

Chapter 6

Conservatism and the "Open Society"

A little over 100 years ago John Stuart Mill wrote in his essay *On Liberty* that ". . . 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."¹ The sentence is not *obiter*: Chapter Two of the book in question is devoted to arguments, putatively philosophical in character, which if they were sound would warrant precisely such a conclusion,² and we have therefore every reason to assume that Mill meant by the sentence just what it says. The topic of Chapter Two is the entire "communications" process in any civilized society ("advanced" society, as Mill puts it)³—and the question he raises about it is whether there should be limitations on that process.⁴ He treats that problem as the central problem of all civilized societies—the one to which all other problems are subordinate because of

¹ Cf. J. S. Mill, *On Liberty and Considerations on Representative Government*, ed. by R. B. McCallum (Oxford: Basil Blackwell, 1946), p. 14 fn.

² That is approximately how Mill himself puts it. The words preceding our part-sentence are, "If the arguments of the present chapter are of any validity, . . ." The chapter is entitled "Of the Liberty of Thought and Discussion."

³ Cf. *ibid.*, p. 9, ". . . we may leave out of consideration those backward states of society in which the race itself may be considered as in its nonage." The distinction seems to turn variously (*ibid.*) on whether "mankind have become capable of being improved by free and equal discussion" and whether they "have attained the capacity of being guided to their own improvement by conviction or persuasion." On the latter point he adds, perhaps a little optimistically, ". . . a period long since reached in all nations with whom we need here concern ourselves." But cf. *ibid.*, p. 59, where he refers, astonishingly, to "the present low state of the human mind," that being the point he needs to establish the thesis there in question.

⁴ That is, the problem as to who, in the fashionable jargon of the "communications" literature, should be permitted "to say what, and to whom?"

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the consequences, good or ill, that a society must bring upon itself as it adopts this or that solution to it. And he has supreme confidence in the rightness of the solution he has to offer—of which (presumably to avoid all possible misunderstanding) he provides several alternative statements, each of which makes his intention abundantly clear, namely, that society must be so organized as to make that solution its supreme law. "Fullest," that is, absolute freedom of thought and speech, he asserts by clear implication⁵ in the entire argument of the chapter, is not to be one of

⁵ Those who regard "absolute" as too strong a term to be deemed a synonym of "fullest" may wish to be reminded of the following passage (*ibid.*, p. 11), ". . . the appropriate region of human liberty . . . comprises . . . liberty of conscience in the most comprehensive sense: liberty of thought and feeling; absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral, or theological . . . [And the] liberty of expressing and publishing opinions . . . is practically inseparable from [liberty of thought] . . ." (italics added). And cf. *ibid.*, "No society . . . is completely free in which [these liberties] . . . do not exist absolute and unqualified" (italics added). See, in this connection, the remarkable recent line of dissenting opinions by Mr. Justice Black in such cases as *Barenblatt vs U. S.* (360 U. S. 109, 1959); *Konigsberg vs State Board of California* (6 L. ed. 2, p. 105, 1961); *In re Anastaphi* (6 L. ed. 2, p. 135, 1961); *Sweezy vs New Hampshire* (354 U. S. 234, 1957); *Braden vs U. S.* (5 L. ed. 2, p. 653, 1960). The issue in these cases has been whether entities like the House Committee on Un-American Activities and the State Bar Association committees on the character and fitness of applicants, are or are not estopped by the First Amendment from asking people to answer questions regarding their present and past affiliations with possible subversive organizations. All the cases in question, be it noted, were decided five justices to four, and have gone *against* Mr. Justice Black. But be it noted also that we do not yet know which team either Mr. Justice White or Mr. Justice Goldberg will join, which is to say that the Black position may be about to become the prevailing position of the United States Supreme Court.

In the opinions mentioned, Mr. Justice Black flatly states that the freedoms of speech and press and assembly and conscience of the First Amendment are "absolute," and were intended to be that by the "Founders." (One wonders, indeed, whether Black has not taken the word "absolute" from Mill.) I should be the last to accuse Mr. Justice Black of deliberately misrepresenting the position of the Founders, but as I shall show in a book I am now writing: (a) most of the Framers of the Constitution *opposed* having a bill of rights at all; (b) the notion that there was widespread popular demand for a bill of rights at the time the Bill of Rights was adopted is pure myth, and (c) the "father" of the Bill of Rights, James Madison, was at most lukewarm toward it. Mr. Justice Black rests his argument mainly on the "plain language" of the First Amendment, which does indeed differ from the remaining amendments by the fact that it is stated in "absolute" terms. But "plain language" here is a very tricky business: "Freedom of speech and press" may have meant to those who supported ratification of the First merely freedom within the limits set by the existing seditious libel laws, which is why those same gentlemen felt "free" to enact the Alien and Sedition Acts. And, in any case, we must remember that the First Amendment left the *states* free to invade the freedoms in question as they saw fit. Nothing can be more certain than that the idea of an absolute freedom of speech was wholly novel to that generation, and that Mill's book, written many decades later, was the *first* theoretical defense

several competing goods society is to foster, that is, one that on occasion might reasonably be sacrificed, in part at least, to the preservation of other goods. For Mill plainly refuses to recognize any competing good in the name of which it can be limited. The silencing of dissenters from a received doctrine, from an *accepted* idea—this is an alternative statement—is never justified.⁶ It can only do unwarranted hurt, alike to the person silenced, to the individual or group that silences, to the doctrine or idea in defense of which the silencing is done, and to the society in the name of which the silencers silence.⁷ The quotation I started with is merely the strongest, the most intransigent, of several formulations of a general prescription Mill makes for advanced societies; and we shall do well to savor it, phrase-by-phrase, before proceeding:

"There ought to exist [ought, so that the prescription is put forward on ethical grounds] the fullest liberty [a liberty that no one—individual, group, government, even society as a whole—is entitled to interfere with] of professing and discussing [of publicly propagating] as a matter of ethical conviction any doctrine [and the word "doctrine" is not intended to exclude, since he uses the term synonymously with "idea" and "opinion"; usually, indeed, he prefers the word "opinion"] however immoral it may be considered" [where "immoral" also is used to cover what Mill considers the extreme case—where people are least likely to refrain from silencing]. He would be equally willing, as the context shows, to write "however *wrong*," that is, "however incorrect," "however dangerous," "however foolish," or even "however harmful." And of course "it may be considered" is recognizably shorthand for "it may be considered by anyone whatsoever."

of such an idea. See on this point Leonard W. Levy, *Legacy of Suppression* (Cambridge: Harvard University Press, 1960)—a book by a scholar who would like to believe that the Founders believed in free speech in the Black sense, but confesses that the evidence is not there.

⁶ Cf., *ibid.*, p. 14, ". . . I deny the right of the people to exercise such coercion, either by themselves or their government. The power itself is illegitimate. The best government has no more title to it than the worst." The statement could hardly be more sweeping.

⁷ Not to speak of "mankind." Cf., *ibid.*, pp. 14-15: ". . . the peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; . . . those who dissent from the opinion, still more than those who hold it."

It is fashionable these days, in part because of a fairly recent book by the scientist-philosopher K. R. Popper,⁸ to call the kind of society Mill had in mind an "open society"—by at least implied contrast with a "closed" society, that is an "hermetically sealed" society, in which Mill's grand principle is by definition not observed. And we are told, variously, by writers whom we may call (because they so call themselves) Liberals (Mr. Justice Black especially, and most eloquently), that we have an open society and ought to protect it against the machinations of those who would like to close it, or that we have a closed society and ought (heeding Mill's arguments) to turn it forthwith into an open society, or that democracy, freedom, progress—any or all of them—must stand or fall, as we maintain or inaugurate or return to an open society. Or, that all who are opposed to the idea of the open society are authoritarians, enemies of human freedom, or totalitarians.

We are told all this, however, at least in its application to civilized societies in general (as opposed to the United States in particular),⁹ on grounds that have not varied perceptibly since Mill set them down in the *Essay*. Thus we are still dealing with Mill's issue; and we shall think more clearly about it, in my opinion, if we keep it stated in Mill's terms, as much as possible (no subsequent pleader for the open society has possessed either Mill's clarity or his vigor of mind). Ought there to exist in organized society—in the United States e.g.—that "fullest liberty of professing and discussing" which Mill pleads for? Are there theoretical grounds on which such liberty of professing and discussing can be defended? Is openness of the kind Mill's society would possess one of the characteristics of the *good* society?

Before attempting to deal with these questions, let me pause

⁸ K. R. Popper, *The Open Society and Its Enemies* (London: Routledge & Kegan Paul, 1945), 2 vols. The term "open society" is of course much older (Bergson uses a distinction between "open" and "closed" society in *Les deux sources de la morale et de la religion*, though for a quite different purpose). What Popper has done is to wed the term "open society" to Mill's ideas, and the term "closed society" to those of his *bêtes noires*, Plato especially.

⁹ The exception is necessary, because the American arguments are often arguments concerning the meaning of the Constitution of the United States, the First Amendment especially.

to clarify certain aspects of the open society theory in the form in which Mill proposes it:

First, Mill must not be understood to be saying, over-all, something *more* extravagant than he is actually saying. He is fully aware of the necessity for laws against libel and slander, and does not deem such laws inconsistent with his doctrine.¹⁰ He is aware, also, of organized society's need to protect its younger members against certain forms of expression;¹¹ which is to say that that fullest liberty of professing and discussing that Mill would commit us to is for adults only, since he would not provide laws prohibiting, e.g., the circulation of obscene literature amongst school children, or, e.g., utterance calculated to undermine the morals of a minor (meaning by "morals" whatever the society chooses to define as morals). Nor does the doctrine outlaw sanctions against incitement to crime¹²—provided, one must hasten to add, nothing political is involved (Mill would permit punishment for incitement to, e.g., tyrannicide, only if it could be shown to have resulted in an overt act).¹³ And, finally—a topic about which there is, as it seems to this writer, much confusion amongst commentators on Mill—he would permit the police to disperse a mob where a riot is clearly imminent, even if its shoutings did bear upon some political, social, or economic issue; but not, he makes abundantly clear, on grounds of any official exception to the doctrinal tendency of the shoutings. (The individuals concerned would be free to resume their agitation the following morning.)¹⁴

This is an important point because the passage in question, that dealing with the mob at the corn-merchant's house, has

¹⁰ Cf. *op. cit.*, p. 73, "Whenever, in short, there is a definite damage, or a definite risk of [definite?] damage, either to an individual or to the public, the case is taken out of the province of liberty, and placed in that of morality and law."

¹¹ Cf. *ibid.*, p. 72, "... protection against themselves is confessedly due to children and persons under age . . ."

¹² Cf., *ibid.*, p. 49, "... even opinions lose their immunity when the circumstances in which they are expressed are such as to constitute their expression a positive instigation to some mischievous act." To this writer's mind a curious concession, which Mill ought not to have made. Once it is made, a society that wishes to silence this or that form of persuasive utterance has only to declare the behavior it is calculated to produce a crime, and it may silence—with Mill's blessing!

¹³ Cf., *ibid.*, p. 14 fn.

¹⁴ Cf., *ibid.*, p. 49.

given Mill an undeserved reputation as an adherent of the "clear and present danger" doctrine as we know it today. That matter we may perhaps clear up best as follows: The situations covered by the clear and present danger doctrine, as applied, e.g., to the Communist "threat," and by parallel doctrines in contemporary political theory,¹⁵ are the situations in which Mill was most concerned to maintain absolute liberty of discussion—those situations, namely, in which the ideas being expressed have a tendency dangerous to the established political, social, or economic order. We must not, then, suppose Mill's society to be one in which, for example, anarchists, or defenders of polygamy, could be silenced because of the likelihood of their picking up supporters and finally winning the day, since for Mill the likelihood of their picking up supporters is merely a further reason for letting them speak. All utterance with a bearing on public policy—political, social, or economic—is to be permitted, no matter what some members of society (even the majority, even an overwhelming majority, even all the members save some lonely dissenter)¹⁶ may happen to think of it. Mill must, then, also not be understood to be saying something *less* extravagant than he is actually saying.

Second, what is at issue for Mill is not merely unlimited freedom of speech (as just defined) but, as he makes abundantly clear, unlimited freedom of thought as well, and a way of life appropriate to their maintenance. To put it otherwise, when we elevate freedom of thought and speech to the position of society's highest good, freedom of thought and speech ceases to be merely freedom of thought and speech, and becomes—with respect to a great many important matters—the society's ultimate standard of order.

¹⁵ E.g., the doctrine that enemies of liberty must not be permitted to take advantage of "civil liberties" in order to undermine and destroy them; or the doctrine that free society is entitled to interfere with free expression in order to perpetuate its own existence. Mill would certainly not have countenanced either doctrine. Here Mr. Justice Black is certainly *Mill Redivivus*.

¹⁶ Cf., *ibid.*, p. 14, "If all mankind were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing all mankind."

Mill did not dwell upon the inescapable implications of this aspect of his position, so that it has been left to his epigones, especially in the United States, to think the position out. The open society, they never weary of telling us, must see to it that all doctrines start out equal in the market-place of ideas; for society to assign an advantaged position to these doctrines rather than those would be tantamount to suppressing those. Society can, therefore, have no orthodoxy, no public truth, no standard, upon whose validity it is entitled to insist; outside its private homes, its churches, and perhaps its non-public schools, it cannot, therefore, indoctrinate; all questions are for it open questions, and must publicly be treated as open. If it has public schools and universities, it will be told (and with unexceptionable logic), these also must treat all questions as open questions—otherwise what happens to the freedom of thought, and so ultimately to the freedom of speech, of the student who might have thought differently had his teachers not treated some questions as closed? Even if in their hearts and souls all the members of the open society believe in a particular religion or a particular church, each must nevertheless be careful in his public capacity to treat all religions and churches as equal, to treat dissent, when and as it occurs, as the peer of dogma, to treat the voodoo missionary from Cuba as on an equal plane with an Archbishop of his own church.¹⁷ The open society's first duty (so the custodians of the open society will remind it, if not those at home then those abroad),¹⁸ is to freedom, and that means that it is not free to give public status to its beliefs, its standards, and its loyalties. Mill's disciples are completely faithful to the spirit of Mill's thought when they insist that if we mean business about freedom, that is how it is going to have to be. The open society confers "freedom" upon its members; but it does so at the cost of its own freedom as a society.

Third, as we have just seen, Mill's position on freedom of

¹⁷ Who, after all, is to say which is right? But the answer of the Founders here is crystal clear: the "deliberate sense of the community" is to say.

¹⁸ As witness, over the years, the endless series of sermons addressed by the New York press to, for example, the Trujillo regime in the Dominican Republic.

thought conduces to a negation of the very idea of a public truth.¹⁹ This is not wonderful, however, and neither is it wonderful that Mill's followers always end up associating freedom with precisely the absence of any public truth. For Mill's freedom of speech doctrine has its very roots in dogmatic skepticism—in, that is to say, denial of the existence, at any particular place and at any moment in time, not only of a public truth but of any truth whatever unless it be the truth of the denial itself. (Let us not press this last too far, however, lest we be accused of trying to score a mere "debater's" point; it is, of course, the Achilles' heel of all skepticisms.) Reduced to its simplest terms, the argument of the *Essay* runs as follows: Whenever and wherever men disagree about a teaching, a doctrine, an opinion, an idea, we have no way of knowing which party to the disagreement is correct. The man or group that moves to silence a teaching on the grounds that it is incorrect attributes to himself a kind of knowledge (Mill says an "infallibility") that, quite simply, no one is ever entitled to claim, short of (if then) the very case where the question is sure not to arise—that is, where there is unanimity, and so no temptation to silence to begin with. When, therefore, Mill's followers demand the elevation of skepticism to the status of a national religion, and the remaking of society in the image of that religion, they are not reading into his position something that is not there—although Mill himself, as I have intimated, preserves a discreet silence as to the detailed institutional consequences of his position. They are, rather, merely making specific applications of notions that, for Mill, are the point of departure for the entire discussion.

The basic position, in fine, is not that society must have no public truth, no orthodoxy, no preferred doctrines, because it must have freedom of speech, but that it must have no orthodoxy, no public truth, no preferred doctrines, for the same reason that it must have freedom of speech. Namely, because in any given situation, no orthodoxy, no truth, no doctrine has any proper claim to special treatment, and this in turn because any orthodoxy, any

¹⁹ Except, we must keep ourselves reminded, the public truth that there is no public truth.

supposed truth, any doctrine that might be preferred may turn out to be incorrect—nay, will turn out to be incorrect, since each competing idea is at most a partial truth. Nor is that all. Mill's freedom of speech doctrine is not merely derivative from a preliminary assault upon truth itself; ²⁰ it is inseparable from that assault on truth and cannot, I contend, be defended on any other ground. (Wherefore, let me say in passing, any man who thinks of himself as a religious believer ought to think not twice but many times before making the doctrine his own.)

Fourth, Mill is not saying that no man must be silenced because every man has a "right" to freedom of speech. Consistent skeptic that he is, he warns us—and from an early moment—that he disclaims any advantage that might accrue to his argument from an appeal to abstract right; he is going to justify what he has to say in terms of "utility," in terms of "the permanent interest of a man [sic] as a progressive being," ²¹ whatever that may mean; and he sticks scrupulously to at least the first half of the promise throughout the *Essay*. This raises interesting questions (a) as to what Mill could have meant—whether indeed he means anything at all that persons committed to the idea of abstract right might find intelligible—by such words as "ethical," "immoral," etc., (b) as to the pains Mill takes, throughout his main argument, to reduce the question, "Should some types of expression be prohibited in civilized society because the ideas they express are wicked?" to the question, "Should some types of expression be prohibited because they are intellectually incorrect?", and (c) as to the kind of moral fervor his followers have poured into the propagation of his views. Everything for Mill reduces itself to intellectual argument, where you either win or draw or lose, and in any case win or draw or lose by the sheer appeal to reason—which, for Mill, excludes *ex hypothesi* any appeal to, for example, Revelation or Authority (such appeals would merely precipitate an endless discussion as to the status, from the standpoint of reason, of Revelation and Authority).

²⁰ *Ibid.*, Chapter Two, *passim*.

²¹ *Ibid.*, p. 9.

The notion of a "right" to freedom of speech, a capacity on the part of every man to say what he pleases that society must respect because he is entitled to it, of a right that men have to live in the kind of society that Mill projects, is a later development which occurs in different countries for different reasons and under different auspices; but, to the extent that it is intended seriously, it represents a complete break with Mill. Those who appeal to such a notion therefore have in Mill's own shrewd example a warning that they must not attempt to do so on his grounds; ²² and much current confusion about the open society would be avoided if they would but take the warning to heart. In short, if we are going to speak of a right to freedom of speech, a right to live in an open society, we are going to have to justify that right with arguments of a different character from Mill's, and so move the discussion onto a plane entirely different from that of Mill. Above all, we are going to have to subordinate what we have to say to certain rules of discourse from which Mill, by his own fiat, is happily free. For the right in question is inconceivable save as one component of a system or complex of rights. Of rights, moreover, that mutually limit and determine one another and are, in any case, meaningless save as they are deemed subject to the general proposition that we are not entitled to the exercise of any right save as we discharge the duties correlative to that right. But once we begin to argue from premises of that sort we shall begin to talk sense, not nonsense, about freedom of speech and the open society. And the essence of the sense, I hasten to add, will be found to lie in the fact that we are no longer driving the roots of our doctrine into the soil of skepticism because (as I have suggested already) once we speak of a right ²³ we have already ceased to be skeptics. And nothing is more certain than that we shall come out with something quite different from Popper's conception of the open society.

Fifth, Mill was fully aware (as his epigones seem not to be)

²² We must distinguish here between a "natural" or "ethical" "right" to freedom of expression and a mere constitutional right. The case for the latter could of course be rested upon Mill's grounds, insofar as they are valid. Mr. Justice Black, as I have pointed out, sticks to the "plain language" of the Constitution.

²³ Again, we must except the merely constitutional right.

both of the novelty and of the revolutionary character of his proposal for a society organized around the notion of freedom of speech. Just as he deliberately cuts himself off from any appeal to the notion of abstract right, so does he cut himself off from any appeal to tradition. Not only had no one before ever taught his doctrine concerning freedom of speech, no one had ever taught a doctrine even remotely like it. No one, indeed, had ever discussed such a doctrine even as a matter of speculative fancy.²⁴ Hardly less than Machiavelli himself, Mill is in full rebellion against both religion and philosophy, and because in full rebellion against religion and philosophy, in full rebellion also against the traditional society that embodies them.²⁵ Hardly less than Machiavelli, he conceives himself a "new prince in a new state,"²⁶ obliged to destroy that which has preceded him so that he may create that which he feels stirring within him.²⁷ Hardly less than Machiavelli, he is a teacher of *evil*: all truths that have preceded his are (as we have noted parenthetically above) at most partial truths, and enjoy even that status only because Mill confers it upon them.²⁸ To reverse a famous phrase, Mill thinks of himself as standing upon the shoulders not of giants but of pygmies. He appeals to no earlier teacher,²⁹ identifies himself with nothing out of the past; and his doctrine of freedom of speech is, as I have intimated, the unavoidable logical consequence of the denials from which his thought moves. Not, however, because it is in fact to be the public policy of the society he will found, not because it is to govern his followers' actions with respect to the freedom of thought of others, but because it is the perfect weapon—perfect because of its alleged connection with the quest for truth—to turn upon the traditional society that he must overthrow. For he who would destroy a

²⁴ Plato, of course, contemplates a freedom of speech situation in Book IX of the *Republic*; but merely to show that it can result only in disaster.

²⁵ Cf., Leo Strauss, *Thoughts on Machiavelli* (Glencoe: The Free Press, 1958), ch. 4, *passim*.

²⁶ Cf., *ibid.*, p. 9.

²⁷ Cf., *ibid.*, chapter 2, *passim*.

²⁸ Cf., *op. cit.*, pp. 42-46.

²⁹ That he had broken sharply with his father and Bentham is, I take it, a commonplace.

society must first destroy the public truth it conceives itself as embodying; and Mill's doctrine of freedom of speech, to the extent that it gets itself accepted publicly, does just that. I do not, I repeat, believe it can be separated from the evil teaching that underlies it; and nothing could be more astonishing than the incidence of persons amongst us who because of their religious commitments must repudiate the evil teaching, yet continue to embrace the doctrine.

Sixth, Mill's most daring *démarche* in the *Essay* (and Popper's in *The Open Society and Its Enemies*) is that of confronting the reader with a series of false dilemmas: unlimited freedom of speech or all-out thought control; the open society or the closed society, etc. I say "false" for two reasons. First, because unlimited freedom of speech and the open society are not real alternatives at all (see below). And second, because the dilemmas as posed conceal the real choices available to us, which are always choices as to how-open-how-closed our society is to be, and thus not choices between two possibilities but choices among an infinite range of possibilities. Mill would have us choose between never silencing and declaring ourselves infallible, as Popper would have us believe that a society cannot be a little bit closed, any more than a woman can be a little bit pregnant. And we must learn, because all our knowledge of politics bids us to, not to fall into the trap Mill and Popper lay for us. Nobody on the anti-Liberal side in this matter is asking for all-out thought-control or the absolutely closed society of the Liberal false dilemmas; and no Liberal has any business accusing those on the anti-Liberal (i.e., Conservative) side of wanting them. For the real question always is, How open can a society be and still remain open at all? Or, to put it differently, is there any surer prescription for arriving—will-we, nill-we, in spite of ourselves—at the closed society than that involved in current pleas for the open society?

That brings me to the central business of this chapter, which let me put as follows: Let us adjourn any objections we may have to open society doctrines on the grounds that they are rooted in demonstrably evil teachings. Let us suppose, for argument's sake, that it would be possible, taking as our premises sound notions

as to the nature of truth, the value of tradition, and the claims of Revelation and Authority, to reach a point where we feel tempted to organize society in accordance with Mill's prescriptions, and for Mill's reasons. Have we then cause to suppose, as Mill thinks, that we shall end up forwarding the interests of truth? In other words, Mill offers us a prediction, "Do such and such and you will achieve such and such a result," and we wish to know merely "What would in fact happen if we did such and such?" My contention will be that once the question is put that way,³⁰ we run up against some insuperable objections to Mill's prescriptions in and of themselves—objections, moreover, that remain equally valid even if one starts out, unlike Mill, from a supposed "right," whether natural or constitutional, to freedom of speech.

Mill's proposals have as one of their tacit premises a false conception of the nature of society, and are, therefore, unrealistic on the face of them. They assume that society is, so to speak, a debating-club, devoted above all to the pursuit of truth, and capable therefore of subordinating itself—and all other considerations, all other goods, all other goals—to that pursuit. Otherwise, the proposals would go no further than to urge upon society the common-sense view: that the pursuit of truth is *one* of the goods it ought to cherish (even perhaps that one which it is most likely, in the press of other matters, to fail to make at least some provision for); that it will fail to make some provision for the pursuit of truth only at its own peril (a point that could easily be demonstrated); and that, accordingly, it should give hard and careful thought to what kind of provision it can make for the pursuit of truth without interfering unduly with its pursuit of other goods. But we know that society is not a debating-club—all our experience of society drives the point home to us—and that, even if it were a debating-club, the chances of its adopting the pursuit of truth as its supreme good are negligible. Societies, alike by definition and according to the teaching of history, cherish a whole series of goods—among others, their own

³⁰ I.e., as a problem for "empirical" political theory.

self-preservation, the *living* of the truth they believe themselves to embody already, and the communication of that truth (pretty much intact, moreover) to future generations, their religion, etc.—which they are likely to value as much as or more than the pursuit of truth, and *ought* to value as much as or more than the pursuit of truth, because these are preconditions of the pursuit of truth.

To put it a little differently, the proposals misconceive the strategic problem, over against organized society, of those individuals who do value the pursuit of truth above all other things. That strategic problem we may put as follows: *Fortunate* that society that has even a small handful—a "select minority," in Ortega y Gasset's phrase—of persons who value the pursuit of truth in the way in which Mill imagines society's valuing it! *Fortunate* that select minority in such a society—if it can prevail upon the society to provide it with the leisure and resources with which to engage in the pursuit of truth, or, failing that, at least not to stand in the way of its pursuit of truth! And *wise* that society whose decision-makers are sufficiently far-seeing and generous to provide that select minority—even in the context of guarantees against its abusing its privileges—the leisure and the resources it needs for the pursuit of truth! To ask more than that of society, to ask that it give that select minority freedom to publicly treat all questions as open questions, as open not only for itself in the course of its discharge of its own peculiar function but for everybody, is Utopian in the worst sense of the word; and hence certain to defeat the very purpose the asking is intended to serve. By asking for all (even assuming that all to be desirable) we imperil our chances of getting the little we might have got had we asked only for that little.

Let us, however, waive that objection, and pass on to another, namely, that the proposals have as a further tacit premise a false conception of human beings, and how human beings act in organized society. Concretely, Mill assumes that speech (the professing and discussing of any doctrine, however immoral) is incapable of doing hurt in society. (He has to assume this, since he calls for non-interference with speech, while the overriding

principle of the *Essay* is that society is always entitled to interfere in order to prevent hurt, whether to itself or to its individual members.) This is frightening enough (Socrates, let us remember, taught otherwise, namely, that he who teaches my neighbor evil does me hurt), but Mill also assumes (else again his proposal is romantic) that people can be persuaded either to *be* indifferent toward the possible tendency of what their neighbors are saying, or at least to *act* as if they were indifferent. We know nothing about people, I suggest, that disposes us to regard such an assumption as valid, once it is brought out into the open (and we should not, I trust, think more highly of our fellow-men if we did think it valid). Thus Mill's proposals, like all political proposals that call implicitly for the refashioning of human nature, can be enforced only through some institutional equivalent of the French Revolutionary Terror—through, in a word, coercion. And I believe it to be this consideration, above all, that explains the failure of Mill's followers, to date, to persuade any organized society to adopt the proposals. For let us never forget that the West has no experience of unlimited freedom of speech as Mill defines it, of the open society as Popper defines it, unless after a fashion and for a brief moment in Weimar Germany. And that is an experience which, one likes to think, no organized society will be eager to repeat.

But let us now waive that objection also, and—assuming both a society willing to adopt the proposals and a population willing to act in the manner they require—pass on to still another. I contend that the society will overnight become the most *intolerant* of possible societies and, above all, one in which the pursuit of truth, in the meaningful sense of the word "truth" that we agreed to start out with, can only come to a halt. Whatever the private convictions of the society's individual members concerning what Plato teaches us to call the important things—that is, the things with which truth is primarily concerned—the society itself is now by definition dedicated to a national religion of skepticism, to the idea that all questions are open questions, to the suspension of judgment as the exercise of judgment *par excellence*. It can, to be sure, tolerate all expression of opinion

that is predicated upon its own view of truth; but what is it to do with the man who steps forward to urge an opinion, to conduct an inquiry, not predicated on that view? What is it to do with the man who with every syllable he utters challenges the very foundations of society? What can it say to him except, "Sir, you cannot enter into our discussions, because you and we have no common premises from which discussion between us can be initiated"? What can it do but silence him, and look on helplessly as within its own bosom patterns of opinion about the important things deteriorate into an ever greater conforming dullness. Nor—unlike traditional society, which did not regard all questions as open questions—need it hesitate to silence him. The proposition that all opinions are equally and infinitely valuable, which we are told to be the unavoidable inference from the proposition that all opinions are equal, is only one—and, as we now should know, the less likely—of two possible inferences. The other tells us that all opinions are equally and infinitely without value, so what difference does it make if one, particularly one not our own, gets suppressed? ⁸¹

This we may fairly call the central paradox of the theory of freedom of speech; and it is it that accounts for some of the most striking phenomena of our time. E.g.: The fact that the situations in American life that are dominated by Mill's disciples, that is, by Liberals not Conservatives—the federal bureaucracy, for example, and the faculties of our great institutions of higher learning—are precisely those in which we find, on the major issues

⁸¹ Cf., Bertrand de Jouvenel, *Sovereignty* (Chicago: University of Chicago Press, 1967), p. 288, "One of the strangest intellectual illusions of the nineteenth century was the idea that toleration could be ensured by moral relativism. . . . The relativist tells us that the man professing opinion A ought to respect opinion B, because his own opinion A has no more intrinsic value than B. But in that case B has no more than A. Attempts to impose either would be attempts to impose what had no intrinsic value; but also suppression of either would be suppression of what had no intrinsic value. And in that case there is no crime . . . in the suppression of contrary opinions." On equality of opinions in Mill, see note 16 *supra*. On the progress in Mill from "equally valuable" to "equally and infinitely valuable," cf., *op. cit.*, p. 46, ". . . truth has no chance but in proportion as every side of it, every opinion which embodies any fraction of the truth, not only finds advocates, but is so advocated as to be listened to." And the presumption, he insists, is that every opinion *does* contain some fraction of the truth: ". . . it is always probable that dissentients have something worth hearing . . . and that truth would lose something by their silence" (p. 42).

of our time, a sheer monotonous conforming, a disciplined chorus of voices all saying virtually the same thing in the same accents, the like of which we encounter nowhere else. The fact that it is precisely in those situations that non-conformism is dealt with most summarily and most ruthlessly.³² In order to practice tolerance on behalf of the pursuit of truth, you have first to value and believe in not merely the pursuit of truth *but truth itself, with all its accumulated riches to date. The all-questions-are-open-questions society cannot do that; it cannot, therefore, practice tolerance towards those who disagree with it. It must persecute—and, on its very own showing, so arrest the pursuit of truth.*

But let us waive that objection too, and assume a society willing to adopt the proposals, a population willing to live up to them, and a miracle that will somehow prevent the society from persecuting and thus arresting the pursuit of truth. I now contend that the society in question will descend ineluctably into ever-deepening *differences* of opinion, into progressive breakdown of those common premises upon which alone a society can conduct its affairs by discussion, and so into the abandonment of the discussion process and the arbitrament of public questions by violence and civil war. This is a phenomenon to which Rousseau, our greatest modern theorist of this topic, returned again and again in his writings, and identified as that of the dispersal of opinion.³³ The all-questions-are-open-questions society not only cannot arrest it (by giving preferred status to certain opinions and, at the margin, mobilizing itself internally for their defense), it by definition places a premium upon dispersion—particularly by inviting irresponsible speculation and irresponsible utterance. As time passes, moreover, the extremes of opinion will—as they

³² Most particularly, by the gradual but relentless elimination of the non-conformists by means of personnel policy.

³³ See *Social Contract*, IV, i., as also *The Discourse on the Sciences and Arts*, *passim*, and Rousseau's famous letter of 1767 to the Marquis of Mirabeau. Cf. de Jouvenel, *op. cit.*, p. 286, "The whole of [Rousseau's] . . . large stock of political wisdom consists in contrasting the dispersion of feelings in a people morally disintegrated by the progress of the 'sciences and arts,' with the natural unity of a people in which dissociation has not occurred." As de Jouvenel notes (p. 287), Rousseau, though himself a Protestant, deplored the introduction of Protestantism into France, and on these grounds.

did in Weimar—get further and further apart, so that (for the reason noted above) their bearers can less and less tolerate even the thought of one another, still less one another's presence in society. And again the ultimate loser is the pursuit of truth.

Let us waive even that objection, however, and suppose a further miracle: one that will somehow prevent the dispersion of opinion and the resultant civil war, and will permit the determination of issues by what the society is still fond of calling the discussion process but what is actually (and still again by definition) now a babel of voices belonging to persons upon whom Mill's proposals have conferred an unlimited freedom of speech. Again what suffers, and suffers this time the final agony since this is the last station of its cross, is that very pursuit of truth that the proposals were calculated to foster. For still another tacit premise of the proposals is the extraordinary notion that the discussion process, which *correctly* understood does indeed forward the pursuit of truth and does indeed call for *free* discussion, is one and the same thing with Mill's unlimited freedom of speech. They rest, in consequence, upon a false conception of the discussion process. What they will produce is not truth but rather, as I have indicated, sheer deafening noise and sheer demoralizing confusion. For the essence of Mill's freedom of speech is to be found in the fact that it divorces the right to speak from the duties correlative to the right, which is one point (already noted above); that for it the right to speak is a right to speak *ad nauseam*, and with impunity, which is a second point; and that it is shot through and through with the egalitarian overtones of the French Revolution, which are as different from the measured, aristocratic overtones of the pursuit of truth—the pursuit of truth by discussion, as understood by the tradition Mill was attacking—as philosophy is different from phosphorous.

Of the latter point we may sufficiently satisfy ourselves, it seems to me, by merely reminding ourselves how the discussion process works in those situations in which men who are products of the tradition organize themselves for a serious venture in the pursuit of truth—as they do in, say, a branch of scholarship, an

academic discipline, and the community of truth-seekers corresponding to it.⁸⁴

Such men demonstrably proceed on some such principles as these: (a) The pursuit of truth is indeed forwarded by the exchange of opinions and ideas among many, and helpful suggestions do indeed emerge sometimes from surprising quarters. But one does not leap from these facts to the conclusion that helpful suggestions may come from just anybody. (b) The man or woman who wishes to exercise a right to be heard has a logically and temporally prior obligation to prepare himself for participation in the exchange, and to prepare himself in the manner defined by the community. Moreover (c), from the moment he begins to participate in the exchange, he must make manifest, by his behavior, his sense of the duty to act as if the other participants had something to teach him—the duty, in a word, to see to it that the exchange goes forward in an atmosphere of courtesy and mutual self-respect. Moreover (d), the entrant must so behave as to show that he understands that scholarly investigation did not begin with his appearance on the scene, that there is a strong presumption that prior investigators have not labored entirely in vain,⁸⁵ and that the community is the custodian of—let us not sidestep the "gypsy phrase"—an *orthodoxy*, no part of which it is going to set lightly to one side. (e) That orthodoxy must be understood as concerning first and foremost the frame of reference within which the exchange of ideas and opinions is to go forward. That frame of reference is, to be sure, subject to change, but this is a matter of *meeting the arguments that led originally to its adoption, and meeting them in humble recognition that the ultimate decision as to whether or not to change it lies with the community*. (f) The entrant, insofar as he wishes to challenge the orthodoxy, must expect barriers to be placed in his way, and must not be astonished if he is punished, at least in the short term, by what are fashionably called "deprivations"; he must,

⁸⁴ A similar point might be developed as regards the difference between Mill's freedom of speech and the free discussion of the traditional American town-meeting.

⁸⁵ A point that our contemporary political behaviorists seem to forget sometimes.

indeed, recognize that the barriers and the deprivations are a necessary part of the organized procedure by which truth is pursued. (g) Access to the channels of communication that represent the community's central ritual (the learned journals, that is to say) is something that the entrant *wins*—by performing the obligation to produce at least one craftsmanlike piece of work recognized as such by, say, three of the community's elders. (h) The ultimate fate of the entrant who disagrees with the orthodoxy but cannot persuade the community to accept his point of view is, quite simply, isolation within or banishment from the community.

No suggestion is made that this is a complete statement of the rules as we see them operating about us in the scholarly disciplines, or that the particular forms of words employed are the happiest, or most accurate, that could be found. They do, however, seem to me to suggest the broad outlines of the paradigm of the free discussion process as it goes forward in an academic community, and do drive home the differences between that paradigm and that of the freedom of speech process as Mill defines it. Nor, I think, could anything be more obvious than the answer to the question, Which of the two is the more likely to forward the pursuit of truth?

But it is not only that one of the two models is more likely than the other to forward the pursuit of truth. The point about Mill's model is that by giving equal privileges to those who are in fact opposed to or ignorant of the discussion process, it constitutes as a matter of course a major onslaught against truth. The two paradigms are not only different, but incompatible.

It would not be easy, of course, to transfer rules of the discussion process as set forth above to the public forum of a society; nor is there any point in denying that the transfer would involve our openly conceding to society far greater powers, particularly as regards silencing the ill-mannered, the ignorant, the irrelevant, than it would ever enjoy under the Mill paradigm. Here, however, two things must be kept in mind. First (however reluctant we may be to admit this to ourselves), that society always has, and constantly exercises, the power to silence. And second, that

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no society is likely, within the foreseeable future, to remake itself in the image of either of the two paradigms. The question, always, is that of which of the two paradigms we accept as the ideal toward which we try to move. That is the real issue at stake between the proponents and opponents of the "open society." It is the issue at stake between Mr. Justice Black and the (up to now) majority of our highest court who, though they would hardly call themselves Conservatives, are adopting (on the showing of this book) a sound Conservative position. And it is the issue that—make no mistake about it—bears *most* heavily on the very destiny of America.

Chapter 7

A Conservative Statement on Christian Pacifism

A "Conservative statement" on Christian pacifism might take either of two forms: that of an argument intended to convince the Christian pacifist himself, to "meet" his "points," to counter his Scripture with other Scripture; or the form—now unfamiliar, so accustomed are we to "debating" with the pacifist (and his omnipresent cousin the leveller)—of a review, addressed not to the pacifist but to "ourselves," that is the "rest of us," of whom we somehow know beforehand that they are not pacifists (or levellers, or relativists) and that they are not going to become pacifists, but of whom we know also that they may not be as clear in their minds as they ought to be about the grounds on which, being the kind of men they are, they should reject the extravagant proposals constantly being dinned in their ears.

In the first of the two types of argument we engage in "debate" with the energumen, the man possessed, which is what he is forever trying to trick us into doing. In the second case we turn to one another and ask, "What are we going to do about his proposals, and why?". In the first case we treat the energumen as an "equal," with a "right" equal to our own to name the terms on which the discussion shall proceed. In the second we begin by raising with ourselves the question whether we can treat him as an equal without advancing him to the status of a superior; or, if you like, by reminding ourselves that *somebody* must name the terms of the debate, and that if we do not then