

Mill's Libertarianism

1 Truth and free speech

“When [Oliver Wendell] Holmes said that ‘the best test of truth is the power of the thought to get itself accepted in the competition of the market,’ he cannot simply have meant an idealized market, since he was arguing for not regulating certain kinds of speech in the actual social context of political and commercial activity The assumption of this approach is that, at least with regard to truths relevant to politics ... the literal commercial market approximates to an idealized market. The trouble is that there is very little reason to accept this assumption. ... The literal market generates a high level of noise. Everyone knows that in modern conditions of communication messages compete for attention and cancel each other out, and that they are picked out for reasons that need have nothing to do with their truth.” ... “Critics of the marketplace approach to First Amendment doctrine have pointed out that in institutions that are expressly dedicated to finding out the truth, such as universities, research institutes, and courts of law, speech is not at all unregulated. People cannot come in from outside, speak when they feel like it, make endless, irrelevant, or insulting interventions, and so on; they cannot invoke a right to do so, and no-one thinks that things would go better in the direction of truth if they could.”¹

2 Offense

Imagine the worst bus ride of your life.²

“there are many acts which, being directly injurious only to the agents themselves, ought not to be legally interdicted, but which, if done publicly, are a

¹ Bernard Williams, *Truth and Truthfulness* (Princeton University Press, 2002) pp. 215, 217.

² Joel Feinberg, *Offense to others*, vol 2 of *The moral limits of the criminal law* (Oxford University Press, 1988), pp. 10–14.

violation of good manners, and coming thus within the category of offences against others, may rightfully be prohibited. Of this kind are offences against decency; on which it is unnecessary to dwell, the rather as they are only connected indirectly with our subject, the objection to publicity being equally strong in the case of many actions not in themselves condemnable, nor supposed to be so.”³

3 Harm to self (paternalism)

Restrictions that we would want if we were rational. E.g., those that save us from our own irrationality, seat belt requirements, anti-smoking laws, etc..⁴

4 Wrongs (moralism)

“We do not call anything wrong, unless we mean to imply that a person ought to be punished in some way or other for doing it; if not by law, by the opinion of his fellow creatures; if not by opinion, by the reproaches of his own conscience.”⁵

³ Mill, *On Liberty*, ch. 5, par. 4.

⁴ Gerald Dworkin, “Paternalism”, in Feinberg and Coleman, editors, *Philosophy of Law*. 8th edition (Thomson Wordsworth, 2008), pp. 281–91.

⁵ John Stuart Mill, *Utilitarianism*, ch. 5, par. 14. For the general point, see Gerald Dworkin “Devlin was right: Law and the enforcement of morality.” *William & Mary Law Review*, (1999) 40:927–946.