Aristotelian Support for Millian Free Speech

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1. Aristotle and the Free Speech Debate

What could Aristotle have to offer to the contemporary debate over John Stuart Mill's view of free speech? Aristotle uses the term *parrhêsia* (often translated "freedom to speak without fear of punishment" or "speak freely") only a handful of times in his corpus. There is also nothing remotely related to Mill's right to express any opinion or sentiment no matter how unpopular or pernicious it is.[1] Given that *parrhêsia* was a privilege given to Athenian citizens rather than a right inherent to a political order,[2] it might seem folly to bring

[1] Aristotle, in *Nicomachean Ethics*, trans. W. D. Ross, rev. J. O. Urmson, in *The Complete Works of Aristotle*, Vol. 2, ed. Jonathan Barnes (Princeton, NJ: Princeton University Press, 1985), refers to the attitude of the *megalopsuchos* (the great-souled person) who speaks freely (*parrhêsia*) in public as not worrying about reprisal (1124b29–31). He also uses *parrhêsia* in *NE* to refer to the candor that friends have with each other (1165a29-30). In the *Politics*, trans. Benjamin Jowett, in *The Complete Works of Aristotle*, ed. Barnes, *parrhêsia* must be discouraged in order to preserve a tyranny (1313b15–16). In the *Rhetoric*, trans. W. Rhys Roberts, in *The Complete Works of Aristotle*, ed. Barnes, those who speak with *parrhêsia* are not to be feared as those who are duplicitous (1382b19–21). In the *Rhetoric to Alexander*, trans. E. S. Forster, in *The Complete Works of Aristotle*, ed. Barnes, *parrhêsia* is evoked in the context of being candid within the assembly (1432b17–19). In the *Constitution of Athens*, trans. F. G. Kenyon, in *The Complete Works of Aristotle*, ed. Barnes, Peisistratus is pleased with a farmer's *parrhêsia* and makes him exempt from taxes (16.6).

[2] Cf. D. M. Carter, "Citizen Attribute, Negative Right: A Conceptual Difference between Ancient and Modern Ideas of Freedom of Speech," in *Free Speech in Classical Antiquity*, ed. Ineke Sluiter and Ralph Rosen (Leiden: Brill, 2004), pp. 197–214; and Robert Wallace, "The Power to Speak—and Not to Listen—in Ancient Athens," in ibid., pp. 221–32.

Reason Papers 43, no. 1 (Spring 2023): 275–296.

Aristotle into the debate over free speech in ethics and political philosophy. It is perhaps as much folly as arguing for the existence of robust rights in Aristotle's political thought, as Fred Miller does in his *Nature, Justice, and Rights in Aristotle's Politics.*[3] Like Miller, I hope to show that the apparent incongruity is overblown. Contemporary debates about freedom of speech can benefit from Aristotle's insights, especially from his discussion of rhetoric and dialectic.

I begin by surveying some general objections to Mill's optimism about free speech. Many are skeptical that liberalism has the resources to defend anything like Mill's unqualified speech rights.[4] One criticism leveled at Millian free speech is that it is too optimistic (if not naïve) to think that unregulated expression in the public arena will further the pursuit of knowledge or the advancement of society.[5] Some go so far as to hold that truth and persuasion are not causally connected at all. Call this "rhetorical skepticism." Mill's optimism about the outcomes of free speech assumes that if different ideas are bandied about under the protection of free speech, then truth will surface amid the clash of ideas.[6] For Mill, while dogmatic certainty is not possible, dialectical discussion will eventually lead to a better society. This assumes that people are rational and that they will choose rational ideas to preserve and build upon. But why think that people are that rational? The rhetorical skeptic argues that the masses will latch on

[3] Fred D. Miller, Jr., *Nature, Justice, and Rights in Aristotle's Politics* (Oxford: Clarendon Press, 1995).

[4] See, e.g., David O. Brink, "Millian Principles, Freedom of Expression, and Hate Speech," *Legal Theory* 7, no. 2 (2001), pp. 119–57; and Larry Alexander, *Is There a Right of Freedom of Expression?* (Cambridge: Cambridge University Press, 2005).

[5] See Eric Barendt, *Freedom of Speech* (Oxford: Oxford University Press, 2005), p. 6ff.

[6] John Stuart Mill, *On Liberty,* ed. Elizabeth Rapaport (Indianapolis, IN: Hackett Publishing, 1978), p. 46. It should be noted that, for Mill, truth is not as important as knowledge. Truth cannot be known with certainty, but knowledge can only come about if we have the best argument for both sides of important discussions. That being said, Mill is an empiricist; while truth may not be known with certainty, he expects that knowledge will track with truth more often than not.

to and follow beliefs that are irrational, contradictory, and even destructive.[7]

While the rhetorical skeptic worries that truth and persuasion are not necessarily connected, a "post-modern objection" claims that truth is contextual. Therefore, the search for truth that Mill thinks is so vital is just a product of Mill's Enlightenment mentality. Stanley Fish argues that the free speech Mill champions is not so much unlikely as it is conceptually impossible. This is because free speech assumes that rhetoric within the marketplace of ideas can be evaluated according to an ideologically neutral concept of reason. Thus, truth cannot be isolated and evaluated apart from our biases.[8] According to Fish, protecting free speech will only ensure a venue for the dominant to assert their power. Those who control the symbols of expression (i.e., rhetoric) will control the construct.[9] In other words, if we allow unqualified speech rights, those with the loudest megaphone provided by wealth and social privilege will dominate the public debate.[10]

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[7] For a full articulation of this objection, see Barendt, *Freedom of Speech*, pp. 7–13.

[8] Stanley Fish says, "It is not difficult to conclude either (a) that there are no such truths, or (and this is my preferred alternative) (b) that while there are such truths, they could only be known from a god's eye view. Since none of us occupies that view . . . the truths any of us find compelling will all be partial, which is to say they will all be political"; see his *There's No Such Thing as Free Speech and It's a Good Thing Too* (Oxford: Oxford University Press, 1994), p. 8.

[9] Adrienne Davis and Stephanie Wildman put it this way: "To the extent that symbols filter understanding of events and, in particular, affect the way history will record them, the ability to share in their creation and presentation is paramount to constructing reality"; see their "Privilege and the Media: Treatment of Sex and Race in the Hill-Thomas Hearings Create a Legacy of Doubt," in *Privilege Revealed: How Invisible Preference Undermines America*, ed. Stephanie M. Wildman (New York: New York University Press, 1996), p. 74.

[10] Indeed, this privilege and power extends not just to persons but also to ideologies. Catherine McKinnon castigates protecting pornography on the grounds of free speech as privileging expression (the 1st amendment) over equality (the 14th Amendment). In fact, McKinnon says, "There has never been a fair fight in the United States between equality and speech"; see

Moreover, the rhetoric used in this "marketplace of ideas" is more likely to confuse and deceive.

Not all objections to Millian free speech come from skeptics of rhetoric and post-modern critics of liberalism. Some objections come from communitarians and conservatives. Robert George, for example, does not think that Millian-style liberalism can provide a principle that would bar the government from promoting virtue by censoring some forms of speech which are "plainly valueless and harmful."[11] He is adamant that more than a moral right to free speech is needed to justify such a principle.[12] While pragmatic reasons may exist to give free speech what George calls "a strong presumption," there is nothing sacrosanct about the Millian preoccupation with free speech.[13] All of these objections echo the same general concern that there is no reason for Mill's optimism that unregulated freedom of rhetorical discussion will lead to a better society.

How does Aristotle figure into the debate over free speech? In his *Rhetoric*, Aristotle argues that truth is necessarily persuasive and that rhetoric—as "counterpart of dialectic"—can be guided by principles.[14] He seems to share Mill's optimism about the prospects of rhetorical discussion, but why is Aristotle so optimistic about dialectic? More importantly, should he be so optimistic?

Since I claim that Aristotle's connection between truth, persuasion, and rhetoric can support Mill's optimism that a free marketplace of discourse can be good for society, Section 2 defends Aristotle's claims that truth is naturally persuasive and that rhetoric, while being an art, is also a kind of reasoning. This will serve to blunt both the rhetorical skeptic's and the postmodernist's objections. Section 3 answers the conservative and communitarian challenge to

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Catherine A. McKinnon, *Only Words* (Cambridge, MA: Harvard University Press, 1993), pp. 84–85.

[11] Robert George, *Making Men Moral* (Oxford: Clarendon Press, 1993), p. 199.

[12] Ibid., p. 198.

[13] Ibid.

[14] As Brad McAdon examines in his "Rhetoric Is a Counterpart of Dialectic," *Philosophy and Rhetoric* 34, no. 2 (2001), pp. 113–49.

free speech. Aristotle advocates strong restrictions on speech, but within an Aristotelian framework, there is a theoretical basis for something like Mill's freedom of thought and discussion.

2. Rhetoric, Truth, and Persuasion

Bringing Aristotle into the debate about free speech and Millian discourse requires some context. To defend Aristotle's optimism that rhetoric and persuasion will for the most part lead to truth, I first need to look at Socrates's view of the matter. In Plato's *Gorgias*, Socrates claims that rhetoric is not a useful art; instead, he holds that it is a false art that does nothing but corrupt the political process. Just as medicine is a true art, but "cookery" (*opspoietike*) is a false art that only serves to damage the health of its patrons, rhetoric looks like a true art, but is worthless and potentially harmful.[15] According to Socrates, dialectic—not rhetoric—is the hope of true philosophy.

Aristotle answers Socrates's criticism in the first sentence of the *Rhetoric*: "Rhetoric is a counterpart (*antistrophos*) of dialectic" (1354a1). He even uses the same term (*antistrophos*) that Socrates does for his comparison between rhetoric and "cookery." Aristotle says that rhetoric is not a counterpart to some false and unhealthy art, but rather, is counterpart to dialectic, which Socrates insists is the source of any true art of persuasion.[16]

While Aristotle links rhetoric with dialectic, it is not the dialectic of Plato's dialogues. For Plato, dialectic is the means to know the ideal Forms and the method to reach the Good. For Aristotle, dialectic is a rational method for inquiry. In his *Topics*, he argues that dialectic is the rational method suited to examining the first principles of all disciplines (101b3–4). By making rhetoric the counterpart of dialectic, Aristotle implies that rhetoric is a rational method.

Aristotle goes even further when says that rhetoric is useful *because* of its connection with truth. Here we find a claim about truth

[15] Plato, *Gorgias*, 465d, in *Plato: Complete Works*, trans. Donald J. Zeyl, ed. John M. Cooper (Cambridge, MA: Hackett Publishing, 1997).

[16] Plato, *Phaedrus*, 266c, in *Plato: Complete Works*, trans. Alexander Nehamas and Paul Woodruff.

discordant to modern ears: "For the true and the approximately true are apprehended by the same faculty, and at the same time men have a sufficient natural instinct for what is true, and usually do arrive at truth" (*Rhet*. 1355a14-18). For Aristotle, what is true and what is believed to be true come from the same faculty. However, imagination is voluntary while belief is not. In *De Anima*, he says, "It is not up to us to hold a belief; for it is necessary either to be mistaken or have the truth" (427b16-21). Truth must be something that we grasp from the world; our assessment of true or false needs to correspond with what we perceive in order for us to survive and flourish as rational creatures. Fred Miller puts it this way: "Our ability to survive and flourish depends on our capacity to respond appropriately to the specific contingent events which occur around us. Our flourishing requires that the content of our beliefs be imposed on us by reality."[17] This validates the second half of Aristotle's statement: human beings "have a sufficient natural *instinct* for what is true, and usually do arrive at the truth."[18]

Aristotle also connects truth and justice, stating that "[t]he true and just are naturally superior to their opposites" (*Rhet*. 1355a37-38). If what is true or just does not prevail in discourse, it is as if truth and justice have suffered a defeat and those responsible are blameworthy.

Given that human beings come equipped with the proper faculty to believe that which is true, and what is true is easier to prove and naturally superior to untruth, it follows that rhetoric can be useful for truth-tracking. William Grimaldi argues that Aristotle is making an even stronger claim about rhetoric: If truth and justice are defeated, it can only be because the rhetoric used was bad.[19] Therefore, Mill's optimism that discourse will lead to truth can be justified, if one holds the Aristotelian idea that human beings have a natural capacity for truth and that truth is naturally persuasive.

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[17] Fred D. Miller, Jr., "Aristotle on Belief and Knowledge," in *Reason and Analysis in Ancient Greek Philosophy: Essays in Honor of David Keyt*, ed. Georgios Anagnostopoulos and Fred D. Miller, Jr. (The Netherlands: Springer, 2014), pp. 285–308; quotation at p. 295.

[18] Ibid.

[19] William Grimaldi, *Aristotle, Rhetoric I: A Commentary* (New York: Fordham University Press, 1980), p. 27.

Some might object that the problem is not that truth can be tracked by human beings, but rather, that the coalescing of a bunch of opinions can ever lead to truth. In other words, the worry is that this rhetorical process is full of mere *opinion*, which has little to do with truth. This is certainly a valid concern. While Aristotle holds in his *Politics* that, provided people are not utterly degraded in their character, the mass of people will be better judges than an individual (1281b35–38), left to themselves, the *hoi polloi* will not have sufficient character to make good decisions. Instead, they will rely on ill-chosen opinions. Diodotus complains that, in the assembly, "the man with good advice must tell lies in order to be believed, just as a man who gives terrible advice must win over the people by deception."[20]

Aristotle links human nature not only to truth, but also to *endoxa* (or reputable opinions): "the man who makes a good guess (*stochastikos*) at what is reputable (*endoxa*) is likely to make a good guess at what is true" (*Rhet*. 1355a). Guessing usually connotes randomness, but *stochastikos* can also mean "skillful aiming or able to hit."[21] Grimaldi thus translates the above sentence as: "The ability to aim skillfully at *endoxa* belongs to the man who is equally able to aim skillfully at the truth."[22]

One of many modern objections to Aristotle's philosophy is its reliance on *endoxa*, which is translated variously as "received opinions" or often just "opinions." Those who object that the opinions of the masses cannot be said to track truth accurately, however, fail to distinguish between "opinion" and what Aristotle means by *endoxa*. Aristotle defines *endoxa* as that which "commend themselves to all or to the majority or to the wise—that is to all of the wise or to the majority or to the most famous and distinguished among them."[23]

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[20] Thucydides, *History of the Peloponnesian War*, 3.34, quoted in Ryan K. Balot, "Free Speech, Courage, and Democratic Deliberation," *Free Speech in Classical Antiquity*, ed. Sluiter and Rosen, p. 237.

[21] Henry George Liddell and Robert Scott, *Greek-English Lexicon*, 8th ed. (Oxford: Clarendon Press, 1882), p. 1435.

[22] Grimaldi, *Aristotle, Rhetoric I: A Commentary*, p. 23.

[23] This translation comes from J. H. Freese, *Aristotle: The Art of Rhetoric* (Cambridge: Harvard University Press, 1994).

Aristotle does not think that all opinions are created equal.[24] Some opinions can be more *endoxa* than others. Dialectical reasoning specifically starts not just from *endoxa simpliciter*, but from what is most *endoxon* or as *endoxon* as possible (*Soph. Ref.* 183a37ff).[25] In *Topics*, Aristotle says, "Dialectical reasoning is not equally *endoxon* and persuasive (*pithanon*) on all problems."[26] *Endoxa* is therefore not a convenient label for the opinions of the many, but rather, seems to be a taxonomy of credible opinion.

According to Robert Bolton, the order of the definition in the *Topics* is consistent with the level of authority that Aristotle accepts with regard to *endoxa*. Things that are unanimously accepted have the greatest weight. Later in *Topics*, Book VIII, Aristotle couples what is more *endoxon* with what is intelligible. One who reasons correctly supports his thesis on the basis of things more *endoxon* and more intelligible than the thesis itself (159b8–9). Linking *endoxon* with intelligibility explains why that which is "accepted by all" carries the most weight.

This formulation does not mean that "what is accepted by all" cannot be challenged or that there cannot be inconsistencies within this consensus.[27] Even though "Aristotle comes close" to saying that what is accepted by all is beyond challenge, "he does not ever quite say it."[28] Bolton suggests that even in the rare case where two beliefs are equally *endoxa*, one may be more intelligible than the other. In addition, it may be necessary to withhold judgment until proper inquiry can continue (*Soph. Ref*. 182b37–183a4).

In the process of dialectic, the premises that count as most *endoxon*—and therefore most authoritative—are those that are most

[24] Robert Bolton, "The Epistemological Basis of Aristotelian Dialectic," *From Puzzles to Principles? Essays on Aristotle's Dialectic* (Lanham, MD: Lexington Books, 1999).

[25] Ibid., p. 68.

[26] This is Bolton's translation; see his "The Epistemological Basis of Aristotelian Dialectic."

[27] Ibid., p. 76.

[28] Ibid.

intelligible and believed by the most. Aristotle offers such a hierarchy in his *Nicomachean Ethics*, Book VII:

> We must, as in all other cases, set the phenomena before us and, after first discussing the difficulties, go on to prove, if possible, the truth of all the reputable opinions (*endoxa*) about these affections or, failing this, of the greater number and the most authoritative; for if we both resolve the difficulties and leave the reputable opinions (*endoxa*) undisturbed, we shall have proved the case sufficiently.[29]

Aristotle provides a rigorous heuristic for weighing opinions. We should try, if possible, to harmonize all of the reputable opinions. Failing this, we should resort to a combination of the majority and the most authoritative. His point is somewhat different from governing by polls or forming one's opinions by feeling. Sifting and weighing *endoxa* is a rational process that depends on our natural tendency to believe what is true. Beliefs that manage to garner a majority among most people or among the recognized experts are ones that are more likely to be true.

Thus, contrary to the objectors, we can see a direct relationship between truth and *endoxa* or reputable opinions. The one who can aim at truth well is also able skillfully to weigh *endoxa* and form beliefs based on arguments that themselves are based on premises that are the most *endoxa* or more *endoxa* than their conclusion.

Aristotle's argument about reputable opinion has two implications for Mill's optimism about virtually unregulated use of rhetoric in the public square. First, the process of weighing opinions can be rational. If an opinion survives this process of public scrutiny, it can be considered reputable. Second, this process of discourse need not reduce to a cacophony of different ideas bandied about with the audacious hope that truth will somehow inevitably rise to the top. Rather, reputable opinions are the premises for arguments in the public square. Mill's reasoning for having maximally free discourse is so that people can draw from all opinions in the public cauldron to make compelling rhetorical arguments. He argues: "The only way in which a

[29] Ibid., p. 79.

human being can make some approach to knowing the whole of a subject is by hearing what can be said about it by persons of every variety of opinion, and studying all modes in which it can be looked at by every character of mind."[30]

Someone may object that all that has been shown is how dialectic is related to truth. Furthermore, all of the examples and argument above were about *dialectic*, but it is a weak argument to say that because rhetoric is *antistrophos* to dialectic, Aristotle can present rhetoric as being as closely tied to truth as to dialectic. This, however, is exactly what Aristotle does. Rhetoric is just as useful as dialectic for hitting upon the truth.

In *Topics*, Book VIII, Aristotle specifically mentions enthymemes as the principal form of argument associated with rhetoric. In giving instruction about how to practice and be prepared for dialectic, Aristotle gives this advice: "You should make your memorized accounts of arguments universal, even if they were argued as particulars. For in this way, it will also be possible to make the one argument into many. (The same holds in the case of rhetoric for enthymemes)" (164a4–5).[31]

Aristotle opens the *Rhetoric* complaining that his contemporaries have said nothing about the enthymeme, opting instead to concentrate on "things outside the subject," like the best method for arousing the appropriate emotions (1354a14–16). Aristotle finds this to be a mistake because enthymemes are the main ingredient in rhetorical proofs. Rhetoric is not useful for manipulation; just like dialectic, it is concerned with proof. Aristotle draws a strong connection between rhetoric and dialectic because he does not see enthymemes as merely compressed arguments, but as *syllogisms*—that is, deduction from true premises (*Rhet*. 1355a4–12).[32] For Aristotle, there are only two ways to demonstrate: through *syllogisms* (a deductive method) and *epagoge* (an

[30] Mill, *On Liberty*, in *On Liberty in Focus*, ed. John Gray and G. W. Smith (London: Routledge, 1991), p. 40.

[31] This is Robin Smith's translation; see his *Aristotle, Topics Books I and VIII* (Oxford: Clarendon Press, 1997), p. 40.

[32] Myles Burnyeat, "Enthymeme: Aristotle on the Logic of Persuasion," in Myles Burnyeat, *Explorations in Ancient and Modern Philosophy*, Vol. 1 (Cambridge: Cambridge University Press, 2012), p. 97.

induction method). Some demonstrations command belief just by the use of things that are true and primary, such as in science. However, other demonstrations rely on *endoxa*; these are dialectical (*Top*. 100a24–25). We now have a connection between reasoning and rhetoric, for demonstration is reasoning and rhetoric is a demonstration. In the *Rhetoric*, Aristotle holds that rhetorical demonstration through the enthymeme is the most effective of rhetorical proofs (1355a7).

Rhetoric is a form of reasoning that uses enthymemes to provide demonstration of things that are true and primary but not scientific. While it has many of the same elements as scientific demonstration, it does not arrive at its principles in the same way. Scientific demonstration, on the one hand, proceeds from things that are true and primary, and these things command belief through themselves (or other primary and true things). Rhetorical proofs, on the other hand, are demonstrations more akin to dialectic because they proceed not from things that command belief in themselves, but rather, through *endoxa*.

The implications of this distinction are enormous. By connecting rhetoric with *syllogism*, Aristotle claims rhetoric to be a form of argument rather than just eloquent verbal expression. Myles Burnyeat underscores this point: "Aristotle insists that the thought content of speech which Isocrates and Alcidamas contrasted with its verbal expression is *fundamentally argument*."[33] Unlike his contemporaries, Aristotle claims that the process of rhetorical reasoning results in an argument.

Combining Aristotle's claim that *endoxa* can be authoritative as premises for arguments about what is true with his view of rhetorical proof, we can see how he regards rhetorical proof as a demonstration that uses *endoxa* to *persuade* concerning truth just as dialectic uses *endoxa* to *inquire* about what the truth is. If rhetorical proofs are concerned with persuasion and truth is easier to prove and more likely to persuade (*Rhet*. 1355a37), then rhetoric is useful for persuading people to believe true things. Furthermore, Aristotle says that people make use of rhetoric and dialectic in the process of making statements and defending them, whether at random or by practice and from habit (*Rhet*. 1354a8–9). Rhetoric can be an art with principles

[33] Ibid., p. 93; emphasis mine.

useful for making demonstrations, so those who aim at truth well can also aim at reputable opinion using rhetoric. Presumably, those who make rhetoric a practice will be superior at both hitting truth and *endoxa* that is naturally persuasive.

If truth is as naturally persuasive as Aristotle claims, then Mill has good reason to be optimistic about public discourse. Because of their nature, human beings can discern and weigh reputable opinions and hit upon the true ones much of the time. Given that Mill believes that a culture of free speech must exist to give the right arguments room to flourish and to sharpen them on the whetstone of intellectual scrutiny within the public sphere, a free arena of rhetorical proofs seems the best way to get at truths that don't admit of scientific certainty—such as political morality, religion, and public policy—but can be demonstrated nonetheless through principled rhetoric.

It might be objected that all I have shown is that rhetoric *can be* principled, not that it *will be* principled in the public square. However, given that people will use principles of rhetoric and that they value an emphasis on argument, free speech might be justified. The problem is that this argument does not specify how we can ensure that rhetoric is used this way. Perhaps what is needed is some sort of assurance that rhetoric will be principled and virtuous. Regulating speech—as Aristotle calls for (e.g., *Pol*. 1336b11–22)—to prevent unprincipled and manipulative arguments might be justified, even if rhetoric can be principled and not hopelessly domineering. If this is true, then Mill's argument for unregulated speech would fail. This is an important objection because prominent critics of free speech—from social conservatives to their progressive rivals—explicitly call for strict regulation of expression.

3. Free Speech or Regulated Speech?

Given that Aristotle advocates interference with individual expression because the masses are not virtuous, we can reasonably ask two questions: First, does Mill's unqualified speech rights contradict Aristotle's defense of censorship? Second, does Aristotle's view that the state should protect and promote virtue justify regulating opinion and sentiment within the public square? I will argue that the answer to both of these reasonable questions is a qualified "No."

First, I should note that Mill's concept of free speech is not wholly unregulated. People are not enjoined to say whatever they like in whatever way they like. Rather, Mill argues that no *opinion or sentiment* ought to be censured: "I denounce and reprobate this pretension . . . . However positive anyone's persuasion may be—not only of the pernicious consequences, but . . . the immorality and impiety of an opinion—it is still wrong to censor such expression."[34] Surprisingly, pernicious consequences may even include harm to others.

Some have said that Mill only qualifies his speech rights on the basis of its harm to others (e.g., a speech may be censored, if it will produce a riot). However, Daniel Jacobson argues that Mill's speech rights are not, strictly speaking, constrained by a harm principle.[35] Mill holds that the context of a given speech may make it liable to censorship or punishment, "when delivered orally to an excited mob assembled before the house of a corn dealer or when handed about among the same mob in the form of a placard."[36] While *opinion* should never be sanctioned, when opinion becomes *action*, it passes out of the sphere of liberty and into a class of actions that can be censored or regulated.[37] Mill argues that the exact same speech, if circulated through the press and not on the lawn of the offender, "ought to be unmolested." [38]

What's important to note here is that if the same opinion is circulated in the press *and has the same results* as the speech given to the mob outside the corn-dealer's house, then it should not be censored. It is when opinion becomes action, not necessarily when it

[34] Mill, *On Liberty*, p. 43.

[35] See Daniel Jacobson, "Mill on Liberty, Speech, and the Free Society," *Philosophy and Public Affairs* 29, no. 3. (Summer 2000), pp. 276–309. Jacobson makes the stronger claim that there is no coherent harm principle in Mill, but rather, a general anti-paternalism and anti-moralism principle (ibid., p. 277).

[36] Mill, *On Liberty*, p. 72.

[37] Jacobson, "Mill on Liberty, Speech, and the Free Society," p. 285.

[38] Mill, *On Liberty*, p. 72.

becomes harmful, that it must be regulated. This suggests that, for Mill, speech in the form of opinion or sentiment must be protected. *Performative* speech-acts, however, are not immune from regulation.[39]

Mill's exceptions to free speech notwithstanding, there is still a wide gap between Mill's liberalism and Aristotle's political philosophy. Aristotle's examples of justified censorship of expression must be examined in detail. His strongest statement about censorship occurs in Book VII of his *Politics*. After making the general statement that "[t]here is nothing which the legislator should be more careful to drive away than indecency of speech; for the light utterance of shameful words leads soon to shameful actions" (*Pol*. 1336b1–3), Aristotle says:

> And since we do not allow improper language, clearly we should also banish pictures or speeches from the stage, which are indecent. Let the rulers take care that there be no image or picture representing unseemly actions, except in the temples of the gods at whose festivals the law permits ribaldry. . . . But the legislator should not allow youth to be spectators of iambi or of comedy until they are of an age to sit at the public tables and drink strong wine; by that time education will have armed them against the evil influences of such representations. (*Pol*. 1336b11–22)

Aristotle notes that the legislator ought to censor improper language and sexual images in public, except when such images are part of festivals to the gods. Youths who have not completed their virtue education should not be allowed to view bawdy comedies, because they are not yet sufficiently armed in virtue against the damage such comedies would do to their souls.

Censoring indecency for the young is not at odds with Mill's view. Mill allows that the environment of unqualified speech is one that ought to be within the realm of maturity. He writes, "Nobody denies that people should be so taught and trained in youth as to know

[39] Indeed, Jacobson makes this very claim; see Daniel Jacobson, "Freedom of Speech-Acts? A Response to Langdon," *Philosophy and Public Affairs* 24, no. 1 (Winter 1995), pp. 64–79.

and benefit by the ascertained results of human experience. But it is the privilege and proper condition of a human being, arrived at the maturity of his faculties, to use and interpret experience in his own way."[40] Mill believes that the sifting of ideas and experiments of living are activities reserved for "grown persons."[41] Indeed, one of the reasons that society cannot impose its values on grown persons is that "it has had the whole period of childhood and nonage in which to try whether it could make them capable of rational conduct in life."[42] Given these passages, restrictions on public displays of vulgarity or limiting freedom of speech next to schoolyards would not be in violation of Mill's defense of free speech.

What, then, of Aristotle's general statement about protecting all citizens from indecent speech, which is the strongest statement he makes with regard to censorship? Indecent speech could refer to vulgar or sexualized language. It might include speech intended to make some point that includes vulgar sentiments, such as when Gary Cohen wrote "Fuck the Draft" on his jacket to protest the Vietnam War.[43] Does Mill's defense of free speech protect both of these cases? Mill does not discuss in detail unfettered vulgarity. However, given that Mill argues for unqualified freedom to express opinion or sentiment, if someone is standing in the square spouting obscenities, then that could presumably fall outside of Mill's definition of opinion on the ground that such activity is more like performative speech. If the obscenities in question were uttered in the midst of a performance (e.g., stand-up comedy), then it would seem allowable under Mill's principle to require such speech to be private where only those who are willing to listen to obscenities would be exposed to them. After all, he allows room for screening off certain self-regarding vices from those who do not want to experience them or even be reminded of their existence.[44]

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[40] Mill, *On Liberty*, p. 55.

[41] Ibid., p. 80.

[42] Ibid.

[43] *Cohen v. California* 403 U.S. 15 (1971).

[44] Mill considers and does not condemn the argument that gambling halls "may be compelled to conduct their operations with a certain degree of

As for someone using vulgarity to prove a point, Mill would almost certainly allow Cohen's sentiment because it is expressing a sentiment no matter how vulgar, whereas Aristotle's legislator might censor it. What are we to make of this difference? For Aristotle, freedom is an external good, not a natural right.[45] Thus, no natural right is being violated, if certain liberties are curtailed. The goal of this article is only to show that Aristotle's discussion of truth, rhetoric, and persuasion provides resources for an Aristotelian defense of Mill's optimism about free speech. Since my goal is not to reconcile Aristotelian and Millian political theory, my argument is not undermined by Aristotle's calls for censorship.

It is worth noting, however, that Mill justifies freedom of speech in terms of individual flourishing rather than natural rights. Mill and Aristotle do not differ over the general justification for their policy decisions, only over the means and the probable results. Aristotle and Mill both justify censorship in order to promote virtue, but they differ significantly about which virtues are vital for flourishing. We might say that Aristotle and Mill share an assumption of *eudaimonism*, though they disagree about its social applications.

Mill is optimistic that certain virtues of character can only flourish within a sphere of liberty in which one can express opinion and sentiment without fear of censorship. While laws are necessary to curtail actions, laws that curtail sentiment or opinion stunt the kind of ethical character and individuality that Aristotle attributes to his *megalopsuchos* (or "great-souled man") who speaks openly and without fear (*NE*, IV.3). We can imagine Mill saying that great souls are best produced in a climate where people can learn to express their sentiments and deal with the social stigma that may come from them. However, such character-building is in danger, if there is legal sanction for any sentiment or opinion.

Someone might object that Aristotle's insistence that legislation is necessary to protect virtue puts him irrevocably at odds with Mill's liberal freedom of thought and discussion. After all,

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secrecy and mystery, so that nobody knows anything about them but those who seek them" (*On Liberty*, p. 99).

[45] Aristotle, *NE*, 1178a28–33; cf. Miller, *Nature, Justice and Rights in Aristotle's Politics*, p. 248ff.

Aristotle expresses pessimism about the value of arguments to make men good, holding that arguments are efficacious only for those who are already lovers of what is noble (*NE* 1179b7–8). Those who do not have this quality do not obey the law out of any shame at vice, but out of fear of punishment. Contrary to Mill's optimism, Aristotle pessimistically asks, "What argument would remold such people?"

Even if rhetoric is a species of reasoning, Aristotle claims that such reasoning only affects those who are virtuous. He is more than willing to bring the force of law to bear in order to ensure a virtuous populace, stating, "For this reason their nurture and occupations should be fixed by law" (*NE* 1179b34–35). Aristotle specifically includes adults in his paternalism, writing, "but it is surely not enough that when they are young they should get the right nurture and attention; since they must, even when they are grown up, practice and be habituated to them, we shall need laws for this as well" (*NE* 1180a1–3). For Aristotle, the end of politics, and thus the aim of legislation, is to produce virtue. If only virtuous people are swayed by principled rhetoric, it seems justified to restrict speech when it is totally worthless or hateful because such speech contributes to vice. This seems in direct contradiction to Mill's view that society must not seek to enforce its paternalism on adults because society has had all of childhood to inculcate virtue. Do Aristotle's statements present a problem for Mill's optimism about public rhetoric?

Communitarians like Alasdair MacIntyre push back on Millian free speech for just such Aristotelian reasons. They argue that individuals do not form their identities apart from community.[46] Since the Aristotelian polis is one of shared pursuit of virtue, censorship is justified based on that end.[47] Another communitarian, Michael Sandel, says, "Communitarians would be more likely [than other political theories] to allow a town to ban pornographic bookstores on the

[46] See, e.g., Charles Taylor, "The Sources of Authenticity," in Charles Taylor, *The Ethics of Authenticity* (Cambridge, MA: Harvard University Press, 1992), pp. 25–30.

[47] Alasdair MacIntyre, *After Virtue*, 2nd ed. (Notre Dame, IN: University of Notre Dame Press, 1984), pp. 150–58.

grounds that pornography offends its way of life and the values that sustain it."[48]

George further argues, on conservative grounds, that speech can be restricted on the basis of its content when the speech is "plainly valueless or harmful" or "the speech in question is likely to result in serious harms or injustices or prevent the realization of important goods."[49] George indicates that what he has in mind are time, manner, and place restrictions (e.g., Neo-Nazis marching in Jewish neighborhoods); criminal activity (e.g., libel, conspiracy); and speech that reveals national security secrets (e.g., WikiLeaks). However, he concedes both that there is no principle that bars censorship of worthless speech and that the fear of government officials having bad motives creates a prudential reason to give free speech "a strong presumption."[50]

George challenges civil libertarians to come up with a principle that would explain why it is impermissible to prevent immoral institutions like worthless speech or action, holding that it will not do simply to talk about the putative moral right to the institution of free speech.[51] If there is no principle that preserves the right to speak worthless or vitriolic speech, and given the aim of the political order is to make men virtuous, then there seems to be a justification for regulating speech.

There are ways of answering this kind of objection without sacrificing either Aristotelian or Millian optimism. First, while Aristotle says that laws are necessary to make people good, this does not mean that censoring speech will necessarily accomplish this goal. Mill believes that censoring speech will make people worse, not better.

Second, while Aristotle does say that the purpose of the polis is to make people virtuous, it does not then follow that campus speech

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[48] Michael Sandel, "Morality and the Liberal Ideal," *New Republic* 190 (1984), pp. 15–17, quoted in Miller, *Nature, Justice, and Rights in Aristotle's Politics*, p. 363.

[49] George, *Making Men Moral*, p. 199.

[50] Ibid., p. 198.

[51] Ibid., pp. 116–17.

codes or federal laws against racial epithets are necessary for achieving Aristotle's purpose. There is a tendency to equate Aristotle's polis with the state, which is arguably a hasty generalization and one often made by communitarians.

MacIntyre thinks that political virtue is incompatible with liberalism.[52] A liberal order with its emphasis on "live and let live" cannot be a community whose common aim is human flourishing. Miller, however, argues that there are two concepts of the polis in Aristotle's political theory: the polis *qua* community and the polis *qua* state.[53] Book I of *Politics* concerns the polis as a naturally occurring community, while Book III concerns the polis as state. However, Aristotle makes it clear in III.9, that any society that seeks only to prevent harm and promote exchange is a polis in name only because a polis must be concerned with virtue and vice (1280b5–8 and 29–31). Miller argues that Aristotle's conflation of polis as society and polis as state may rest on his view that a "polis resembles an organism in that when it has a function it always has a part whose function is to realize that end."[54]

However, just because citizens participate in political governance, this does not mean that the community is an organic whole like an organism. There are individual and collective pursuits that have nothing to do with the state. Most of the voluntary associations (especially religious ones) and activist groups that seek to persuade others about various aspects of the good life act outside of government policy. On Mill's model of the free exchange of ideas, much of the moral education and discussion about virtue occur through such non-state associations.

Contra MacIntyre and Sandel, Mill's free society is compatible with promoting virtue. It is not compatible, though, with the state directly coercing people toward virtue. The purpose of government in such a free society would be to provide a framework for private individuals and community groups whose purpose would be to

[52] See MacIntyre, *After Virtue*, p. 244ff.

[53] For a complete discussion of the uses of "polis" as both community and state, see Miller, *Nature, Justice, and Rights in Aristotle's Politics*, pp. 357–66.

[54] Ibid., pp. 360–61.

persuade citizens to be virtuous. Peter Simpson argues that such a conception is consistent with Aristotelian principles. He asks, "So why could not Aristotle's natural or virtuous city be viewed as . . . a community within the state?"[55]

This conception of community within the state fits Mill's public discourse in that individuals and groups would have the freedom to persuade others toward virtue and away from vice. However, this view does not answer George's challenge to liberalism, for he asks for a principle that would block the state from preventing worthless speech in the name of virtue.

There *is* an Aristotelian principle that a defender of Mill can appeal to, and it responds to George's challenge. In *De Anima*, Aristotle says that while perception is non-voluntary, a human being can exercise his knowledge when he wishes (417b18–26).[56] This seems to indicate that because human flourishing requires actualizing rational desire over appetite—in what Douglas Rasmussen and Douglas Den Uyl call "a self-directed activity"[57]—the acquisition of virtue is essentially an individual activity that requires a person to take responsibility for her own flourishing.

Based on my claim above that Mill's concept of a free society is justified by a kind of eudaimonism, I argue that Mill believes that self-directedness is enhanced rather than hindered by unqualified freedom of opinion and sentiment. If this is correct, then the Millian defender of free speech can answer conservative and communitarian critics by using Aristotelian resources.

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[55] Peter Simpson, "Making the Citizens Good: Aristotle's City and Its Contemporary Relevance," *Philosophical Forum* XXII, no. 2 (Winter 1990), pp. 149–65; quotation at p. 160.

[56] This translation is Douglas Rasmussen and Douglas Den Uyl's from their *Norms of Liberty* (University Park, PA: University of Pennsylvania Press, 2005), p. 138. Rasmussen and Den Uyl note that "wishes" refers to Aristotle's *boulesis* (or rational desire), not mere whim. The argument I make here about self-directedness and speech is heavily indebted to Rasmussen and Den Uyl's argument for self-directed human flourishing in *Norms of Liberty*.

[57] Ibid., p. 139.

Mill argues that without the chance of being publicly confronted and challenged, our ideas become stagnant and dead.[58] The price of censorship is the "sacrifice of the entire moral courage of the human mind."[59] By itself, Mill's claim here is open to the charge of being hyperbolic. However, Mill's insistence that the "faculties of judgment, mental activity, and moral preference are actualized only when making a choice," is made more compelling if we accept Aristotle's requirement that for an agent to be virtuous, the agent must be in a condition of knowing what he is doing and choosing his actions for their own sake (*NE* 1105a31–32).[60]

Aristotle's political philosophy allows paternalism to protect people from learning vice. Mill rejects that view, holding that it is only through discussion that vicious ideas can be refuted and virtuous ones can predominate. He thinks that certain virtues—such as individuality, prudence, temperance, and courage—come about through unregulated discussion of the good life. If we allow censorship instead of freedom of thought and discussion, our convictions may be good, but they will not be self-directed in the Aristotelian sense. It is possible that someone may be guided on a good path and kept out of harm, but Mill asks, "What will be his comparative worth as a human being?"[61]

Miller reminds us that Aristotelian "autonomy" is not a virtue in itself, but rather, a component of practical wisdom.[62] Mill believes that an environment of freedom of thought and discussion is necessary for a person's character to be self-directed. Therefore, there is an Aristotelian principle blocking government intervention in this sphere

[58] Mill, *On Liberty*: "Our merely social intolerance kills no one, roots out no opinions, but induces men to disguise them or to abstain from any active effort for their diffusion" (p. 31).

[59] Ibid.

[60] Mill adds "perception" to this list (ibid., p. 56). It isn't clear what Mill means by saying that perception is a matter of choice, but Aristotle, of course, would disagree with this addition; see Aristotle, *De Anima*, 417b18–26.

[61] Mill, *On Liberty*, p. 56.

[62] See Fred D. Miller, "Aristotelian Autonomy," in *Aristotle and Modern Politics*, ed. Aristide Tessitore (Notre Dame, IN: Notre Dame University Press, 2002), pp. 375–402.

of liberty in order to secure self-directed pursuit of the good life. Mill's optimism about unqualified speech rights benefits from an Aristotelian framework of virtuous character with its essential component of self-directedness.

5. Conclusion

Aristotle does not have a concept of free speech resembling modern civil liberties. His concept of the state may be at odds with Mill's, but the justification for both is rooted in the pursuit of moral virtue. Additionally, Aristotle's theory about the natural relation between truth and persuasion and his framing of rhetoric as a kind of reasoning provide resources for those who support Mill's classical liberal defense of freedom of speech.

In ancient Athens, it was assumed that if a particular proposition managed to survive the rigorous debates in the assembly, then it was most likely the better judgment.[63] Aristotle's theory about rhetoric makes that optimism reasonable. There is reason to think that rhetoric and discourse within the public square not only can be principled, but that ideas that have weathered Mill's marketplace of ideas are more likely to be true.

Likewise, Mill's optimism about unregulated freedom of thought and discussion leading to individual virtue is not unreasonable or naïve. There is good reason to believe that a Millian environment of uncensored opinion and sentiment produces not only better judgments, but also better people. All of this suggests that an Aristotelian defense of Millian freedom of speech is not jarring or incongruent, but a natural fit.

[63] Balot, "Free Speech, Courage, and Democratic Deliberation," p. 240.