MILL ON HATE SPEECH

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1. Introduction
This text will explore the philosophy of hate speech. The question I am interested in is whether or not we ought to ban hate speech. More specifically, I am interested in how this question might be answered if we adopt a position similar to the one defended by John Stuart Mill in his classic essay *On Liberty*.

I will first briefly describe Mill’s harm-principle and provide a general idea of his stance on freedom of expression. Next I will attempt to provide a definition of the term “hate speech” and describe how it will be used in this text, along with a short discussion of related topics.

I will then take a closer look at John Stuart Mill’s arguments in *On Liberty*, focusing mainly on what he took to be the strongest reasons in favor of extensive freedom of thought, expression and action. This will help clarify the reasoning behind the harm-principle. As it relates to hate speech, I am primarily interested in freedom of expression. Mill proposed a fairly radical principle which he hoped would provide people with the freedom needed to flourish as individuals, and that would be conducive to progress in general. Any restriction on the liberty of the individual is only justifiable if this is done to prevent serious harm to others. The question then becomes how he defines serious harm, and whether or not hate speech sometimes is an example of such harm. Mill sets the bar high, and restrictions on expressions would only be permissible if they are likely to cause serious harm.

Therefore, I will be discussing the sorts of harm that we can expect to be caused by various forms of hate speech, as well as how this might relate to the arguments presented by Mill. It is certainly not obvious that hate speech always or even often presents a threat to basic rights. At the same time, it would be strange to claim that it does not cause some sort of harm.

Following this I will look closer at some of the recent arguments that have been put forward in favor of broader regulations of hate speech, and how these could be viewed in relation to Mill. Ishani Maitra and M.K. McGowan have argued that we are sometimes mistaken when we claim that hate speech must be allowed due to our commitment to free expression. One central claim of Maitra/McGowan is that we often do things with words apart from their purely expressive content, and on this I agree with them. They also claim that the effects of hate speech are harmful enough that it ought to be under stricter regulation. I will argue
that the sort of harm they describe would not considered serious enough according to Mill. This will lead into a discussion on authority and context, where I try to show that ignoring or minimizing the importance of either raises problems.

The next section will briefly describe the reasons in favor of hate speech legislation presented by Jeremy Waldron in his recent book *The Harm in Hate Speech*. Waldron focuses on the effect that hate speech can have on the sense of dignity of those targeted, as well as questioning whether hate speech deserves a place in any good society.

Next I will look at how Mill’s arguments may actually permit broader regulations of certain forms of hate speech. David O. Brink has argued that Mill’s principle of harm may be compatible with regulation of expressions that threaten certain practices, namely our deliberative practices. This will be followed by a general discussion on some objections that could be made to Mill’s harm-based principle. Some of these objections will have been touched upon in previous sections.

Finally, I will offer a few summary thoughts on the contents of this text.

It should be stated that I will not be examining any specific laws. The primary aim of this text is to examine Mill’s ideas on liberty of expression and to then compare these to more recent work on the subject of hate speech.

2. Mill and the harm-principle
First published in 1859, *On Liberty* by John Stuart Mill presents a strong defense of individual liberties and rights. Dealing primarily with the question of when and why the liberty of the individual can and should be limited, Mill states his intention in the introduction:

The object of this essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion. That principle is, that the sole end for which mankind
are warranted, individually or collectively in interfering with the liberty of action of any
of any of their number, is self-protection. That the only purpose for which power can be
rightfully exercised over any member of a civilized community, against his will, is to
prevent harm to others (Mill, 2002, p. 8)

Mill is claiming that the freedom of the individual can be limited only if this is done to
prevent serious harm to others. It may seem that he means any harm or harm in general, but
he actually only sees certain kinds of harm as serious enough to warrant limiting the liberty
of any individual. So, although not stated in the above quote, Mill is claiming that the liberty
of the individual may only be limited if this is done to prevent serious harm to others. This
principle will be referred to as the “harm-principle”. Following Mill’s early statement, one
important question becomes which restrictions could and should reasonably be enforced
based on this principle. What is serious harm?

Mill sees any threat to basic rights as serious harm. The harm that we suffer as a result of
being exposed to a vulgar slur or what we think of as an immoral or false opinion would not
be an obvious example of serious harm. Being called something insulting would, in general,
not justify punishment or restrictions. This seems to mean that much of what might actually
be harmful, but not harmful enough, is in fact not covered by his principle. One could claim
that hate speech is precisely false and immoral. Harm to life, property and the basic rights
that he claims are vital if we people are to live good lives, would justify restrictions. If my life,
liberty or property is harmed, that would be serious harm. One example that Mill uses to
show what he thinks should and should not be allowed to express, involves a hypothetical
scenario with a corn-dealer. He claims that it is perfectly acceptable to publish an article
claiming that corn-dealers are starving the poor. Making the same statement to an excited
mob gathered outside home of a corn-dealer should not be allowed (2002, p. 46). The
former is not a violation of the corn-dealers rights, but the latter is promoting an obvious
threat to the safety of the corn-dealers life and property.

The right to discuss, question and deliberate over all matters is central among these basic
rights. Only if we have these rights can we try to live our own lives the way we want, and this
process is crucial in the reasoning of On Liberty. I would seem then that the basic right to
freely express any idea is basic right, and this cannot be limited to prevent insult or offense in others since this is not serious harm. More serious consequences must be expected in order to motivate restrictions.

For Mill, expressions that hurt or offend the feelings of another person would be permitted. So, calling someone ugly or stupid or any other insulting word would be allowed by Mill’s principle. What is considered serious harm can be described as harm to basic legal rights. For instance, he thinks that one should not be allowed to stoke an angry mob and thereby help cause physical damage to those then harmed by the mob. It would be perfectly fine to publish articles attacking the very same people that the mob is angry with. He thinks of harm in terms of harm to physical safety and personal liberty, as well as the right to not have ones property stolen or destroyed. Mill nevertheless presented a strong series of arguments that seem to favor a great deal of individual freedom, even the freedom to express what could be classified as hate speech. Simply put, Mill claimed that we ought to be permitted to openly discuss or defend any idea or opinion, no matter how wrong or immoral it may seem to others. Thus, not even the most inaccurate or immoral opinion should be silenced based solely on its being inaccurate or immoral. If one wants to adopt the Millian approach to this question, any restrictions on hate speech would first need to show that it causes or can cause harm to basic rights. Of course, hate speech may be the cause of the kind of harm or un-freedom which Mill is claiming that we deserve protection from.

I will now provide a rough definition of hate speech as well as discuss how it may cause harm.

3. What is hate speech?
Hate speech will here be defined as derogatory expressions directed at an individual or a group based on (for example) their race, ethnicity, gender or sexuality. Perhaps the way we normally think of hate speech is as expressions of hatred towards minorities (Wolfson, 1997), but there is no principled reason why it must be limited to minorities. Women or subjected populations in countries that are ruled by small groups of powerful elites can also be targets of these sorts of expressions. It is easy to think of some very unpleasant expressions that would fit most definitions of hate speech. Calling a black person “nigger” or calling a Jewish
person “kike” or calling a homosexual person “fag” are examples of one-word slurs that give us a clear idea of the kinds of expressions we are talking about. It is of course possible to express similar sentiments in more expanded ways and even in more sophisticated language. Jeremy Waldron points out some of the problems that the term “hate speech” may raise. It may imply that we are discussing whether or not we should restrict hateful thoughts, but no one is suggesting laws against thought-crime. We may also get stuck when trying to clearly define hatred as such (Waldron, 2012, p. 34-36). If we were to try to restrict hateful expressions in general, that would be to miss the point.

A closely related topic is of course hate crimes. Hate crimes can be described as crimes that are motivated by the same sorts of prejudices, biases and opinions that could, when verbally expressed, be considered hate speech. If someone who is a racist commits a crime against someone because of the skin color of the victim, this may well be considered a hate crime. The Federal Bureau of Investigation (FBI, n.d) defines hate crimes as a criminal act that is wholly or partly motivated by bias. The important distinction here is that hate crimes are crimes that are distinguished by the motivation or reason which led the perpetrator to choose a certain type of victim. The “hate” is an added factor in what is already a crime. Although clearly an important question, I will not be discussing hate crimes further.

My focus will be on hate speech, so I must first establish more specifically what I take this term to describe. Also, we must discuss the sorts of damage it may cause.

“Speech” will here mean the expression of ideas, opinions, emotions and so forth, either verbally, in print, or in any kind of artistic form. I will take speech to include, for example, the person who stands in a town square with a sign expressing some sort of message. It will not include simply holding hateful thoughts of any kind. When discussing hate speech, what I am discussing is the expression of certain kinds of derogatory words and ideas, such as those mentioned at the start of this section. I will be taking for granted that intentions matter in the sense that we must be able to use words, phrases and ideas in this kind of discussion. So, it is not actually uttering, for example, the word “kike” that is at issue when discussing hate speech. Rather, I am interested in the cases where these kinds of words are expressed with the intention of communicating a message.
It is important to clarify that I am primarily interested in situations where the person or group expressing the hateful message or idea is doing so without authority or power over any or all recipients. Simply put, I am interested in hate speech expressed by civilians. I am taking for granted that we should not allow a police officer, doctor or any other profession to engage in hate speech while performing their respective duties. Because of their authority in professional situations this would likely cause serious harm to many people. Authority is, thus, not here considered only as legal authority. I will be including (for instance) the authority that the banker has over his/her bank or the authority that the nightclub-owner has over his/her establishment. These people would, if they were to put a racist sign in the door hoping to discourage a certain group from entering, be committing an offense that I am assuming should be illegal. I will discuss the role of authority further in part five, since it ties in with the arguments presented by Maitra/McGowan. One reason that Mill appears to use in favor of trying to separate actions from words is that we risk undermining the legitimacy of any laws if we forbid expressing resistance to these laws. In other words, if we enact laws against, for instance, racist discrimination, it weakens rather than strengthens the legitimacy of this law to forbid expressions that claim it to be a bad law.

It is of course important to consider the sorts of consequences and damage that can be caused by hate speech if we want to see what Mill might have made of them.

When someone addresses a person or group in a way that describes them as inferior or subhuman, this is of course going to be upsetting to those who are targeted. Shouting racist or sexist epithets can be threatening, insulting, deeply offensive or all of these at once. Telling someone that they are ugly or stupid may of course cause this person to be insulted or offended, so simply causing insult or offense cannot be claimed to be unique to hate speech. If an utterance is in fact a threat, that would be much more serious. Jeremy Waldron claims that hate speech often sends the message that certain groups are not welcome and that they should be prepared to suffer various kinds of harm in the future (2012, p. 2). In other words, hate speech can in this way be used to convey threats. Threats are clearly not acceptable in most legal systems, so if any particular incident of hate speech is actually equivalent to a threat, legal action would not be problematic. Whether or not a specific law would then be needed, apart from existing laws against threats, is another question.
If the group or individual targeted by hate speech is part of a particularly marginalized group it may be extra important to be wary of their status. If, for instance, a certain group has historically been persecuted and treated badly, it may be reasonable to think that at certain times their safety is much more easily jeopardized. If the risk of serious harm is greater in any given scenario, anyone interested in limiting destructive consequences would have reason to want to stop this from happening.

One can also imagine that different societies (as a whole) will sometimes be in such a state that chaos is easily brought about. If riots and widespread harm is just under the surface, it would of course be reasonable to claim that extra strict rules could be applied until things improve.

Even though many examples of hate speech involve minorities, there are many cases that do not. Sexist hate speech is an obvious example. The sexist slurs that women suffer and have suffered are no less troublesome than other kinds of hate speech mentioned. And here we are talking about fully half of the entire population of any society. If sexist hate speech is shown to be seriously harmful, we would surely be obligated to consider restrictions.

We might also ask what the difference is between aiming expressions directly at an individual or more generally at a group? One can imagine that personal attacks are more likely to cause direct harm, however one wants to define harm. To a Jew, being personally confronted by a swastika may cause a different reaction as opposed to reading an article containing anti-Semitic statements. This particular kind of problem is similar to Mill’s hypothetical example involving the corn dealer. Attacking a group by publishing or broadcasting messages of hate speech can of course cause discomfort or fear in the same way. It might also cause a general marginalization of the targeted group. If certain messages are allowed space in a society it may undermine the ability for certain groups to live peacefully. In extreme cases, such as 1930’s Germany or early 1990’s Rwanda, what we call hate speech served as a promotion of the most horrific events of recent history. The stability of any particular society will of course be one factor when considering the consequences of actions.

I shall now take a closer look at the arguments put forward by John Stuart Mill in On Liberty.
4. The arguments of On Liberty

For Mill, it was of great importance that everyone had the right to voice any idea or opinion, as long as this would not harm others. This means that even those convictions that were considered by most or everyone else to be immoral, untrue or unimportant should be protected. The fact that what is expressed by one person might be offensive or disturbing to another isn’t strong enough grounds for restrictions.

If the arguments of the present chapter are of any validity, there ought to exist the fullest liberty of professing and discussing, as a matter of ethical conviction, any doctrine, however immoral it may be considered (2002, p. 13)

Even if a certain opinion was supported by only one person, this person should not be prevented from voicing this opinion (2002, p. 14). Harm is, crucially, quite a narrow term for Mill. Threatening or physically attacking someone would of course be considered harmful, as would likely harm or damage to property. Being verbally unpleasant to someone would probably be permitted according to the harm-principle. If someone passing me on the street calls me ugly I would be upset, but based on the harm-principle I would not be legally protected. To be clear, the fact that I am upset or offended is not a strong enough reason to silence or punish the speaker.

This is not because there are not many cases when it is reasonable to be upset, but because the act of restricting such speech would be a violation of what Mill argued we should value most. This seems to entail that calling someone “kike” or “fag” is, although very rude, is not serious enough an offence to warrant legal punishment. It seems that Mill wants this sort of rudeness to be attacked “by opinion, not by law” (2002, p. 63). So, we can ridicule or counter-attack such expressions, but not legally forbid them. This is a little peculiar from Mill, because he also seems to be worried by the pressure put on individuals by public opinion. The third chapter of On Liberty is clearly expressing his dislike for what he calls the “despotism of custom” (2002, p. 58). People are too often pressurized to conform to
customs of behaviors, desires, thoughts etc, and this Mill sees as contrary to the “spirit of liberty” (2002, p. 58-59).

For Mill, attempting to suppress or forbid any idea or opinion was to assume to know the absolute truth.

To refuse a hearing to an opinion, because they are sure that it is false, is to assume that their certainty is the same as absolute certainty. All silencing of discussion is an assumption of infallibility (Mill, 2002, p.14-15)

One of Mill’s central ideas is that free expression is the only reliable way to promote truth. On his view, restricting speech is counterproductive if we want to allow the truth to emerge in any given situation. This is perhaps easy to misunderstand when relating it to the problem of hate speech. How could banning hate speech somehow be harmful to our search for truth? Mill does point out that when we prevent an idea or opinion from being expressed, we may be silencing the truth, but he also places value on the freedom to be completely wrong. In relation to the kinds of speech we are discussing here – such as racist, sexist or homophobic speech – the possibility of these containing truth seems unlikely. As a matter of principle it might be appealing to withhold any claims to objective or eternal truth, but we are quite right to consider, for example, racist speech to be both offensive and untrue. As are we, I would argue, in having extensive laws against discrimination. Can we hold these two ideas at the same time? Interestingly, Mill’s point seems to be that it’s quite necessary that we do so. Mill argued that we are only justified in taking a stance strongly if we have allowed our convictions to be confronted with all possible objections. Silencing even a wrongful opinion robs others of the opportunity of strengthening their reasons for holding the right idea (2002, p.14). If we are to commit to any principle which permits hateful and bigoted speech it does not seem appealing to do this because we expect this speech to contain some part of the truth. The racists and sexists of this world are unlikely to be those promoting truth. More interesting would be the claim that our own convictions, and subsequently any actions that follow, are somehow unwarranted unless we grant even unpleasant and untrue ideas to be freely debated.

Mill seems to be describing different ways in which good ideas suffer from lack of interaction or collision with bad ideas. First is that we cannot be justified in thinking and acting on our
convictions unless we allow them to be questioned (2002, p. 16). If, for instance, we enact a law against some form of behavior, it undermines the validity of this law to forbid it being called into question. If we decide that a particular action is the best way of achieving a particular goal, forbidding other options from being discussed seems to weaken rather than strengthen the validity of our decision. Any moral or legal principle which is not allowed to be questioned is thereby less justified, according to Mill. How could we trust any rule or law that was not allowed to be called into question? The very reason anything is warranted in being a ground for action is that it has been thoroughly criticized. Any doctrine that is not allowed to be questioned is thereby less justified.

What also happens with any idea that is never questioned is, according to Mill, that it loses power. It becomes dogma and those who hold it are less sure of why they do so. Here Mill makes an historical claim, explaining that this has happened to “almost all ethical doctrines and religious creeds” (2002, p. 32-33). This is hard to be sure about. Even though it is not easy to know how we would test this claim, it does not seem very persuasive to claim that we need, for example, racists in order to maintain our commitment to combating racism. Would it not be enough to study history and learn from the past? Also, since it seems likely that the burden of racism, however heavy one actually thinks it is, will probably not be shared evenly, we would be asking certain people to put up with racism in order to remind others just why racism is bad.

It’s important to see Mill’s reasoning on freedom of expression in the light of what he thinks is a good life for a human being. It is crucial that we develop and exercise our ability to evaluate and deliberate on important issues regarding how we should live our lives (Brink, 2001, p. 126). The freedom to deliberate is crucial if we are to fully develop our capacities.

One can perhaps summarize Mill’s reasoning by saying that he wants to permit almost unlimited expression and deliberation on any issue, since this will allow us to fully allow us to be autonomous in how we choose to live our lives. This will increase our well-being. How we choose to live our lives, what we decide to do and what we put into action, cannot be granted the same freedom as our discussions or deliberations.

No one pretends that actions should be as free as opinions (2002, p. 46)
Mill’s emphasis on the importance of deliberative freedom is important to keep in mind, as it can be argued that this can pave the way for restrictions on expressions that can be shown to limit the deliberative freedom of others.

So, what should we take Mill’s reasoning to suggest regarding hate speech? In general Mill seems to think that the right to express the most vulgar idea is more important than the right of others to not be subjected to it. It is not clear that hate speech clearly harms the basic rights of those targeted. The fact that we think of hate speech as a clear example of insulting and immoral expressions of the most unimpressive kind does not seem to warrant forbidding it according to Mill. Neither does the fact that hate speech appears to be full falsehood. Banning all false statements or claims may be tempting. I would personally think that a world without “psychics” and “homeopathic healers” would be a better world. But these are examples of practices that if we want to ban, we should do so because they are cheating their customers. If someone tells me that Elvis is alive, no harm will come from it. Restricting all untrue speech would contradict Mill’s reasoning both by assuming the position of objective truth-teller and by violating the right to promote any doctrine unless doing so seriously harms others.

There are of course ways in which we can justly restrict or punish false statements. If someone knowingly spreads false information with the intent of harming, it would seem reasonable to consider any reference to free speech as a defense to be unwarranted. If, however, ideas or information we are thought to be correct are spread, it is less clear how justified any ban would be.

Mill had some strong reasons why the question of truth is important, but for him the importance of truth is a general reason against regulating speech. Mill reasoned that the only way we can hope to be sure that we are getting anything right is by exposing our ideas to ruthless and unending challenges. The harm principle proposed by Mill would not consider the falsehood of an expression strong enough reason for restriction or punishment. Nor would the unpleasantness, vulgarity or immorality of an expression.

One way of attacking Mill’s arguments could be to claim that he makes too much of the difference between expressing an idea and actually enacting its message. We shall now look at the way in which Ishani Maitra and M.K McGowan have approached this question.
5. Saying and doing

It is quite clear that we do things with words. Sometimes we simply express something (“I am so happy!”), and other times words are used to achieve more substantial changes that affect ourselves and/or others. Often several things are done with a single expression. Talking about doing something nasty or illegal is of course not the same as doing something nasty or illegal. If I tell my friend that I feel strongly that I should steal a candy bar from the local shop, this is very different from actually stealing it. But, there are also ways in which particular expressions can themselves constitute actions of greater or lesser significance.

When I say “hello” to my neighbor in the morning I am performing the act of greeting this person. Actually, I am performing (at least) two acts: the act of making a particular sound and the act of greeting my neighbor. For the latter to be a greeting it seems to depend on my intention, on whether or not my neighbor can hear me, and on whether or not we understand this interaction in the same way. The greeting also tells my neighbor that I see him/her, perhaps that I wish to act friendly and that I am probably expecting a response.

As mentioned, Mill’s claim was that we ought to be allowed extensive freedoms of expression, and this would include many hateful and unpleasant utterances. Freedom of action should not be quite as free according to Mill, since actions can easier intrude on the freedom of others. But, if there actually is not much of a difference between doing things with or without words that would present Mill with a problem.

Ishani Maitra and Mary Kate McGowan have argued that, in some cases, hateful expressions cause damage in a way that means it would be wrong to even think of it as a question of free speech. In their paper “On Free Speech and the Scope of a Free Speech Principle” (2010) they argue that if we understand hate speech correctly, it will become clear that regulations are perfectly reasonable and compatible with a strong free speech principle. Their reasoning is that certain forms of speech do things that we would want to forbid if they were done in another way.

In the example with me and my neighbor it seems clear that when I say “hello” that constitutes a greeting. The verbal expression is the greeting. This depends on the context. If I
was alone when I said “hello” I would be performing a different act (partly at least). If we see someone kneeling and asking their partner if they will marry him/her, we are witnessing a proposal. Proposing or greeting my neighbor are maybe not the most striking or serious actions, but we can easily think of scenarios that are legally, politically and socially more consequential and serious.

Maitra and McGowan present some suiting examples to make it clear how we can do different things with words depending on the context in which they are uttered. When an employer (Donald Trump in their example) says “you are fired” to an employee, this utterance itself is a firing (Maitra/McGowan, 2010, p. 350). That particular sentence uttered in that particular context means that the employee is then fired. This will register with the people involved and then have the effect that the employee is in need of a new job and so on. The very same sentence would not do the same thing if uttered to a stranger on the street. Verbal contracts also work in a similar way. If two people verbally agree on the sale of a certain item or service they are obligated to stick to this agreement.

It is easy to think of scenarios where verbal expressions can be used to discriminate on (for example) racist grounds. If a security guard at a public library approaches a visitor and tells them that they may not visit the library because people with their particular skin color aren’t welcome, this seems a clear case of racist discrimination. The security guard should in this hypothetical example could be both fired and arrested. There is of course more that could be said about why these various utterances function the way they do, but the point here is to show that there often is not a clear or deep difference between saying and doing. A more distinct difference can be found in the function of expressions based on the context within which they are uttered.

In their paper they introduce the term “significantly obligation-enacting utterance”. If a certain utterance can be shown to enact or dissolve one or more significant obligations, the argument goes, this could be a reason in favor of restriction or punishment. When I greet my neighbor I am enacting an obligation for my neighbor to respond. If I ring his/her doorbell I am enacting an obligation to open the door. The employer who fires his/her employee is both enacting obligations (to not expect a paycheck, to leave the building and so forth) and dissolving obligations (the employee no longer has to show up for work or answer to the
employer). In the case of the verbal contract, both parties have enacted obligations to live up to their end of the agreement. If I am out walking my dog and someone cries out for help because they are drowning, I am of course obligated to help them, even if no laws apply. I am morally obligated to help.

We have now seen some examples of moral, social and legal obligations. For an utterance to significantly obligation-enacting it needs to affect obligations of a certain kind. If an utterance enacts an obligation that, if fulfilled, means I must commit a crime, this would be significant. The same would apply if an obligation is dissolved even though the law requires that the obligation be fulfilled.

Maitra and McGowan claim that hate speech can in fact affect social contexts in ways that are significantly obligation-enacting. They point to the fact that we have obligations to refrain from engaging in discrimination, for example. If an utterance somehow dissolves this obligation, and thereby leads to us committing an illegal act of discrimination, this utterance is significantly obligation enacting and open to legal restriction. In the examples mentioned previously I described how it seems plausible to consider certain acts as obligation-enacting. My neighbor has a kind of obligation to reply to my greeting, and the employee who gets fired both loses and acquires certain obligations as a result of the firing. No problems so far. Maitra and McGowan also use the example of a restaurant owner who puts up a sign saying “whites only”. Clearly, this is unacceptable, and their argument is that the restaurant owner has enacted obligations that are significant. These obligations are, as they put it, neither legal nor moral as the owner lacks the ability to enact such obligations. The obligations are, in this case, social. Whites are encouraged to participate in the illegal activity of discrimination.

It seems clear that the owner’s intention is to keep non-whites away from the restaurant. Even though the owner cannot control the laws on discrimination, it seems obvious that he/she has a kind of authority of the restaurant. This is how we think of restaurants and any other businesses that are open to the public. If I enter a clothing store and the owner tells me that I must not use a particular changing room when trying a shirt on, I will comply. There is, in general, a clear understanding that the owner sets the rules. The owner has a legal obligation to not engage in discrimination. We, as potential customers, are normally
expected to comply with the rules set by the owners. If these rules are in fact illegal, the owner will rightly be in trouble with the law. The owner of the restaurant is discriminating in a way that clearly should not be protected by a free speech principle.

As in the hypothetical case with the guard at the public library, we can clearly see the problem due to the fact that they are both acting from positions of authority. Even though we should all resist these sorts of discrimination, these examples are meant to show examples of scenarios where we are generally inclined to follow instructions.

Apart from arguing that utterances that are significantly obligation-enacting should be out of reach of any free speech principle, Maitra and McGowan suggest that racist hate speech can function in such a way that means it meets their criteria for such utterances (2010, p. 369). They point to the work of Charles Lawrence and his claim that segregation and racist discrimination is illegal (in the U.S.A) mainly because of the message it sends. Therefore, sending this message should also be illegal. As they put it, Lawrence claims that racist hate speech labels certain people as inferior and thereby legitimates discrimination against them (2010, p. 369). This seems problematic, since it labels the recommending of a particular practice as equally illegal to actual enacting of the practice. It claims that utterances in favor of racist discrimination are racist discrimination. Maitra/McGowan appear to claim that, if Lawrence is right, utterances that for instance recommend segregation in restaurants legitimize discrimination in a similar way to when the owner puts up a sign stating that discrimination is an active policy.

This seems to blur a line that Mill considered important. As we have seen, Mill’s claim is that any law must be open to criticism if it is to be considered justified. Furthermore, he claimed that restricting criticism weakens our understanding of why good rules are in fact good. The latter point is less strong than the former.

5.1 The importance of authority and context

How we respond to the people we interact with is often influenced by how we relate to each other in particular contexts. Upon entering a public library, I am inclined to pay close attention to anything said to me by the staff at the library. I am also likely to be respectful of
the particular rules or customs in place at any shop or restaurant I visit. If a waiter tells me that an empty table is reserved for another guest, I will respect this.

The argument put forward by Maitra and McGowan is meant to show that utterances can enact or dissolve obligations and that if this can lead to criminal activity that makes the utterance extra significant. The same goes if the obligations are regulated by law in general. The problem here is that this implies that an utterance could reasonably be regulated if it caused anyone who followed it to commit a crime.

The reason that the security guard or the restaurant owner cannot defend their actions by claiming they were exercising their right to free speech is because they were in positions of authority. The reason that the employer who says “you are fired” to an employee is enacting a significant obligation is that there are laws in place that regulate these interactions.

Should we think of utterances made by people without authority in a similar way? Imagine that you are walking to your car in the morning, and you come across someone that tells you that you should drive on the wrong side of the road that day. You are told to break the law and put lots of other people at risk. Could we therefore reasonably ban this sort of expression? An opponent of such a ban would likely concede that it could prevent much harm, even if it could be shown that the vast majority of people would know better than to obey this sort of request. But would such a ban not imply that we in fact are not capable of telling a good idea from a bad one? It seems to shift the responsibility in a way that both positions us as though we cannot be expected to resist a call to act in an illegal away, and that risks making many seemingly harmless utterances open to regulation. If those addressed can reasonably be expected to not comply, it seems wrong to ban this sort of expression. This changes if the circumstances dictate that the expectation is that you should in fact drive on the wrong side of the road when told to do so. It is not clear that hate speech tends to do this more than other forms of speech.

The harm-principle seems to be at odds with the arguments of Maitra/McGowan as regards what is acceptable to express. First, they argue that we are sometimes wrong to think of hate speech as mainly expressive. Secondly, the argument (originally made by Lawrence) that it is actually the message of such things as racist discrimination that is forbidden
we make anti-discrimination laws, is not compatible with Mill’s claim that we should be able to support and express agreement with even the worst possible doctrines.

5. Dignity
What should a good society look like? More to the point, do we want a society that contains visible messages contradicting the values that generally form the basis of a liberal democratic society? Jeremy Waldron has argued that if people are subjected to hate speech in public spaces this can undermine their sense of dignity (2012, p.16). Liberty is certainly something we value highly, but so is equality. If a society wants to be open and democratic, the equal rights of its citizens would seem an important ingredient. What people get from exposure to hateful messages is, Waldron argues, the opposite of a sense of dignity and equality. It even threatens their ability to live their lives unhindered. Waldron invites us to think of hate speech laws as a societal agreement to ensure the equal dignity and social standing of each citizen (2002, p.16). As Waldron points out, the banning of certain thoughts or opinions is not what he is suggesting. Rather, he wants us to consider whether the actual exposure to these messages is reasonable in a “well-ordered society” (2012, p. 16).

Waldron claims that the main worry should be the effects of lasting messages rather than, for instance, the shouting of obscenities or vulgar epithets.

   But to my mind, it is the enduring presence of the published word or the posted image that is particularly worrying in this connection; and this is where the debate about “hate speech” regulation should be focused (Waldron, 2012, p. 37-38).

Posting vulgar images or holding up a racist sign is certainly not very sophisticated, but Waldron seems to be interested in more considered expressions of hate speech as well. Of course, Waldron’s position is that a well-ordered society could certainly restrict the more vulgar street-level obscenities as well, but we might well ask if we should grant for different liberties to those who engage in hate speech in a more polished way? For instance, should we treat homophobic, racist or anti-Semitic expressions differently if they are shouted in the streets rather than preached in a church or spoken at a political debate? On the one hand, it
seems plausible that political debates or private religious ceremonies are entitled to criticize or promote many different ideas, and Mill would likely agree with this. On the other hand, do we really want to claim that the ordinary person shouting homophobic slurs in the street should be silenced, while (for instance) allowing old and religiously grounded homophobia to be expressed because it’s part of established traditions? This is not very appealing.

Waldron is emphasizing dignity rather than insult or offense. Harm to the dignity of citizens is what Waldron is highlighting, particularly if these citizens are part of a minority group. We should also remember that Waldron is focused on the visual presence of messages that would fall under the term hate speech. He is arguing that how things look, literally the way they appear to us, is at least part of how things are. And he wants us to consider whether hateful and prejudiced messages should be allowed to be a part of what the good society consists of (2012, p. 68). We might think of it like this; do we want hate speech to a part of the “furniture” of our society? If we do, it may be that it ends up affecting how we live and at least in part gain legitimacy.

How might Mill view the question of the dignity of each member of a society? We have already touched upon Mill’s general suspicion towards most forms of restrictions on speech, but it is also crucial to note that he is primarily interested in the free development of the individual. As Jonathan Riley points out, Mill certainly sees the value of obedience to social norms and the fundamental right of each person to live without fear of harm from others (1998, p. 77-78). But harm to the dignity of an individual would probably not meet the criteria for serious harm unless circumstances dictate that this would lead to other more serious harms. Overall, his reasoning indicates that dignity would be more harmed by restrictions than by expressions of hate speech. As far as messages that undermine the values of a particular society, this was almost described as necessary by Mill. Allowing opposition to all doctrines adds rather diminishes our right to actually defend the ones we enact. Let us look at how the fundamental motivations of Mill may still leave room for restrictions on some destructive speech.
6. Harm to deliberative freedoms

David O. Brink has pointed out that some of the basic ideas which Mill bases his value of liberty on could actually be used as arguments in favor of at least considering regulations of certain forms of speech. If we are to strive for maximum deliberative freedom, as Mill thinks we should, any expressions or speech that clearly restricts/limits this freedom could be restricted. As Brink points out, Mill would consider those liberties which are most needed when deciding what kind of person to be, to have the highest value (2001, p. 126-127). More importantly, Brink points out that Mill’s claim that certain liberties are crucially important is explained by how these liberties allow us to exercise our “deliberative capacities” (2001, p.138).

We must remember that Mill, although in principle opposed to constraints upon the discussing, expressing or defending of any doctrine, is interested in finding the best way to allow each individual to shape their own life as much as possible. This is partly achieved by developing our intellectual faculties and learning how to make informed decisions. To do this we must be free to consider and express all options and potential answers. If it could be shown that certain forms of hate speech clearly has the opposite effect on others, or that hate speech regulation advances rather than restricts (overall) deliberative freedoms, this would seem to undermine any claim that hate speech should be protected in the name of deliberative freedom, even on Mill’s own reasoning (Brink, 2001, p. 138). Mill would have seen the free exchange of ideas and perspectives as one way of providing us with the input used to guide our decisions. It is not hard to imagine that hate speech, in any given environment, can have the effect of preventing rather than promoting the maximum amount of free inquiry and discussion.

If Brink is correct in that hate speech can be empirically shown to effectively exclude certain groups from participation in “deliberative contexts”, this provides us with good reason to at least consider regulating certain forms of speech (2001, p. 140-141). Of course, it is still important to think of this in relation to other forms of speech that may cause similar problems. Would it seem reasonable to restrict any form of speech that diminishes the liberty of others? One potential problem here is that we may see similar effects in political or religious discussions. Perhaps we should place greater importance on context. No one is forced to attend a political debate or a religious ceremony.
As we have seen, Mill warned against both assuming absolute truth and undermining our considered judgments by forbidding attacks on them. The latter is closer to what we come up against when considering hate speech bans.

7. Objections to the harm-principle
If we accept Mill’s arguments in favor of extensive freedoms of expression and deliberation we seem to have good reason to allow extensive criticism of pretty much anything. Perhaps most in regards to any principle that we want to make into law, or whenever we want an opinion to guide actions. In other words, if we want to make (for example) discrimination illegal it would undermine the strength of any such legislation if we were to then consider it off-limits in terms of critique or opposition.

If one accepts that a principle based on harm similar to that of Mill is well suited as grounds for our approach to hate speech, what are the most obvious problems and weak points of this position? Perhaps there are equally or even more unsatisfying difficulties for this position?

One obvious problem is defining clearly what is a significant enough harm. From this follows that the principle of Mill seems to be open to the objection that it’s both too wide and too narrow. This problem is in a way similar to the problem faced by anyone proposing limits on speech based on content, because there is no clear way of drawing the line regarding harm. People seem to be harmed by all sorts of things, and exposure to ideas and opinions contrary to their own is certainly capable of causing harm. If we assume that physical harm and other kinds of harm can be experienced as equally strong, any attempt to draw a line at physical harm may seem arbitrary.

If one were to argue that Mill’s principle allows too much harm to be caused, mental or psychological harm seems a good place to start. One could argue that Mill should, if he is indeed interested in limiting harm, have promoted bans on many more forms of expression than he actually did. Being told that you are going to hell when you die due to your sexual orientation, or that your particular ethnic group or gender has some negative characteristic,
or that the political party you represent is ruining peoples’ lives, or that you shouldn’t be allowed full participation in society, these are all no doubt hurtful, provocative and saddening words to have to endure. It is not unreasonable to claim that the effect of these kinds of expressions negatively impact the lives of those targeted. The sorts of things that Mill values, such as liberty, autonomy and the development of each individuals’ intellectual capacities, may be better promoted by freeing people of as much harm as possible, no matter its cause. What should we make of the harm principle if we assume that the examples mentioned here above are as harmful some of the harms that Mill thinks justly open to punishment?

In a way, those who argue that Mill permits too much harm may have more use for the type of principal that he outlines. It could be argued, in line with Waldron and (in part) Maitra/McGowan, that we simply need to widen the reach of the principle, and thereby “get rid” of lots of harm, including the sort of harm to dignity and our sense of equal standing that Jeremy Waldron described. On this account, Mill’s principle would considered too tolerant, while still focusing on harm as the guiding principle.

But, one could also claim that the fact that many of the most barbed expressions that we encounter in political or religious contexts are seriously harmful, and that if we were actually committed to preventing harm we should restrict much, much more speech than what seems realistic. In the areas of politics and religion we can easily think of all the harm caused when different ideas and beliefs collide. This could plausibly be used as an argument against basing any free speech principle on harm. If serious harm is common in situations we wish to keep free from regulation, maybe we should focus on other things than harm? We seem to be able to find problems with the harm principle depending on what we think is harmful, and depending on what we think a person should reasonably be expected to endure. We should remember that Mill is claiming that priority should be given to liberty to explore different ways of life. Therefore, we could also question why the liberty of the individual should be our primary concern in this matter.

For Mill, the answer to this would be that if we are not granted the basic liberties he is defending, we are limiting our ability to make good decisions, both individually and collectively. The claim seems to be that if we accept that we need to allow even the most
despicable idea to be expressed, we will get both a better grasp of which ideas are good and be justified in our convictions.

It could be argued that Mill is presenting a model that, if applied in practice, would in reality expose many marginalized parts of society to attacks from stronger groups. We may in fact be obligated to consider this, but it’s very clear that Mill is trying to defend precisely those who are in a minority. As he puts it, not even a minority of one should suffer at the hands of the majority.

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 justified in silencing mankind (2002, p.14).

One may claim that Mill’s principle would in fact expose minorities to attacks which they cannot defend themselves from, but it would be wrong to say that Mill was arguing in favor of the majority and their right to suppress the minority.

8. Concluding thoughts
The arguments presented in On Liberty clearly give priority to liberty on the grounds that it promotes both progress in general and the autonomous development of the individual.

We have seen some examples of hate speech and how these may cause harm. If we are interested in preventing serious harm, as Mill was, we probably have to be aware of the fact that the state of the society in question is an important factor. In an ideal society, Mill seems to claim that we should allow even hate speech in most cases, as it is not clear that it violates basic rights of others. If and when it can be shown that instances of hate speech are equal to a threat or a direct incitement to violence, Mill would have been strongly in favor of state intervention. Falsehood, insults or seemingly immoral doctrines are, however, compatible with Mill’s principle.
The arguments presented by Ishani Maitra and Mary Kate McGowan present a clear description of how and why utterances are more than just expressions in many cases. I argued that they ignore the role of authority in a way that means we miss something important. Their claim, based partly on work by Charles Lawrence, that racist hate speech may actually be racist discrimination is problematic in that it appears to equate the approval of discrimination with the act of discrimination. It seems strange to accept this reasoning in other cases of expressions in favor of illegal activity. If I claim that punching my neighbor would be great idea and should be allowed, it is too much of a stretch to equate this in any way to the act of actually attacking my neighbor. If one wanted to say that racist hate speech, for example, is threatening, then we could act based on laws against threats.

Jeremy Waldron raised the interesting question of whether hate speech can reasonably be considered to have a place in any well-ordered society. We would of course be better off without racism, homophobia, sexism and many other similar problems. The Millian approach to this would likely be that the ability to freely engage in even these sorts of expressions are basic rights that, at least in many cases, are more important than the rights of others to avoid them. It is worth considering whether clear violations of dignity seriously limits the lives of others, if so it seems that even Mill’s liberal stance could permit regulation. It does not seem clear that harm to dignity is the sort of harm he thought serious.

The importance of deliberative freedom, the freedom for all to partake in the sorts of discussion and inquiry that Mill is placing such importance on, was an aspect that David O. Brink showed as a possible reason to consider broader regulations of hate speech. It would be hard to defend Mill’s harm principle in the face of any speech that is clearly hindering rather than enhancing deliberative freedoms.
Bibliography


