within that practice can support rights to free speech in the sense that the term is often used today. I conclude, in section 3, by suggesting that for a defence of free speech in this broader sense, we must look beyond *On Liberty* II, and that though we should be optimistic about the chances of finding such a defence in *On Liberty* III, that defence will be a limited one.

1. The Teleological Orientation of *On Liberty* II

The argument of *On Liberty* II is primarily *epistemic* in nature. By that, I mean the following: in arguing for liberty of discussion, Mill attempts to establish that there exists a relation between *free discussion* and *our epistemic good*, and he appeals to the value of the latter in motivating the former. Mill's conception of the epistemic good of human beings is a broad and liberal one. For convenience, I will refer to it as *knowledge of the truth*, but we should keep in mind that when Mill speaks of knowledge in *On Liberty* II, he means to indicate not merely a true belief, but a true belief held "the way in which truth ought to be held by a rational being" (*On Liberty*, XVIII: 244). This involves the ability, Mill claims, to connect a proposition to its grounds and to its implications, to be able to argue against alternatives, and to meet counterarguments offered by others. His ideal is that of true belief held as "living truth" rather than "dead dogma" (*On Liberty*, XVIII: 243). Nevertheless, it is on the basis of its relation to something valuable – knowledge, in this demanding sense – that Mill argues that our discursive interactions should be governed by norms of free discussion.

There is, I think, a puzzle about the nature of the relation Mill aims to establish between free discussion and knowledge of the truth. Mill certainly does not believe that free discussion of an opinion is *sufficient* to bring about knowledge of the truth of that opinion: he is well aware that the existence of free discussion over any given length of time is quite compatible with the prevalence of false beliefs. But he

Macleod, Mill on the Liberty of Thought and Discussion, in A. Stone and F. Schauer (eds.) *The Oxford Handbook of the Freedom of Speech* (Oxford University Press, 2020), 3–19.

does at times seem to move between the claim that freedom of discussion is a necessary condition for knowledge and the claim that freedom of discussion is positively conducive to knowledge of truth. I will not here attempt to resolve the puzzle of which he regards as the core claim.³ For the purpose of this paper we might remain neutral on the particular connection Mill envisages between free discussion and knowledge of the truth by thinking of it as an enabling relationship, while noting that ‘ x enables y ’ can be read either as x is conducive to, or necessary for, y . The important thing, for our purposes, is as follows: Mill makes no claim about an “abstract right” to air one’s opinions during *On Liberty* II. Nor, tellingly, does he make any claim to the effect that discussion should be free because it can cause only offense, but never harm.⁴ It is by appealing to a particular *end* that he regards as valuable, and showing which conditions enable this end to be achieved that he means to convince the reader that there should be absolute liberty of discussion. The argument, that is to say, is teleological in orientation.

Bringing the underlying teleological orientation of the argument into focus is useful – for if the argument is to be regarded as valid, as Mill obviously intends, then this orientation imposes significant constraints on how it can be interpreted. Clearly Mill does not think that freedom of discussion is attended by no other effects other than that of enabling knowledge of the truth; neither does he hold that knowledge of the truth is the only thing of value for human beings. But a teleological argument which appeals solely to the value of knowledge to offer a vindication of freedom of discussion *tout court* could only be valid on exactly those grounds. If, for instance, we were to establish that experimentation on humans stood in an enabling relationship to knowledge of the truth, we could not thereby seamlessly infer that experimentation on humans should be permitted. This would only be a reasonable conclusion to draw if we were confident that human experimentation had no other effects beyond those of enabling knowledge, and that were no other values which deserved consideration.

Mill confines his attention in *On Liberty* II to the consequences of freedom of discussion for human beings considered from a distinctly *epistemic* perspective, arguing for this liberty on the basis of our *epistemic* good as human beings. He was, however, well aware of the dangers of drawing all-things-considered normative conclusions on the basis of overly narrow abstractions – he is critical, throughout his

³ See Macleod ‘Mill on the Liberty of Thought and Discussion,’ section I for a fuller discussion of this issue.

⁴ The idea of ‘harm’ is conspicuously absent from *On Liberty* II. Given that Mill announces the Harm Principle in *On Liberty* I, the following argument must surely have occurred to him: the only reason we are warranted in interfering in an action is to prevent harm to others; discussion never causes harm to others; therefore, there should be no interference with discussion. Indeed, making *this* argument – if Mill thought it sound – would have leant greater unity to *On Liberty* overall. The fact that he does not, and that the Harm Principle re-emerges only later in the work suggests, I think, that he simply does not believe the claim that discussion never causes harm to others plausible.

work, of those who attempt to deduce whole truths from partial premises.⁵ It is unlikely that he made *this* mistake. How, then, should we read his argument?

In order to understand how Mill's argument could be considered valid, it will be useful, first of all, to note his understanding of the structure of human activity as outlined in *System of Logic* VI. Here Mill claims that each human practice – 'art', in his terminology – is properly governed by a body of rules which specify how to achieve the end at which that practice aims.

Every art has one first principle, or general major premise, not borrowed from science; that which enunciates the object aimed at, and affirms it to be a desirable object [...] The art proposes to itself an end to be attained, defines the end, and hands it over to the science. The science receives it, considers it as a phenomenon or effect to be studied, and having investigated its causes and conditions, sends it back to art with a theorem of the combination of circumstances by which it could be produced. (*System*, VIII: 949, 944).

Each art, then, is formulated as a body of rules offering guidance on how to bring about, or sustain, a specified desirable end. Architecture, for instance, is a body of rules aimed at bringing about "beautiful or imposing" buildings; medicine is a body of rules aimed at effecting the "preservation of health" (*System*, VIII: 949). We might term the ends of the individual arts *proximate* ends. There are, Mill suggests, many valuable proximate ends in life.⁶

The rules of action specified by each art are local to that practice. Arts offer guidance on how to act if one wishes to bring about the specified end – they are, in this sense, "hypothetical imperatives," to draw on Kantian terminology. But proximate ends, and therefore the rules of individual arts, will often come into conflict. It is the job of the grand commanding "Art of Life" – "Practical Reason", as Mill also calls it – to determine the "place in the scale of [these] desirable things" overall, and to reconcile conflicts when these ends clash. This determination, Mill suggests, should be made on utilitarian grounds. "I do not mean to assert that the promotion of happiness should be itself the end of all actions, or even of all rules of action. It is the justification, and ought to be the controller, of all ends, but is not itself the sole end" (*System*, VIII: 952).⁷

⁵ See, for instance, *Bentham*, X: 88–94 for a critique of Bentham on the grounds that he generalised on the basis of a partial view of man, *System of Logic*, VIII: 887–894 on the difficulties of a "geometrical, or abstract method" which ratiocinates from a single force taken in isolation from a broader system, *On the Definition of Political Economy*, IV: 321 for a characterisation of Political Economy as incomplete on the grounds of treating human beings solely in their basis as seekers of wealth and, of course, *On Liberty*, XVIII: 252ff. on the dangers of taking a view which is only partially-true as the whole truth.

⁶ Mill uses the term "secondary ends". I prefer 'proximate end' as it seems to better capture that it is *these* ends, rather than the final end of utility, that are in general the focus and motivating ground of agents. See *Bentham*, X: 110ff.

⁷ Tellingly, Mill directs the reader to "the little volume entitled *Utilitarianism*" for "an express discussion and vindication of this principle" (*System*, VIII: 951).

A picture therefore emerges of many and various human practices, each with distinctive ends, guided by rules which help achieve those ends and underpinned by their place in securing human happiness. The question posed above was this: how can we read Mill's argument as valid, given that a *tout court* vindication of freedom of discussion would involve considerations of all effects and ends, but that Mill considers only epistemic effects and ends? The answer, I suggest, is that Mill did not mean to offer a *tout court* vindication of freedom of discussion. Rather, he offers an account of the rules we should adopt as effective for discussion, given the aim of that practice. Mill focuses his attention in *On Liberty* II only on the effect relevant to *one* valuable end, because discussion – in the sense that Mill uses the term – is only *one* human practice amongst many.

We should certainly value knowledge of truth, and pursue it as an end. As is the case with other things which we value, however, sometimes this end will conflict with other valuable ends – and as such the rule against informal or legal suppression of discussion will be incompatible with some other rule facilitating another end. (Such is, in effect, a more generalised way of framing the classic worry that the free discussion of some views might endanger security, breach copyright, violate privacy, undermine social cohesion, *etc.* – and that our commitment to free discussion might therefore clash with our other commitments.) In such a case, the job of determining the priority of our ends, as noted, falls to the “Art of Life”: we are called upon to find a balance between valuable proximate ends on the basis of their contribution to overarching end of human happiness.⁸

This is not to make the claim that freedom of discussion should *often* be disregarded on the grounds of its incompatibility with other valuable ends. Indeed, it may be that, such is its value, knowledge of truth should *almost never* be sacrificed in favour of some other end. Clearly, Mill thinks the end extremely important, and takes the injunction against suppression of free discussion extremely seriously:

I deny the right of the people to exercise such coercion, either by themselves or by their government. The power itself is illegitimate. [...] If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind. (*On Liberty*, XVIII: 229)

⁸ In the case of public discussion of the intimate details of others' lives, for instance, there is reason to think that Mill regards the contribution to happiness of *knowledge* as outweighed by the contribution of *privacy*. “Mr. O’Connell goes farther than we are able to follow him, when he proposes that in all cases of private libel, truth should be a justification. [...] But we would not permit the press to impute, even truly, acts, however discreditable, which are in their nature private. [...] The proper tribunal for the cognizance of private immoralities, in so far as any censorship can be advantageously exercised over them by opinion at all, is the opinion of a person’s friends and connexions” (*Mr. O’Connell’s Bill for the Liberty of the Press*, VI: 165). Here, then, looks like a case of *discussion*, but should not be permitted because of the value of the kind of knowledge which it would enable.

But it is equally clear that he does not think that this injunction should be exceptionless – for he holds that *no* exceptionless practical rules are possible. “[R]ules of conduct cannot be so framed as to require no exceptions” (*Utilitarianism*, X: 225). “[T]he admission of exceptions to rules is a necessity felt in all systems of morality” (*Whewell*, X: 182). “To admit the balance of consequences as a test of right and wrong, necessarily implies the possibility of exceptions to any derivative rule of morality which may be deduced from that test” (*Taylor’s Stateman*, XIX: 638).⁹ A commitment to knowledge as an important object of value does not mean that in each and every instance knowledge should take precedence over other objects of value.

The question of how and when to balance knowledge against other proximate ends must be answered not summarily and *a priori*, but with serious consideration to the role that various domains of knowledge of truth plays in securing human happiness. Mill simply does not attempt to treat these sorts of issues in *On Liberty* II – rather, he confines his discussion only to the internal rules which enable discussion to lead to truth. He notes in *On Liberty* that the “truth of an opinion is part of its utility” (XVIII: 233) – a view echoed elsewhere¹⁰ – but offers little by way of expansion, explanation, or defense of that claim. Because he never offers a sustained treatment of the issue, it is hard to specify precisely where Mill thinks that knowledge of truth falls in the “scale of desirable things”, and therefore hard to determine how, in his view, we should approach cases in which free discussion conflicts with other ends. But it seems clear, because of the teleological structure of the argument of *On Liberty* II, that we should be open to the fact that such judgements will occasionally have to be made.

2. The Nature of Discussion

I have suggested that, in arguing for Freedom of Discussion, Mill offers an account of the rules we should adopt within a practice, given the end specified as valuable by that practice. In this sense, ‘Discussion’ names a practice – a certain kind of activity

⁹ The question of how to square this with Mill’s claim about the harm principle – that it is “entitled to govern *absolutely* the dealings of society” (*On Liberty*, XVIII: 223, my emphasis) – is a tricky one. See P.N. Turner, The absolutism problem in *On Liberty*, *Canadian Journal of Philosophy* 43.3 (2013), 322–340 for useful attempt to solve this problem. My own view is that the naturalistic and teleological orientation of Mill’s philosophy means that unqualified and singular *practical* rules are no more possible than unqualified and singular *causal* rules – rules which state that, whatever the surrounding context, a given cause will bring about some effect, and no other effects. No practical rules can avoid this basic structural constraint of Mill’s theory.

¹⁰ See *Utility of Religion* X: 405. Mill also shows strong commitment throughout his work to the *general* claim that mental advancement is a condition for social progress and the improvement of the lot of mankind – see, for instance, *Utility of Knowledge*, XXVI: 257–61, *System of Logic*, VIII: 926–8. This general claim, however, again gives little sense of how we are to judge the contributions of different kinds of knowledge to human happiness, and how they can be weighed against other, and competing, commitments.

– and is a technical term for Mill.¹¹ We might ask, therefore, what the boundaries of discussion *are*? What counts as discussion, in this technical sense?

It is clear that Mill regards discussion as a *cognitive* activity: an activity, as we have noted, that has knowledge of truth as its fundamental aim. Mill argues that consideration of opinion – whether true, false, or partially-true opinion – stands in an enabling relationship to knowledge, and that all contributions to discussion should therefore be permitted. The move from *true, false, or partially-true* opinion, to *all contributions to discussion* is telling. It implies that Mill regards the consideration of true, false or partially-true opinion as exhaustive of discussion, for otherwise the inference from these three cases could hardly be secure. Mill’s argument is that we should be free to engage in the discussion of an opinion because discussion enables us to achieve knowledge of the truth regarding that opinion. But this suggests that discussion involves consideration of claims which are *able* to be true. Discussion, that is to say, is constituted by the statement and consideration of truth-apt propositions.

So framed, the promise of ‘freedom of discussion’ seems extremely limited – narrow, certainly, by comparison to the breadth of activity that is defended under the mantle of ‘freedom of speech’ in public discourse and in law. Consider, for example, that in U.S. First Amendment law the burning of a flag is regarded as protected speech.¹² Certainly, the burning of a flag may be occasioned by the consideration of some truth-apt proposition about the world. But it makes little sense to think of burning the flag as itself either as an act of consideration or as the sort of thing to which a truth-value can be assigned. The action may be evaluated as appropriate, inappropriate, just, tasteless, or patriotic, but it clearly does not state a truth-apt proposition – it does not make a claim, but rather signals protest, anger, and perhaps a call to resistance. Nor is it the public consideration of some claim. The activity is primarily an expressive rather than a cognitive one, and so is not covered by the argument of *On Liberty* II.

Further examples of the broadness of the coverage of First Amendment law by comparison to that which can be grounded on Mill’s argument are easy to replicate. Under *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, the Supreme Court ruled that marching in a parade qualified as protected speech. Marching in a parade, as the Court acknowledges, itself conveys no “succinctly articulable message,” but is rather an instance of symbolic expression, and protected *as such* under the category of speech. So, too, other purely expressive acts, in the form

¹¹ In this regard, I follow the basic approach of J. Skorupski *John Stuart Mill* (Routledge, 1989), 369–376. J. Riley argues that this reading, by restricting what counts as ‘discussion’, endangers liberty. “[S]uch a ‘liberalism’ threatens to become highly illiberal. The community is given legitimate authority to determine which acts of expression shall count as dialogue [*i.e.*, discussion] and thus be freely permitted, and which shall not and thus be regulated or prohibited” (Riley, *J. S. Mill’s Doctrine of Freedom of Expression*, 152). It does not follow from the fact that ‘discussion’ is read as a technical term, though, that the community is entitled to decide what counts as discussion. That, it seems to me, could still be an objective matter.

¹² See *Texas v. Johnson*, 491 U.S. 397 (1989); *United States v. Eichman* and *United States v. Haggerty*, 496 U.S. 310 (1990).

of visual art and instrumental music receive protection under the First Amendment. The “painting of Jackson Pollock” and the “music of Arnold Schoenberg” are regarded as “unquestionably shielded” as speech in *Hurley* despite the fact that they are incapable of conveying a “particularized message”.¹³ Such expressive works cannot be construed as the consideration of opinion which is capable of truth, falsity, or partial truth, as *per* the categories that form the basis of argument in *On Liberty* II.

But although Mill’s argument is limited to protecting discussion as the statement and consideration of truth-apt propositions, there are at least two ways in which that notion can be unfurled so as to cover more territory than we might initially expect. The first is simply to note that the range of statements which Mill regards as amenable to evaluation in terms of truth and falsity is a broad and ecumenical one. The cognitive is the domain of statements which can serve as evidence in an argument and which can themselves be evidenced. But, to Mill’s mind, this category is not confined, for instance, only to utterances which can be translated without remainder into statements which can be directly empirically verified. Mill is clear, after all, that normative claims – statements about how there is reason to believe and act – are amenable to evidence and argument, and evaluation in terms of truth. As such they fall within the domain of the cognitive.¹⁴ There is little reason to think that Mill would deny that aesthetic claims can, similarly, fit into a network of evidencing and being evidenced.¹⁵ All of these forms of statement would be covered by Mill’s account of Freedom of Discussion.

Moreover, we might note that because a claim about the status of any given linguistic act as truth-apt is itself truth-apt and therefore subject to freedom of discussion, there is an expansionist push from within the domain of the cognitive which may result in the protection of various forms of noncognitive utterances. One might, by instinct, doubt that some statement φ – ‘apples are better than oranges,’ for instance – is the sort of statement which can bear truth. Grammatical form notwithstanding, it might be claimed, the statement is merely the expression of a preference, as such excluded from the cognitive domain, and therefore from the scope of Mill’s argument. But because the claim that ‘ φ is not truth-apt’, is *itself* truth apt, and because this statement therefore falls within the scope of Mill’s argument for freedom of discussion, we must be willing to hear evidence about φ ’s truth aptitude. Such evidence will include evidence for its truth, and therefore involve full discussion

¹³ *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557 (1995). See M.V. Tushnet, A.K. Chen and J. Blocher *Free Speech Beyond Words* (New York: NYU Press, 2017) for full and useful discussion of the various forms of non-linguistic activity which are protected as speech under First Amendment law.

¹⁴ For a full defence of this claim, see C. Macleod, Was Mill a Non-Cognitivist?, *Southern Journal of Philosophy* 51.2 (2013), 206–223.

¹⁵ Mill’s own views on what determines whether something is beautiful are given in *Thoughts on Poetry and its Varieties*, I: 341–365. See A. Loizides, Mill on Aesthetics, in C. Macleod and D. Miller, *A Companion to Mill*, (Wiley-Blackwell, 2017), 250–265 for useful reflection on this area of his work.

of φ .¹⁶ The result is generalisable, of course, and as such anything within the territory of truth-aptitude will be covered by Mill's argument.

Secondly, and more importantly, however, we should note that though discussion in Mill's sense involves the consideration only *of* truth-apt statements, it does not follow that consideration itself takes place only *via* truth-apt statements. The assertion of truth-apt propositions is clearly the foundation on which discursive consideration takes place – without individuals expressing opinion, we would not find ourselves in the position of considering those opinions at all. But consideration, in the context of dialogue, amounts to thinking together about a truth-apt proposition, and thinking together might take us well beyond the exchange truth-apt propositions. Trivially, for instance, it may involve the posing of questions – rhetorical or otherwise – even if questions are not themselves truth-apt. (While 'murder is wrong' may be true, 'is murder wrong?' can be neither true nor false.) But other forms of truth-inapt linguistic or non-linguistic activity, too, might constitute the consideration of statements which are themselves truth-apt. If freedom of discussion involves consideration in dialogue as well as the assertion of truth-apt propositions, protection is extended to thinking as it takes place when given concrete form and externalized in the public domain.

Historically, for instance, satire has been an important medium for individuals seeking to contribute to public consideration of political ideas.¹⁷ (Curiously, given that he himself was a target in contemporary comic periodicals, we might note that Mill himself never speaks directly to the issue of satire. Reflection on this medium, however, may nevertheless help to give an example of the diverse ways in which public consideration can take place.) Satire need not involve making claims which can be subject to evaluation in terms of truth or falsity – rather, it most often involves portrayal, whether of real or fictional subjects, in such a way as to draw attention to the injustice or absurdity of a policy or situation. By doing so, however, it can itself be an instance of *thinking through* that policy or situation with others: a move in an ongoing dialogue which has revealing the truth as its aim. Such a move can be made in verse, or in prose, or indeed by way of visual art and cartoons. James Gillray's *The Plumb-Pudding in Danger* shows Bonaparte and Pitt at the dinner table, carving the globe as if it were a roast pudding. The cartoon is clearly not itself capable of truth or falsity – but it offers a framing of the Napoleonic proposal of peace-making which draws attention to worries about empire-building and the ambition of England and France. It shows what might otherwise be overlooked: the unsavory principles and motives which underlie the policy, the fragility of the situation, and the potential consequences of endorsing the proposal.¹⁸ As such, it contributes to

¹⁶ Cf. *On Liberty*, XVIII: 233. Here, Mill argues that for any opinion φ , the utility of believing φ is itself a matter of fact which must be open to discussion. Such discussion inevitably involves discussion of its truth, however – and we must therefore be willing to hear arguments for and against φ 's truth *as part* of a consideration of its utility.

¹⁷ See W. Wickwar *The Struggle for the Freedom of the Press 1819–1832* (London: George Allen & Unwin Ltd., 1928) for a useful consideration of satire as central to the emergence of freedom of the press in the UK.

¹⁸ One may argue that these motives, principles, and consequences could simply be *stated in language* without resort to cartoon and parody – and that while freedom of discussion should

the ongoing process of thinking about the prudence of a given policy. Such cartoons, that is to say, are not merely acts of self-expression, but themselves contribute to a dialogue which has truth as its end. They constitute public acts of consideration which can make advances in the pursuit of consensus and truth, and Mill's epistemic defense of freedom of discussion is therefore applicable to them. So, also, can fiction, parable, and other forms of art make contributions to the consideration of truth-apt claims: they, too, can be attempts to publicly 'think through' an issue with others.

The line between acts which constitute public consideration and those which are merely a form of self-expression – those which give voice to an emotion, state-of-mind, or creative impulse – is of course an extremely difficult one to draw. Making such discriminations requires a considerable exercise of judgement: that Orwell's *1984* is a contribution to a discussion which attempts to publicly think through an issue of policy, whereas Monet's *Water Lilies* or Sibelius's *Symphony Number 2* are not, is a substantive and contestable claim; so too is the claim that Martin Luther King's *The Two Americas* is a contribution to a discussion, whereas the burning of a flag is not. And, of course, we must acknowledge that many actions may be both acts of self-expression *and* contributions to discussion – with certain aspects of their performance protected from censure by norms of free discussion, and certain aspects governed by other norms. But that there is a meaningful distinction to be made between the discussion of a truth-apt claim and behavior which is merely expressive is certainly a position assumed by the form which *On Liberty II*, with its focus on knowledge, takes.

3. Freedom of Expression

I have, in the first two sections of this paper, offered a reading of the argument of *On Liberty II* which focuses on the form that the argument takes. In doing so, I have attempted to complicate our understanding of that chapter in two ways. In the first section, I highlighted the teleological orientation of the argument. Freedom of discussion is defended because of its relation to a proximate end which is assumed by the practice of discussion – knowledge of the truth. This good, however, must be balanced against other goods, and its place in the scale of ends determined by appeal to the overarching end of life. It cannot be assumed that in all cases, the good of knowledge will trump other goods. Determining when Mill's argument offers protection of discussion will involve difficult judgments about how various domains of knowledge contribute to human happiness.

Difficult judgements are also called for in determining whether something *is* an act of discussion, in Mill's sense. The form of argument Mill offers to establish freedom of discussion – divided exhaustively into sub-arguments addressing the cases

cover the former, it should not cover the latter. Even if all contributions to discussion could in principle be made in language, however, it does not seem obvious that it would be reasonable to insist that they should *only* be. Constraints on the manner in which discussion takes place are at least sometimes illegitimate. Consider, for example, the argument that all contributions to discussion should be made in Latin, or in a given logical notation. It would be scant consolation that the all sentences can in principle be translated into these forms of expression, without a clear argument as to why such a constraint would be reasonable.

of true, false, or partially-true opinions – indicates that he views discussion as a distinctively cognitive activity. Mill’s aim is to establish freedom for the statement and consideration of truth-apt propositions – but of course not all linguistic expression is truth-apt, let alone all expressive activity. The argument does not establish protection as broad as that assumed by First Amendment understanding of ‘speech’, which shields a diverse array of behavior, from musical performance to flag-burning. The boundaries between expression and discussion, however, when it comes to public consideration, are difficult to draw.

All of this to say: determining which forms of activity count as discussion is no easy task, and just because an action qualifies as ‘discussion’ in Mill’s sense does not mean that protection is thereby seamlessly conferred. Of course, we should not allow a recognition of the complexity of Mill’s argument in *On Liberty* II to generate doubt in our mind as to the basic liberal orientation of that work as a whole. The argument of *On Liberty* II does not offer protection to linguistic or non-linguistic acts of symbolic expression as such, but this is not to say that such acts do not receive protection from the arguments given elsewhere in that work. Even if purely symbolic expression does not constitute the statement or consideration of some truth-apt proposition, it may nevertheless be shielded from interference on other grounds. In particular, *On Liberty* III, which argues for what we might think of as the *freedom to develop and express one’s own personality*, can be taken to offer protection to kinds of expressive activity which are not covered by the chapter it immediately follows.

On Liberty III is a paean to authenticity, originality, and self-expression, arguing that individuals should be given free scope to live according to their own nature and impulses, as opposed to merely following social expectation or convention. Mill’s argument for the freedom to develop and express one’s own personality, like the argument for freedom of discussion, is teleological – he attempts to justify a rule against constraints on “self-development” by appealing to the proximate end promoted by that rule (*On Liberty*, XVIII: 266). Where members of a community are able to choose their own ways of life, he argues, they exercise their active powers of observation, reason, discrimination, judgment, desire. Freedom to explore one’s own nature therefore promotes “well-developed human beings”, with “fullness of life”, a “strong will” and “energetic character”. This proximate end, he terms “Individuality” (*On Liberty*, XVIII: 263–267). The end is to be highly prized, Mill argues, on the grounds both of its direct and indirect contribution to the final end of human happiness.¹⁹

¹⁹ Some of Mill’s comments in *On Liberty* III can seem to suggest that individuality is valuable not merely as a means to some further end, but as an end in itself – and therefore to signal a commitment to some brand of perfectionism. See, in particular, *On Liberty*, XVIII: 236. “He who lets the world, or his own portion of it, choose his plan of life for him, has no need of any other faculty than the ape-like one of imitation. [...] But what will be his comparative worth as a human being? It really is of importance, not only what men do, but also what manner of men they are that do it.” These claims, though, are ultimately compatible with hedonistic understanding of Mill’s account of value if one accepts that the sort of individual one *is* can determine the forms of happiness one can enjoy.

Where, not the persons' own character, but the traditions or customs of other people are the rule of conduct, there is wanting one of the principal ingredients of human happiness, and quite the chief ingredient of individual and social progress. (*On Liberty*, XVIII: 261)

The promotion of Individuality involves leaving as much room as possible for each person to expand "according to the tendency of the inward forces which make it a living thing" – while preventing the growth of each to unduly impede the growth of others.²⁰

One cannot *be oneself* without the ability to express oneself, and the ability to express oneself – to give an external manifestation to one's internal thoughts and feelings – is so much a part of living according to one's own personality that it must be taken as a central part of what *On Liberty* III protects. This is so, whether expression takes the form of the assertion of truth-apt propositions or something entirely non-cognitive in orientation. Living in accordance with one's own personality will, of course, involve articulating one's opinions. But it may also involve finding outlet in the production of poetry, dance, music, or literature. Such artistic endeavours are amongst the deepest and most important ways human beings have of providing a voice to their distinctive natures. It may equally well involve finding an outlet in the clothes one wears – whether a bow-tie and tweeds or a "F*ck the Draft" jacket²¹ – or expressing one's anger by burning a flag. Giving air to the spontaneous expression of internal states is integral to allowing personality to "grow and develop itself on all sides" (*On Liberty*, XVIII: 263). Such activity is therefore protected by a wholly different argument than that offered in *On Liberty* II.

Like *On Liberty* II, however, the argument of *On Liberty* III involves an abstraction. Mill focuses particularly on the effects of freedom on individuals' character, and the rules we must follow to secure one particular proximate good: that of Individuality. And for that reason again, the argument cannot provide anything other than a rule which will be subject to possible exceptions – for other effects will also follow from instances of following this rule, and the end it identifies as good may conflict with *other* proximate ends judged valuable. As was noted above, when such conflicts between values occur, appeal must be made to the Art of Life to judge where in the "scale of desirable things" these ends sit in their respective contribution to overall happiness. Such is the case for all practical rules in Mill's philosophy.

Cognitive and non-cognitive expression alike receive protection from *On Liberty* III. If we desire an argument from Mill for freedom of speech in the sense which encompasses both, it is to this chapter that we must turn, rather than *On Liberty* II. But we should note that the level of protection offered by *On Liberty* III

²⁰ This caveat – that "[a]s much compression as is necessary to prevent the stronger specimens of human nature from encroaching on the rights of others, cannot be dispensed with" (*On Liberty*, XVIII: 266) – can itself be read, I think, either as an exception to the general rule argued for in *On Liberty* III, or itself as *part* of the rule which promotes individuality in the context of a society of individuals. Though the latter seems to me preferable, little, I think, hangs on this decision. In either case, further exceptions should be expected, exactly because other ends may sometimes clash with the promotion of individuality.

²¹ I allude, of course, to *Cohen v. California*, 403 U.S. 15 (1971).

is clearly not the same as that offered by *On Liberty* II. Mill starts his defence of freedom to develop and express one's personality by conceding that "[n]o one pretends that actions should be as free as opinions" (*On Liberty*, XVIII: 260). Indeed, the very fact that Mill offers a separate argument in *On Liberty* II for freedom to state and consider opinion suggests Mill thought *merely* defending discussion as an expressive act which promotes the end of self-development would miss something important. The proximate ends to which *On Liberty* II and *On Liberty* III appeal are different, and Mill regards the end appealed to in the earlier chapter – knowledge of truth – as especially important, and holding a particularly high place in the scale of valuable things.

In government, perfect freedom of discussion in all its modes – speaking, writing, and printing – in law and in fact is the first requisite of good because the first condition of popular intelligence and mental progress. All else is secondary. (*Diary*, XXVIII: 661)

Although all forms of expressive activity receive protection, then, the statement and consideration of truth-apt propositions has protection *over-and-above* other linguistic and non-linguistic forms of expression. As noted above, Mill holds that no exceptionless practical rules are possible. But the rule proposed in *On Liberty* II should be expected to be subject to fewer exceptions than that proposed in *On Liberty* III. The end that discussion serves is in Mill's view particularly important, and so more will be required to justify interference in the statement and consideration of truth-apt propositions than other kinds of expressive activity.²²

²² The original version of this paper was presented to the 2019 Philosophy, Politics, and Economics Society Meeting in New Orleans. I am grateful to participants in that session for useful feedback, and in particular to Melina Bell, Helen McCabe, Dale Miller, and Piers Turner for extensive discussion and comments.