

Disagreement and Free Speech

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Abstract. This chapter examines two ways in which liberal thinkers have appealed to claims about disagreement in order to defend a principle of free speech. One argument, from Mill, says that free speech is a necessary condition for healthy disagreement, and that healthy disagreement is conducive to human flourishing. The other argument says that in a community of people who disagree about questions of value, free speech is a necessary condition of legitimate democratic government. We argue that both of these arguments, in their standard guises, are premised upon contestable views about the *realpolitik* of disagreement in a liberal society

1. Introduction

Liberals want a society in which everyone gets to decide for themselves how to live and which ideals to pursue. This freedom doesn't completely override the communal good. A certain level of stability, cooperation, and social solidarity needs to be maintained. But as long as these things are maintained, each of us gets to be the captain of our own vessel. If you think my way of life is wrong, or I think your ideals are benighted, so be it. We live and let live. We escape the mire of endless conflict by agreeing to disagree. And although it's sometimes tricky, settling on common policies as a group of individuals who disagree about many things, life goes on and the world keeps turning.

Free speech is a principle granting citizens the freedom to express their ideas and opinions as they see fit, and forbidding the suppression (especially by governments) of disapproved opinion. It is generally seen as one of the core principles of the liberal tradition, and it is deeply enmeshed with a foundational liberal ethos, as sketched above, of people agreeing to disagree. This relation is reflected in the

slogan that is often used to encapsulate a free speech principle: “I don’t agree with what you say, but I’ll defend to the death your right to say it.”¹ The archetypal, pro-free-speech liberal comes to the topic of disagreement with a deep respect, verging on reverence. There are any number of uncomfortable topics that you might bring up if you wanted to criticise a classical liberal view of free speech. For example, you might consider whether free speech makes it too easy for bigots to attack their targets. But if you’re looking to cast free speech in a flattering light, then disagreement seems like the ideal topic to focus on.

In this chapter we want to challenge this. We examine two arguments that liberals have used to defend a doctrine of free speech, based on some notion of disagreement’s ethical significance. One argument, from John Stuart Mill, says that free speech is a necessary condition for healthy disagreement, and that healthy disagreement is conducive to human flourishing. The other argument – developed by a number of contemporary authors – says that in a community of people who disagree about questions of value, free speech is a necessary condition of democratic government. In both cases we believe the argument is premised upon a contestable view about the *realpolitik* of disagreement in a liberal society. But we also briefly comment, more constructively, on how defenders of free speech might adjust their arguments in the face of this criticism. We discuss the Millian argument in §2, the democratic argument in §4, and the challenges to them in §3 and §5 respectively.

2. Free Speech, Healthy Disagreement, and Well-being

For some seminal figures in the liberal tradition, disagreement is something to be feared, insofar as it tends towards destructive conflict. The Hobbesian solution to this danger was to accord near-total authority to the state, and to pressure the citizenry towards some form of ideological conformity, at least in respect of their public proclamations. The strategy, roughly, was to maintain peace by insisting upon a united front under the sovereign. Locke proposed a more pluralistic way of managing disagreement, and one that still serves as a template for liberal politics today. We let people hold onto their own ethical convictions, and, rather than weakening the sovereign’s ability to maintain the peace, this actually results in a more resilient form of unity. After all, making people pretend to believe things they don’t really believe, runs a risk of reigniting the conflict that sovereign authority was meant to extinguish. Disagreement is dangerous in principle, but we can achieve an armistice, in the war of all against all, by letting people hold their own convictions, and by cultivating a tolerant ethos that breeds solidarity in the face of difference.

¹ The phrase is commonly attributed to Voltaire, but it was in fact coined by one of his biographers (Talleyre 1903) in an attempt to neatly encapsulate Voltaire’s liberal outlook.

Mill's 19th century brand of liberalism is premised upon a more optimistic view of disagreement's costs and benefits to society. Where Hobbes and Locke are both trying to defuse the destructive potential of disagreement, Mill embraces disagreement's generative potential. Mill takes this view largely because he sees individuality as an essential ingredient in human well-being. We cannot flourish if we are forced to follow someone else's lifestyle or worldview. At any rate, we cannot attain the higher-order pleasures which, in Mill's mature ethical theory, are of utmost value. So we must be free to live our own way. But this isn't just a matter of the state leaving us alone. As much as conformity is inimical to our well-being, we are still conformity-prone if left to our own devices. Thus we need an environment in which we encounter disagreement and diversity, in ideas and in lifestyles, so that we are inspired to resist conformity and live our own way.² In a pluralistic community, conflict about various issues is inevitable. But as Waldron suggests (1987: 417), in his approving explanation of this part of Mill's thought, spirited disagreement and conflict can ultimately be edifying for society.

Free speech plays a role in realizing this, as do freedom of association, and experiments in living. In fact free speech plays two complementary roles. The first is about creating positive intellectual friction. If an idea isn't "fully, frequently, and fearlessly discussed, it will be held as a dead dogma, and not a living truth" (1991: 40). Dogmatism is inimical to the kind of mental vitality that characterises higher-order pleasure, on Mill's account. Living well is fundamentally about having an active, independent, and self-directed way of being. So by protecting free speech, Mill thinks, we ensure that society will be too intellectually turbulent for dogmatism to set in, and thus we guard against a major threat to mental vitality. Free speech's second role is about opening up access to the wisdom of the masses. It allows for a diverse array of ideas to show up on society's intellectual agenda. This is especially valuable if we're hoping to collectively move towards an accurate and nuanced understanding of complex issues. Because on most complex issues, Mill believes, it turns out that opposing viewpoints each contain some facet of the overall truth (Ibid: 52). We therefore need to ensure that rival viewpoints get a fair share of airtime in public discourse, and free speech is the way to achieve that.

Unless opinions favourable to democracy and to aristocracy, to property and to equality, to cooperation and to competition, to luxury and to abstinence, to liberty and discipline, and all the other standing antagonisms of practical life, are expressed with equal freedom, and enforced and defended with equal talent and energy, there is no chance of both elements obtaining their due. (Ibid: 53-54)

In short, we want every side of every disagreement to be championed in public discourse, so that the insights contained in each perspective can be folded into

² For discussions of Mill's argument in *On Liberty* which interpret the argument broadly along these lines, see for example Gray (1996) and Brink (2013).

our collective inquiries about the issues of the day. And we especially want to see that unpopular views get a proper hearing.

On any of the great open questions just enumerated, if either of the two opinions has a better claim... to be encouraged and countenanced, it is the one which happens at the particular time and place to be in a minority. That is the opinion which, for the time being, represents the neglected interests, the side of human well-being which is in danger of obtaining less than its share. (Ibid: 54)

As this passage reminds us, human well-being is the ultimate justificatory reference point in all of Mill's arguments in *On Liberty*. The argument for free speech is often misinterpreted in this regard, as if Mill were saying that free speech is justified mainly because it increases society's total stock of true belief or intellectual understanding. But this isn't the best interpretation of his argument. When he presents a top-level overview of the argument in *On Liberty*, in the Introductory chapter, Mill affirms the utilitarian foundations of his position (Ibid: 15), and explains that the benefits of the liberties he is discussing – speech and thought, lifestyle, and association – is that they nurture individuality, which in turn conduces to well-being (Ibid: 16-19). This exegetical point is crucial for any evaluation of Mill's argument, because if the argument is evaluated under its epistemic interpretation, its pivotal premise seems highly implausible. Free speech in contemporary societies is aiding the spread of misinformation and conspiratorial falsehoods. If it is meant to be resulting in epistemic benefits, then it doesn't seem to be delivering, and cannot be defended on that line (Leiter 2016; Halliday and McCabe 2019).

However, Mill is promising us a different benefit. Modern societies may be seriously faltering, epistemically. But they are still a place where individuality can flourish. Free speech promotes individualistic, non-conformist ways of thinking, so the argument goes, by protecting the right of all people to broadcast their views and stories about the wider world, no matter how idiosyncratic they may be. For Mill, our best bet, in promoting individuality and resisting conformity, is to have a diverse but tolerant society where we are encouraged to express ourselves and engage with the views of others. Granted, there is room for debate about whether clashing opinions and ways of life are actually conducive to well-being in the way that his argument says. Maybe individuality can be achieved in less confrontational ways? And maybe conformity isn't as fatal to our well-being as Mill believes?³ Even so, the key premise in Mill's individuality-based argument for free speech – the claim that free speech helps us realise our individuality – seems more plausible than the (nowadays, fairly indefensible) claim that free speech is epistemically beneficial. Free speech helps to ensure that we live in an environment

³ Simpson (2021) criticises these parts of Mill's argument, in which Mill suggests that mental vitality cannot be achieved in the absence of conflict and diversity.

of clashing opinions and ways of life, and so if such disagreement really is a necessary ingredient for human well-being, then free speech is beneficial overall.

3. Does Free Speech Actually Support Healthy Disagreement?

Or so you might argue. The notable weakness in this line of argument, as we said in §1, is that it is premised on a contestable understanding of how disagreement and debate in a liberal society actually work. The argument suggests that when we protect free speech, every side of every disagreement will be defended in public discourse, in a way that allows all ideas – especially unpopular ones – to factor into our inquiries, and inspire individuals to pursue their own good in their own way. Groupthink and enforced conformity are inimical to human flourishing. Free speech is supposed to remedy these ills.

What we find in liberal societies, however, is a mode of public discourse in which the opinions of elites dominate, and where the Overton Window (i.e. the range of ideas taken seriously in public debate) is dictated by elite interests. Free speech advocates promise us a free marketplace of ideas, where we can inspect any intellectual or informational wares we are interested in, and ‘buy’ the best ones. Notice that this sort of marketplace would be a mixed blessing, since it would incentivise the production of intellectual wares that people *want*, and not necessarily ones that are true or well-evidenced (Goldman and Cox 1996). However, even if we bracket off that kind of worry, the ‘market’ for ideas that we actually get in a liberal society isn’t a free and well-regulated marketplace. It’s more like an oligopoly of ideas. A small cadre of dominant ‘idea merchants’ – ostensibly: elites in the media and political class, working in collaboration with corporate leaders and the global super-wealthy – leverage their drastically disproportionate power and influence, to ensure that public discourse is saturated by the kind of ideas they approve of.

Mill says that in big debates about practical life, all sides need to be expressed with equal freedom, and defended with equal talent and energy. A principle of free speech may secure an equal degree of *formal* freedom for the advocacy of all viewpoints. But in societies where power and resources are inequitably distributed, there will naturally be inequality in the degree of *substantive* freedom – the vigour, efficacy, and frequency – with which unpopular ideas are expressed. We are stating this idea at a high-level of abstraction, but the concrete implications are not hard to spell out. Oligarchs can buy media companies, marketing firms, think-tanks, university centres, lobbyists, and shills, and use these to ensure that their ideas predominate in public discourse.

The liberal may object that inequalities of power are not liberalism’s fault. Such inequalities can be found, after all, in aristocratic, theocratic, collectivist, and other illiberal political systems. But free speech is a dangerous doctrine, insofar

as it portrays the prevalence of elite viewpoints in a liberal society as if they were the popular winners in a fair contest. This doctrine invites us to think that if certain viewpoints disappear from public debate, it isn't because they are antagonistic to the cultural-political agenda that elites are working to advance, but mainly because they are inferior intellectual wares.

This sort of critique of the Millian argument shows up in various places in the free speech literature, including in work that narrowly criticises marketplace-of-ideas-style reasoning (e.g. Brietzke 1996), and in broader Marxist (or Marxism-inspired) attacks on free speech as a pillar of liberal ideology (e.g. Marcuse 1965). One prominent version of this critique is found in feminist work that defends Catharine MacKinnon's claim that pornography silences women. The classical liberal line on pornography is that even though it often expresses an objectionable view of sex, it is not the government's business to try to sanitise the marketplace of ideas, or suppress objectionable perspectives (Dworkin 1981). Against this, MacKinnon (e.g. 1989) and her followers (e.g. Langton 1993) argue that pornography doesn't just express objectionable ideas. Pornography normalises, and thus perpetuates, the whole heteropatriarchal order. Under that order, attempts to defend an emancipatory feminist vision of sex fall on deaf ears. They are either pushed towards marginality and irrelevance, or if they are heard, they are reinterpreted as variant expressions of the same misogynistic ideas that they are protesting. What a free speech principle purports to do is to secure the space for us to have healthy disagreement and ideological diversity. It purports to enable all views of sex to get a public hearing, including those represented in pornography. What it does in practice is to allow already-predominant views about sex to saturate public discourse, in a way that pre-emptively inhibits the efficacy of attempts to espouse rival viewpoints. A politics of free speech claims to be on the side of the ideological underdog, while simultaneously bolstering a communicative system that cements and reifies the established ideological pecking order.

Can we defend a version of Mill's argument in the face of this critique? Plausibly, the critique overemphasises the dangers of ideological conformity under a free speech regime, while downplaying the ways in which free speech guards against other mechanisms of ideological conformity. Free speech is a good principle if you want to combat government-mandated ideological conformity. It's less useful if you want to combat conformity engendered by powerful private actors, because it limits the government's power to rein in those actors. The utility of the principle therefore depends upon the balance of power that exists in a particular society, at a particular time, between private actors and government institutions. Even if free speech doesn't always foster healthy disagreement under a corporate dictatorship, the Millian analysis may still be an apt one in societies where the government's domination of private interests is a present-day problem, rather than an historical memory.

Another line of response would be to challenge the premise about the prevalence of elite viewpoints. Some contemporary forms of conspiracy theory and science

denialism appear to be thriving without being backed by corporate or political elites. Free speech might not be ensuring that every side of every debate gets a public hearing, as Mill envisaged. But it doesn't necessarily follow that we're living in an oligopoly of ideas. Epistemic systems in contemporary liberal societies are arguably more *anarchic* than oligarchic. (The super-wealthy aren't in charge, because no-one is in charge.) The defender of Mill might want to argue that our present-day anarchy, in the realm of epistemic governance, is still the least worst option, long-term, for human well-being.

A third line of response would be to insist that the potential benefits of free speech are real, but that they are jeopardised in most liberal societies by drastic inequalities in power and material resources. In order to mount a full defence of free speech, in the wake of this claim, one would then need to present a credible account of how the priority of classical civil liberties can be reconciled, in principle and in practice, with a robust program of material redistribution. Such accounts aren't hard to find – Rawls's (1971) theory of justice is, at its core, an account of how civil liberties can be reconciled with egalitarian distributive principles – but their credibility is open to debate.

4. Free Speech, Democratic Participation, and Legitimacy

How else might a liberal use a claim about the significance of disagreement to argue for free speech? Another argument is to say that in a society where people disagree on a range of value-related issues, the state is obliged to ensure that everyone is able to express their views and criticise the government. This idea might be cashed-out with reference to a Rawlsian notion of reasonable pluralism. According to this notion, fundamental questions about what is good and just are sufficiently complex that rational, unbiased, and conscientious people are bound to sometimes arrive at conflicting views on them. Because of this, even a government with the utmost integrity will sometimes enact policies that some reasonable citizens oppose. People having to live under policies that they oppose is an inevitability, given the facts of reasonable pluralism. And we can't expect people to simply change their minds and agree with state policy, whenever they find themselves in this situation.

Against this political backdrop, people must have a robust right to express their opinions, and to criticise government action, on pain of the government jeopardising or relinquishing its claim to legitimate authority.⁴ Call this the *Weak Democratic Legitimation Demand* (Weak DLD). Notice the underlying conception of democratic society: that it is a bit like a community in which policies are decided at town hall meetings, which all residents are welcome to attend. In analogical

⁴ A number of free speech theorists, including Scanlon (1972), Dworkin (1996), Heinze (2016), and Weinstein (2017), argue along these lines.

terms, the Weak DLD says that each person must get a seat at the town hall meeting, and a chance to express their views on any policies to the rest of the community.⁵ This is partly about keeping the decision-makers accountable – ensuring that dissent can be voiced about any policy that people oppose – but it is also about affirming the communal belonging of people whose viewpoints diverge from the mainstream. The Weak DLD is minimal, in that it merely promises a right to have one’s say. But this has non-trivial implications, all the same. For instance, it means that we will sometimes have to grant a hearing to opinions we find abhorrent, or which make our society a more hostile place for some of its members.

You might worry, however, that the Weak DLD is *too* weak. A right for everyone to have their say is a fine thing. But if we think the legitimacy of a democracy depends upon its inclusivity, then why would we be content with merely formal, *de jure* inclusion? A healthy democratic society isn’t just a matter of people having a right to speak their mind. It involves a representative cross-section of citizens effectively exercising that right. Analogically: it isn’t enough for people to be welcome at the town hall meeting; we need a representative cross-section of the community to attend and speak up. Shouldn’t a society that is actively engaged with and responsive to the viewpoints of all of its citizens, be seen as more inclusive – and therefore, more democratically legitimate – than one that is *de jure* inclusive but *de facto* elitist? The Weak DLD doesn’t require that any proactive measures be taken to achieve *de facto* inclusion. And so, especially when there are obstacles that discourage particular groups from participating in public discussion, it seems like democratic legitimacy can still be jeopardised, even while the Weak DLD is satisfied.

In light of this concern, and taking our cues from deliberative theories of democracy (e.g. Gutmann and Thompson 2004), we have a *prima facie* good argument for supplementing the Weak DLD with a more demanding ideal, e.g. one which requires that “individuals engage actively with one another within and through a network of civil associations, groups, and organisations which mobilise political action, provide political information, and communicate collective concerns to decision makers” (Parvin 2018: 33). We can call this the Strong DLD. At the limit, the Strong DLD might even extend beyond the demand that a representative spectrum of views should be publically expressed. It may require, in addition, that democratic decision-making processes are demonstrably informed by, and in their justificatory dimensions, responsive to, the diversity of perspectives that are expressed in this fashion.

The Millian argument for free speech is premised on the claim that healthy disagreement conduces to human well-being. By contrast, a democratic argument for

⁵ This kind of town hall analogy is part of Meiklejohn’s seminal version of the democratic argument for free speech (Meiklejohn 1948: 22-27)

free speech is premised on a claim about what legitimate government requires, in a society of people who disagree with each other. People must be able to express their differing views, not necessarily so that their disagreements will be resolved, but so that better compromises can be found, where possible, and so that people can at least be validated as part of the community, in cases where their ideals or lifestyles aren't reflected in the policies enacted by the group. Much recent democratic theory adverts to ideals related to what we are describing – e.g. ideals of relational equality (e.g. Kolodny 2014), or civic friendship (e.g. Leland and van Wietmarschen 2017) – in arguing that democracy is the most (or only) justifiable form of government. The points we are making here are not primarily about the justifiability of democracy, but about what discursive conditions are needed to secure a properly democratic form of government. The Weak DLD entails a formal right to free speech. The Strong DLD calls for further measures to facilitate the effective exercise of that right, so as to achieve healthy democratic dialogue.

5. Free Speech's Impact on Democratic Discourse

These claims about the relationship between democracy and free speech again seem to rest on a sanguine view about the *realpolitik* of disagreement. In this section, we want to highlight one difficulty that arises in satisfying the weaker and stronger demands of democratic legitimacy, given the messy realities in how people's rights to free speech are exercised in a liberal society.

The right to free speech gives everyone a seat at the town hall meeting, thus satisfying the Weak DLD. But it also protects exclusionary and uncivil forms of speech, which make it harder for a society to satisfy the Strong DLD.

Consider racist hate speech, for example. Following the influential work of critical race theorists like Matsuda (1988) and Lawrence (1990), many authors have claimed that racial prejudice, manifested in hate speech, results in targets withdrawing from public discourse. This withdrawal might occur even in contexts where overt racial prejudice is relatively uncommon. Waldron (2012) suggests that the point of hate speech is to implant in the target's mind an inflated sense of just how disdained they are across society. Hate speech can thus rob its targets of assurance about their equal status, independently of any institutional or material inequalities across racial lines. Subjection to hate speech might also result in internalised prejudice among targeted people. As David Williams argues (2018), exposure to discrimination and stigmatised cultural images is correlated not only with lower self-esteem, but also expectations, anxieties, and reactions that adversely affect people's psychological well-being and their motivations for socio-economic attainment. The motivational psychology of those who withdraw from public discourse in the face of hate speech may take different forms. Some people might feel ashamed. Others might lose confidence in their opinions. The result will be similar whatever the motives. Viewpoints that a healthy democracy ought

to be engaging with will be pushed out of the public sphere. And in addition to such discursive withdrawal, hate speech may also make it harder to satisfy the Strong DLD, by perpetuating biases that cause marginalised views to be systematically ignored or misunderstood (Greene and Simpson 2017; Reid 2020).

In sum, liberals who want to ensure discursive inclusion, for the sake of democratic legitimacy, have reason to be worried about any principle that protects speech whose *de facto* function is discursive exclusion. Broadly similar worries apply to other extreme forms of uncivil speech. Today's political debates seem highly polarised. And in addition to the mere fact of polarisation, many participants in contemporary political debates argue in bad faith – superficially engaging with rival views, only to deride or dismiss their proponents. The moves that typify this dysfunctional discourse (e.g. straw-manning, name-calling, what-about-ism, snark, and deflection) tend to undermine everyone's ability to seriously reflect upon different political viewpoints. Even some forms of debate that seem legitimate in principle, e.g. questioning the motives behind our interlocutors' ideas, can derail healthy debate, by lapsing into derogatory or conspiratorial speculations, which breed anger, mistrust and alienation between would-be interlocutors. Instead of it being a dialogue between reasonable people trying to talk through common concerns, our metaphorical town hall meeting all too easily descends into a slanging match between adversaries, convinced that they have nothing to learn from each other.

A free speech principle presumptively protects exclusionary and uncivil discourse. The Weak DLD tells us that we *must* protect these things, as a condition of democratic legitimacy. But our ultimate reason for endorsing that demand is because we see that democracy's value depends upon it being responsive to the actual views that people in society hold. This suggests that a right to free speech isn't enough for democratic legitimacy. We also need healthy democratic dialogue between proponents of rival viewpoints. And so we face a tension. We need to protect exclusionary and uncivil expression, as a condition of democratic legitimacy (per the Weak DLD). But the things we are protecting jeopardise healthy democratic dialogue, and thus simultaneously undermine democratic legitimacy (per the Strong DLD). Free speech isn't a royal road to democratic legitimacy, then. It's more like a way of exchanging one set of delegitimizing factors for a different set of delegitimizing factors.

Can we revive a democratic legitimacy-based argument for free speech, in the face of this challenge? One option would be to hold that, when deciding between whether to censor exclusionary and uncivil speech, or to have a free speech policy that tolerates it, the latter is the lesser of two evils. Although democratic legitimacy is threatened both by censorship *and* by the permission of exclusionary speech, censorship is the greater threat. There is no guarantee that restrictions on exclusionary speech will lead to the kind of healthy discourse that would satisfy the Strong DLD. Moreover, such restrictions may create chilling effects, or clear

the way for other, less well-intentioned, restrictions on speech (Schauer 1985, Brown and Sinclair 2020).

However, even if these are reasonable worries, it seems totally unsatisfactory to conclude the debate at this juncture. Those liberals who deem censorship to be too risky a way of dealing with exclusionary speech, still need to think carefully about what alternative, non-censorious measures we can take to combat discursive exclusion. If democratic inclusion is our ideal, we cannot be blasé about expression which, by our own lights, subverts that ideal.

As an addendum to the above, then, one might argue that in order to maintain a sufficient degree of all-things-considered democratic legitimacy, protections for exclusionary speech need to be accompanied by alternative (non-censorious) policies and practices, aimed at countering exclusionary speech's antidemocratic effects. In a society where material inequalities are lessened, and where ideological difference is conditioned by deep, mutual respect, hate speech will have less uptake, and will not have the same kind of negative impact on political participation that it has in our society.⁶ The same goes for our response to uncivil speech. The level of incivility in public discourse would need to be fairly extreme in order for it to constitute a serious barrier of democratic legitimacy. Unless we have reached that extreme point, the censorship of uncivil expression would be pointless, since it would in itself jeopardise the very thing (democratic legitimacy) that it is intended to promote. Instead, we can enact non-censorious policies that promote civility.

Granted, you might worry that, in *de facto* terms, even non-censorious policies aimed at promoting civility could chill healthy democratic discourse, e.g. by discouraging expressions of justified anger, and other reasonable but highly charged forms of expression. After all, to accuse your opponents of incivility is sometimes just a way of dismissing their views, and this does little to encourage healthy democratic dialogue.⁷

But this worry only arises given an uncharitable conception of what pro-civility measures involve. Those measures needn't discourage genuine conflict, or anger. For example, suppose we have government-sponsored policy debates, on controversial topics, at which representatives of different views are invited to explain their competing policy ideas, and the values underlying them. In a well-run democratic system, the aim of such events isn't to create a false impression of harmony and consensus. The point is to get proponents of rival views to actually engage with each other's perspectives – instead of dismissing each other out of hand, or reverting to *ad hominem* attacks – so that policy-makers can be guided by a richer

⁶ In recent work on hate speech, Corey Brettschneider (2012), Eric Heinze (2016), and Matthew Kramer (2021) have all offered arguments of this sort.

⁷ For discussion of these concerns see e.g. Bejan (2017) and Olberding (2019).

understanding of why different parts of the community favour different positions. Fostering civility doesn't have to mean using civility as a pretext for quashing full-blooded disagreement.

6. Conclusion

Our aim here isn't to suggest that disagreement-based arguments for free speech must be dismissed altogether. Our aim is to show how those arguments, in their standard guises, rely on overly optimistic views about how disagreement plays out in the liberal public sphere. The liberal promises us that, in the normal run of cases, every party on every side of a disagreement will get to have a say in political debate. That is meant to be one of liberalism's key selling points. A right to free speech is surely much better – for human well-being, and for political legitimacy – than an authoritarian order in which specific viewpoints are suppressed by the state.

All the same, viewpoints can be and are suppressed in ways that don't involve the exercise of state authority, e.g. through vast inequalities of discursive power. If we are sincere in wanting every viewpoint to receive a full hearing in public discourse, then we cannot respond to other (non-state-backed) forms of suppression with an indifferent shrug of the shoulders.⁸ The challenge is to figure out how to allow disagreements to be played out on their own terms, in the public sphere, while simultaneously working proactively to mitigate the vast inequalities of power and influence that commonly lead to *de facto* exclusion, or to the effective suppression of certain viewpoints.

It sounds noble to say “I will defend to the death your right to disagree with me”. Given how many people want to silence their opponents, we shouldn't be quick to deride that. But a more noble ethos – and a more full-bloodedly liberal ethos – would want to transform Mill's hopes for public discourse into reality. That is, it would want to see every side of every disagreement being defended *with equal talent and energy*. And with respect to the realisation of that vision, there is a danger of us becoming myopic when we champion a high-minded reverence for a formal right to free speech. Some of the speech that ends up shielding behind that right, is speech whose practical effect is to deplete the talent and energy with which marginal views are defended.⁹

⁸ Our way of putting the point suggests that free speech's advocates are sometimes wont to “shrug their shoulders” to this, but of course there are some exceptions, including Mill himself. Blackford (2018) is one more recent example of a spirited defence of free speech which foregrounds concerns about non-state-backed suppression of ideas.

⁹ Thanks to Dan Halliday and to the editors of this volume for feedback on a draft version of this paper.

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