

ALAN HAWORTH

ON MILL, INFALLIBILITY, AND FREEDOM OF EXPRESSION

ABSTRACT. Philosophers have tended to dismiss John Stuart Mill's claim that 'all silencing of discussion is an assumption of infallibility'. I argue that Mill's 'infallibility claim' is indeed open to many objections, but that, contrary to the consensus, those objections fail to defeat the anti-authoritarian thesis which lies at its core. I then argue that Mill's consequentialist case for the liberty of thought and discussion is likewise capable of withstanding some familiar objections. My purpose is to suggest that Mill's anti-authoritarianism and his faith in thought and discussion, when taken seriously, supply the basis for a 'public interest' account of 'freedom of expression as the liberty of thought and discussion' which is faithful to Mill in spirit, if not to the precise letter. I outline such an account, which – as I say in conclusion – can serve as a valuable safeguard against *ad hoc*, reactive legislation, and the demands of a spurious communitarianism.

KEY WORDS: free speech, freedom of expression, thought and discussion, J. S. Mill: *On Liberty*

INTRODUCTION

I am sure that John Stuart Mill's first 'ground' for the protection of the liberty of thought and discussion will be familiar to everyone reading this. Mill states it thus.

First, the opinion which it is attempted to suppress by authority may possibly be true. Those who desire to suppress it, of course, deny its truth; but they are not infallible. They have no authority to decide the question for all mankind and exclude every other person from the means of judging. To refuse a hearing to an opinion because they are sure that it is false is to assume that *their* certainty is the same thing as *absolute* certainty. All silencing of discussion is an

assumption of infallibility. Its condemnation may be allowed to rest on this common argument, not the worse for being common.¹

I am also sure that claims to the effect that this or that instance of censorship is an overweening and unwarranted 'assumption of infallibility' are equally familiar to those who are not especially acquainted with philosophy or with Mill's work. Such pronouncements tend to be issued by journalists and others whenever freedom of expression has become a topical issue. Perhaps things have always been so. Certainly, Mill's own characterisation of the infallibility claim as 'common' indicates as much.

This being so, it is all the more ironic that Mill's 'infallibility claim' (as I shall call it) should have received such short shrift from philosophers themselves. It was, thus, quite early on – in 1873 – that James Fitzjames Stephen dismissed Mill's claim on the grounds that an opinion may be suppressed, not because it is false, but 'because it is true, or because it is doubtful whether it is true or false, and because it is not considered desirable that it is discussed'. As Fitzjames Stephen added, 'In these cases there is obviously no assumption of infallibility in suppressing it'.² More recently, similar objections have been raised by Acton, McCloskey, and Scanlon; and they have been raised by others (including myself) more recently still.³

In short, there is a consensus. But, as I now think, that consensus is too dismissive and in the earlier sections of this piece I should like to offer a few words in defence of the infallibility claim. Later, I shall go on to develop that defence into an account of freedom of expression which, if it is not Mill's, nevertheless reflects the core concerns of *On Liberty's* celebrated second chapter. But, to start with, let me first prepare the ground with a review of the main objections to which the infallibility claim is prone.

¹ John Stuart Mill [1859], *On Liberty* (London: Penguin, 1974), p. 77.

² James Fitzjames Stephen [1873] *Liberty, Equality, Fraternity*, in *Liberty, Equality, Fraternity, and Three Brief Essays* (Chicago & London: University of Chicago Press, 1991), p. 77.

³ See H.J. McCloskey, *John Stuart Mill, A Critical Study* (London: Macmillan, 1971), pp. 119ff; H.B. Acton (ed.), *John Stuart Mill, Utilitarianism, On Liberty, Considerations on Representative Government* (London: Everyman, 1972), Introduction, xx–xxi; Thomas Scanlon, 'A Theory of Freedom of Expression', *Philosophy & Public Affairs*, 1/2(1972) 206–224, p. 211; Alan Haworth, *Free Speech* (London & New York: Routledge, 1998), pp. 43–46; Catriona McKinnon, *Toleration: A Critical Introduction* (London & New York: Routledge, 2005), p. 122.