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## John Stuart Mill's 'On Liberty'

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# So to Speak podcast transcript: John Stuart Mill's 'On Liberty' with Professor Dale E. Miller

by [Nico Perrino](#)

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*Note: This is an unedited rush transcript. Please check any quotations against the audio recording.*

**Nico Perrino:** All right, Professor Miller, thanks for coming on the show.

**Professor Dale E. Miller:** Well, thanks very much for having me.

**Nico:** I wanna ask, how did you get interested in the philosophy of John Stuart Mill? You seem to have been working on him and with his works for quite some time now.

**Professor Miller:** Well, you know, when I was an undergraduate and even back into high school, I was very much enamored of a kind of libertarian political philosophy. And I guess that by the time I was an undergraduate, the philosopher that I was most enamored of was Robert Nozick and his book *Anarchy, State, and Utopia*. So, then I went off to grad school and in my first year there, I decided I wanted to read more about utilitarianism, which was a very different viewpoint from the one that I was – the one that I had embraced. And I did this kind-of in the spirit of wanting to know my enemies.

So, a professor there named Kurt Baier agreed to do a directed reading with me, and the plan was that we were going to start with the history of utilitarianism and then move on to some more contemporary work. And so, we got through a couple of weeks of Jeremy Bentham, who was an earlier utilitarian philosopher than Mill –

**Nico:** And actually a teacher of Mill, correct?

**Professor Miller:** Well, not in any formal sense. But they were certainly acquainted. Bentham and Mill's father had a close connection for a number of years. And mill at one point, for example, served as an editor for some of Bentham's work. So, we got through the Bentham and we got to Mill, and the plan was that we were going to spend two or three weeks on Mill. And every week I just said, I'd like to do some more of

this. I just really got caught up in Mill. And I think the reason was that I had never really felt satisfied with the kind of foundations that I had for some of my views. I was sometimes, maybe, smugly confident about them, at least in talking with other people.

But I believed in all these natural rights and I never really had a good story about where those things came from. And I felt like Mill offered me more of a foundation for a lot of what I believed, and some pretty good reasons to give up the parts that he wasn't giving me foundations for. And so, coming into reading Mill, really seeing him as kind-of an opponent, he just won me over.

**Nico:** Well, let's talk about utilitarianism very quickly, because this is perhaps what he's best known for. And I'm not a philosopher but my basic understanding of utilitarianism is the idea that what does the greatest good for the greatest number of people is the best form of government, or governance. Is that more or less correct?

**Professor Miller:** It's certainly on the right track. That formula, greatest good for the greatest number of people, is kind-of misleading. It's something that gets tossed around a lot, and while I would want to fact check this before I said it in print, I think it's true that that actually comes from Bentham, but that he later repented of putting it that way. It would be better to just say greatest good, and let it end with that. Numbers come into it but it's not always a question of what's best for the most people. And so, that's what can make that misleading.

**Nico:** Well, that's interesting because then, well I guess in the prior formulation, the one I stated, you also have the same problem which is how do you define good?

**Professor Miller:** Well, now that's gonna be an issue no matter what. For the utilitarians, roughly speaking, that comes down to a question of what results in the most happiness. Not the most happiness for the person who's conduct we're evaluating, or at least not only them, but the most happiness overall. The most happiness taking everyone into account even in the long run. There's a very – oh, I'm sorry, go ahead.

**Nico:** No, you can finish that thought but there is an interesting departure it seems to me, between that principle and the arguments that John Stuart Mill makes in *On Liberty*, which is the book that many of our podcast guests, or listeners, will be most familiar with because the second chapter in that book is one of the best articulations in favor of a free speech philosophy that has ever been written. But I want you to finish that, and I actually wanna place John Stuart Mill before we move into that, as time, for example.

**Professor Miller:** I think that where I was going actually is going to address the thing that you're already worrying about. It's a good worry to have. There are different stripes of utilitarians. One way to be a utilitarian, and this is in some ways the most straightforward way, is to think that on a case by case basis, when we're trying to decide whether somebody did the right thing, we should look at whether their action produced the most good. That individual action by that individual person in those specific circumstances. And because philosophers have a name for everything, we call that "act utilitarianism". A different way to be a utilitarian is to think that we don't apply the standard of producing the greatest good on a case by case, action by action basis. But instead we use it to evaluate something like moral rules. And we say that the best rules are the rules that it would best promote happiness for people, generally, to accept. And then, when we want to evaluate individual actions and think about whether what a person did on a specific occasion was right or not, what we think about is what that best set of rules would say about their action.

So, we call this "rule utilitarianism," and while some of my friends and colleagues would disagree with me about this, I've come to the conclusion that Mill is a rule utilitarian. And I think that this makes it much easier to fit together his utilitarianism and the kinds of arguments that he makes in *On Liberty*.

**Nico:** Yeah, I would think it would have to be so. Because if I am looking at that first strand of utilitarianism, you could be justified under that philosophy in perhaps stealing a loaf of bread if it's going to feed your family, but only cost the rich merchant \$0.10. It seems to be that there would be greater good coming from that action, but on a precedential basis, it wouldn't matter because you're looking at

everything [inaudible] [00:07:49]. Whereas the second one, if you have John Stuart Mill's philosophy as he enumerates in *On Liberty*, which is essentially that, "The sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection." and I'm quoting him, here.

He says that, "Only purpose for which power can be rightfully exercised over any member of a civilized community against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant." In that case my example, stealing a loaf of bread, the harm would be in taking from someone else, their property. And so in that sense it would break that moral foundation which Mill would argue should be the guiding principle in society to produce the greatest good.

**Professor Miller:** I think in some sense in the abstract you're right. I think it's a mistake to think that the principle that you just read, which today Mill doesn't use this kind of language, but today people call that the liberty or the harm principle –

**Nico:** A very libertarian principle that I'm assuming you're familiar with from your early libertarian readings.

**Professor Miller:** I think it's a mistake to think that – to say that that principle would necessarily condemn somebody in the kind of example that you gave. But it's maybe better to bracket that conversation for now until you're ready to talk more about *On Liberty*.

**Nico:** Yeah. Well, let's just take a few moments to talk about John Stuart Mill, the man. He was a man who was born in 1806, he was born in London to a father who worked in the East India Company, one of the big, mega international corporations of the time, and he was very well educated, correct?

**Professor Miller:** John, you mean, was well educated?

**Nico:** Yeah, John was well educated.

**Professor Miller:** Yeah, right. He had a very unique education. His father – when he was born, his father wasn't at the East India Company yet, although he actually, when John was fairly young, his father wrote a history of the East India Company and that was essentially his job application. On the strength of that, they hired him. John was educated by his father. So, he was, to use the language that we would use today, home schooled. He essentially never had any formal, outside of the home, education. And his education, Dickens kind-of parodies it in his novel *Hard Times*. It was famous in that James Mill set a very demanding syllabus for him.

James had this idea based on his psychological theories that any child could be a genius, as long as he got the right kind of early education. We're born completely blank slates, so that as long as you started forming a child's mind in the right way from the very start you could produce this genius. And so his project for John was that he was going to raise him to become this champion of utilitarian philosophy. And John was a real child prodigy, and was doing things like – famously he says in his autobiography, reading Greek at the age of three. He really was an enormously accomplished child. It wasn't necessarily the most enjoyable upbringing.

We don't have any confirmed reports, for example, of John ever playing with a ball, anything like that. To some extent, this was driven by himself. It's not that he had no free time, and even in his free time he was pretty bookish. So, it's not as if he had this strong inclination to be doing something, other than studying, that his father was preventing him from doing. It's the kind of upbringing, I always say to my students, where you'd expect to read in the London newspapers 15 years later that this fellow had hacked his father to pieces or something like that. Which didn't happen, although it is true that when he was about 20, John had a period of depression that affected his thoughts in some way. When I say affected his thoughts, I mean it caused him to reconsider some of the things that had been taught. It made him a different sort of utilitarian than his father had raised him to be.

People call it, sometimes, a nervous breakdown. It was nothing like that. He was completely functioning the entire time, but he was melancholy.

**Nico:** And he grew up and ended up going to work for the East India Company like his father. And did he work there almost his entire life while he was doing the philosophy that he's become so well known for?

**Professor Miller:** He worked there until 1858, and in 1858 the British government absorbed the East India Company. And they actually encouraged him to stay with them and to become essentially a government civil servant, but he declined that and retired at that point. So, he worked there until he would've been, roughly 52.

**Nico:** And he was doing philosophy while he was working there?

**Professor Miller:** He was.

**Nico:** Was he a well-known philosopher?

**Professor Miller:** He was well-known, although what he was well-known for is not what he's best known for now. So, he was well-known at the time for two things in particular, I think. One was his work on political economy. And he had a major two volume work on political economy that came out, *The Principles of Political Economy*. He was also well-known as a logician. And he'd had another major two volume work come out, *The System of Logic*, which – I say logician because the book has logic in the title. It was really much wider ranging than that. And has a lot to say about the nature of language about knowledge, what today we'd call epistemology.

So, he was well-known for those works. But today when people talk about Mill, or when we teach Mill, we're very often teaching the political philosophy like *On Liberty*, the moral philosophy like Utilitarianism. He had written some things in these areas earlier in his life and the essays that we most often read today, Utilitarianism and *On Liberty*, he was working on them in the 1850s. But *On Liberty* wasn't published until 1859, Utilitarianism didn't come out until 1861. So, he was out of the India House before the things that he's famous to us for, appeared.

**Nico:** Yeah. He left, as you said, in 1858. He wrote *On Liberty* in 1859. What was –

**Professor Miller:** He published it in 1859.

**Nico:** Oh yeah. You said he had been writing it.

**Professor Miller:** Yeah. He'd been working on it earlier, and he was working on it with his wife, Harriet Taylor Mill who, some people would argue and it's hard for me to know whether they're right or not, that she really was a co-author of *On Liberty*, and he essentially says as much in the dedication to the essay which is the highest praise that you'll ever read being heaped upon any person, the terms in which he speaks of her. Harriet actually died in 1858, and so at the beginning of the essay one of the things that Mill says is that it's a tragedy that she was never able to give the last version of the essay a going over.

**Nico:** What did he think of his time, and of England at this time?

**Professor Miller:** Well, he certainly had many frustrations. And it's hard to know where to begin in talking about that.

**Nico:** Would he have been seen as a radical, would you say?

**Professor Miller:** Yeah, I mean, somewhat literally. He would've been seen as a radical in the terms that they used in those times. He was, for example, a supporter of extending the franchise to everybody. Letting everybody vote, which was – just in terms of the way they categorized people politically, that was

part of the radical agenda. He was in some ways, I think, radical and in other ways, very conventional. He was western centric, maybe, for lack of a better term. He thought that the western societies, while they still had many defects and things to learn from the rest of the world, he thought that western civilization was essentially on the right track compared to civilizations in other parts of the world.

**Nico:** Had he been well travelled working for the East India Company? Was that something he did within the scope of his job?

**Professor Miller:** Not the least bit. No. He never left Europe. So, in contrast maybe with somebody like Edmund Burke or other people who'd been involved in the colonial enterprise, Mill never set foot in India. And despite the fact that – he didn't just work for the East India Company. He rose to a really high level within the company. I think that with some justice he could blame ill health, he had tuberculosis and he had a lot of digestive problems. It would've been hard for him to travel very widely. A lot of the travel he did was actually to get to better climates when his tuberculosis, or his wife's, was acting up. But no.

It is true that he makes some claims about how people in other parts of the world live, that he didn't necessarily have the strongest evidence for.

**Nico:** I guess we should probably mention, but the East India Company was a trading company, correct?

**Professor Miller:** Yeah. It essentially ran India, or the British – even before it was actually part of the British government, it essentially ran India for Britain. So, it was not just a company that sent ships to India, and purchased things, and brought them back. They really ran India as a colony.

**Nico:** So, in 1859 he publishes *On Liberty*. What was the inspiration for his writing it? As you state, it was kind-of different than things he had written before.

**Professor Miller:** Well, he and Harriet together thought that – in one letter, Mill actually describes *On Liberty* and some other things as a kind of mental pemmican, he says. I think I'm pronouncing that correctly. The kind of dried meat and berries that Native Americans might have used as survival food. They thought that, despite what I just said about his believing that overall western societies were somewhat more advanced than others, he thought that still the level of intellectual quality in the west was fairly low, and especially in England. And so, they saw *On Liberty* as something that future thinkers would be able to benefit from.

Something that they didn't necessarily think would be appreciated in its time. But they saw Victorian society as kinda stultifying, confining. To some extent, I think, this probably reflects the fact that their own relationship had been scandalous by Victorian standards. When they first met, Harriet was actually married to another man. And she and Mill very quickly were spending enormous amounts of time alone together. Her husband actually at one point, six out of seven nights of the week, would go to his club so that Mill could come to their house. Now, they insisted that this was completely chaste and I think today most of us probably believe that it was. But by Victorian standards, you just couldn't do that. So there was a lot of gossip, there was a lot of tittering, and I always thought that had to contribute to them thinking that it just wasn't possible for people to be themselves.

That people were too hemmed in by convention, by tradition, by what society expected. And so *On Liberty*, whether or not that I'm right that that detail about themselves was the motivation, that's the kind of thing that, in general, *On Liberty* is reacting against.

**Nico:** Well, 1859 was sort-of an Earth shattering year, when we're talking about the level of discourse and new discoveries. That was the year that, I believe Charles Darwin's *On the Origin of Species* was published. And when John Stuart Mill uses as an example in *On Liberty*, religion, to kind-of point to the one thing that you can't question, in walks Charles Darwin, of course, with *On the Origin of Species* and perhaps creates a case study for some of the arguments that John Stuart Mill discusses.

**Professor Miller:** Mill had some appreciation of Darwin, and of course you don't see it in *On Liberty*, but Mill also wrote some things about religion. And to an extent that today surprises, I think, a lot of people who study Mill – I just read a very nice book about this by Timothy Larsen. While Mill wasn't a Christian, he actually saw a lot that was positive in Christianity and actually thought that, what we call today sometimes the design argument, was a pretty good argument for some kind of creator. Some kind of designing intelligence.

But in his last essay, where he talks about these kinds of issues, he also says, in essence this clever fellow named Charles Darwin has just published a book that offers a different explanation of why it seems like we see evidence of design in nature. And this looks pretty good, and we'll have to see whether this holds up or not. But if it does, then that really probably takes away the one respectable intellectual reason for believing in some kind of creator.

**Nico:** Oh, interesting. So, you say he probably wasn't a Christian, correct?

**Professor Miller:** He certainly was not a Christian.

**Nico:** Because in *On Liberty*, he comes across as one though he comes off as very skeptical. I mean, in so far as he – it seems like he makes the arguments he makes in *On Liberty* from a Christian perspective to reach a Christian audience.

**Professor Miller:** You're absolutely right. First of all, Mill was not, during his lifetime – he really just didn't discuss his religious views. And the work in which he talks about this was work that was published posthumously. He certainly knows who he's writing for, and in *On Liberty* he makes some arguments that are clearly meant to appeal to a Christian audience. And he somewhat affects a – I'm trying to think of a delicate way to put this, he probably pretends to be a bit more of a Christian than he is, although again without strictly being a Christian. He does see much to admire in Christianity. So, it's not as if he's stretching that much.

**Nico:** Well, there is a concern about your ability to reach a predominately Christian audience by coming out as a non-Christian. And we saw what happened to Thomas Paine after he published *The Age of Reason*. He was essentially led away at his burial by paupers, people who were looking to pick at his estate which was very little at that time. He died destitute. So, there was a concern about coming out as a non-Christian, obviously in Thomas Paine's time but presumable in Mill's time as well.

**Professor Miller:** Yes, that's right.

**Nico:** So, let's get into *On Liberty* now, the crux of it. You said that he came from an a-traditional household. He met his wife while she was still married to another man, and society – Victorian society at that time was not accepting of that sort of arrangement. And in *On Liberty*, he begins it by saying that, "It's an examination of the nature and limits of the power which can be legitimately exercised by society over the individual." And earlier in this conversation we kind-of talked about what he believed the nature of those limits were.

But he goes on to say that, "In the part which merely concerns himself, the individual, his independence is, of right, absolute over himself, over his own body and mind, the individual is sovereign." He also says, "The only freedom which deserves the name is that of pursuing our own good in our own way so long as we do not attempt to deprive others of theirs, or impede their effort to obtain it. Each is the proper guardian of his own health, whether bodily or mental, or spiritual. Mankind are greater gainers by suffering each other to live as seems good to themselves than by compelling each to live as seems good to the rest." That's a pretty blatant refutation of a lot of the social trends, and political trends perhaps, that were happening in Victorian England at the time.

**Professor Miller:** Well, a rejection if not a refutation. This might be a good time to say a little bit more about the principle that you read earlier. The liberty principle, or the harm principle. Mill says that the object of the essay is just to assert and defend that one principle, which probably when you read the essay isn't true. There's a lot of different stuff going on there. But he clearly sees that as at the heart of the

essay. But it's important to be clear about exactly what this liberty or harm principle says and what it doesn't say. So, one way to read it and what I think is the best way, is to take it to say that preventing from other people from being harmed is the only reason that could count in favor of restricting the freedom, the liberty, of an adult.

So, what that doesn't say is that society always ought to stent them, whenever one person is harming another, and prevent that. What it says is, in essence, preventing other people from being harmed is a necessary condition for society to be justified in interfering. And this is important for Mill, because he thinks in fact, we do things all the time that we ought to do, we ought to be allowed to do, that harm other people. He thinks this about economic competition. If you're running a store and I open a store down the street that offers consumers a better deal, I take your customers away, Mill thinks I've harmed you but he doesn't think that society ought to prevent that.

**Nico:** Didn't Mill think that there should be some sort of population control, and that economic growth shouldn't be allowed to expand unregulated? Am I remembering his thinking there correctly?

**Professor Miller:** Well, vaguely correctly, yeah. Mill thought, and this goes back to his economics which come from a – largely from an earlier economist named David Ricardo. Mill thought that economic growth at some point would just naturally stop. And just as a matter of basic economic laws. And I'm not gonna try to rehash exactly why he thinks that, because I didn't review that part of Mill. But he believes this. And he believes that we shouldn't be having too many kids. Partly because he believes this drives down wages. That if you've got more potential workers, then people are going to get paid less for working. He believes – they didn't really have any very effective birth control back then. But we know now that Mill was arrested as a young man for distributing some literature outlining some ideas about birth control in working class neighborhoods. So, he would've been a big proponent of the very effective birth control that we have right now. He believed that parents shouldn't have kids that they weren't able to feed, to take care of. He even suggests that couples shouldn't be allowed to marry unless they can show they have the means to support children, which is kind-of quaint for us today, to think that only within marriage would people be having children.

So, you could make sure that you didn't have any kids that you couldn't afford as long as you couldn't get married until you had enough money. But he's not – when you say population control, that could mean different things to different people. I mean, Mill is the last person who's going to want –

**Nico:** Eugenics or something.

**Professor Miller:** – some kind – yeah, some kind of draconian, government regime of population control. That's not –

**Nico:** But some of the things you were talking about before, and this is where I'm trying to parse out what he really means. When you say he believes people should do this or should do that, does he advocate for government intervention in doing those sorts of things? Or does he not? Because based on the reading of *On Liberty*, it seems as though people are free to do whatever they want so long as they don't harm other people. But you could define harm so expansively that almost everything can be harmful to someone.

**Professor Miller:** Yeah. This is – I mean, it's very much an issue in interpreting Mill, to think about how he understands the notion of harm. And it's important for thinking about how to understand him on free speech. Mill never actually tells us what counts as harm. He never really gives a definition of harm, and that is, I think, a weakness in the essay. Although Mill is trying to write for a very wide audience. And so, he values readability and accessibility a lot. And so that, I think, leads him to just take some things for granted that if he had been writing for a more scholarly audience, he would've felt the need to go into more detail about.

If you contrast the writing style of *On Liberty* with some of his more technical work, like *The System of Logic*, it's very different. What Mill seems to have in mind, I think, when he talks about harm is that we've got certain interests. We've got an interest in our life, our health, our money. We've got an interest in



security. Mill seems to think we have an interest in privacy. And that to harm us is to damage those interests. So, not everything that happens to me, that I wish hadn't happened, necessarily counts as harming me. Just because something makes me unhappy doesn't mean I've been harmed by it. Somebody who's a homophobe might be really unhappy to think that this gay couple has moved in down the block, but Mill wouldn't think that they were being harmed by that.

**Nico:** So, to take the example that we discussed earlier of stealing a loaf of bread, I realize that's probably a cliché in philosophical circles, but what would he have thought of that? Would he have thought that the person in the wrong was the person who stole the loaf of bread from the rich merchant to feed their family?

**Professor Miller:** Well, it's kind-of a question here about how far back you want to go. I mean, of course Mill would have thought that it's not okay to be a thief. And he would've thought that theft is harm, and he would've thought that theft is a harm that society ought to do something about. Remember, I said that he doesn't necessarily think that society or the government needs to try to prevent all kinds of harm. He would've thought that theft is a harm that we ought to be trying to prevent. However, he also believed in something like a universal basic income. Mill would not have thought that anybody ought to be in the position of having to steal a \$0.10 loaf of bread to prevent their family from starving.

So, in some sense in a Millian world, that's not a scenario that would arise in the first place.

**Nico:** Okay. So, what would you make of his arguments about the tyranny of the majority? Because when we get talking about how he thinks society should take into account people living their own autonomous, independent lives, he talks about how oppression doesn't just come from government. It can also come from social constraints. He says, "The will of the people, moreover, practically means the will of the most numerous or the most active part of the people. The majority, or those who succeed in making themselves accepted as the majority."

He's talking essentially about democracy, here. "The people consequently may desire to oppress a part of their number and precautions are as much needed against this as against any other abuse of power." And then he goes on to say, "Society can and does execute its own mandates, presumably outside of the scope of government. And if it issues wrong mandates instead of right, or any mandates at all in the things which it ought not to meddle, it practices a social tyranny more formidable than many kinds of political oppression since. Though not usually upheld by such extreme penalties, it leaves fewer means of escape, penetrating much more deeply into the details of life and enslaving the soul itself."

So, I guess the thing that I have a hard time wrapping myself around is, where does Mill see a role for the state, where does he see a role for the society, I guess, to regulate outside of official state action? And I don't know. It seems like a difficult thing for me to grapple with.

**Professor Miller:** Well, the idea of the tyranny of the majority, I think Mill actually got from Tocqueville, Alexis de Tocqueville and his two volume work, Democracy in America. Mill was a big fan of this. He and Tocqueville never met but they corresponded for a lot of years. Mill actually wrote some long reviews of Democracy in America that were kind-of the introduction of this work to English speaking readers. And when you asked me before about Mill's motivation for writing On Liberty, this was something else I should've talked about. Tocqueville came over in the 1830s, I believe, maybe it was very late 1820s. He was a Frenchman who came over to America ostensibly to study our prison system.

But what he wrote instead was this major sociological treatise about American society. And there was a lot here that he admired, but part of what concerned him was how much people felt pressured to obey social norms that weren't necessarily enforced by the government. They weren't laws. But just to do what was expected of them, and the way that people would, through ostracism or other kinds of techniques, informally punish their neighbors for not conforming to these norms.

**Nico:** We see this today, in the cancel culture dialog that goes on about people –

**Professor Miller:** Well, we probably see it in various places. That would be one. You could talk about harassment on Twitter as another. Tocqueville, rightly or wrongly, Tocqueville thought that this was, at least in part, a result of the way that American society was so much more level than more aristocratic European society. In a more aristocratic society, you've got aristocrats that are basically immune to this kind of pressure. And if they're eccentric, they're weird, or they're very individual, that gives everybody else a kind of cover, in a way. It's hard for people to criticize you for doing something that the Count of Whatever is doing also. Whereas in a society that is much more level, Tocqueville thinks it's actually much easier for society to exert this kind of pressure on people. And so, this is something that's very much in Mill's mind, too.

And the way that Tocqueville had approached this, what made him interested in studying America, is that he thought this is the direction that Europe is headed. Europe is also becoming more democratic, not just in the voting sense, but in the sense of social equality. And so, Europeans need to understand Americans in order to see what they're going to get. And so Mill is to some extent, I think, writing On Liberty as some kind of protection against what he sees as the negative side of something that on the whole he thinks is actually very beneficial.

**Nico:** And what is that, that he thinks is beneficial? The leaving things up to society?

**Professor Miller:** Greater equality.

**Nico:** Gotcha.

**Professor Miller:** Mill was – I'm not necessarily here talking about equality in terms of money, although he'd have things to say about that, too. But in terms of social equality.

**Nico:** A rejection of station by birth, I'm assuming?

**Professor Miller:** Yeah, exactly. And so, this gets back to something that I mentioned before about Mill wanting to extend the franchise. Wanting to let not only the working class vote but also women vote. Mill was briefly in parliament in the 1850s – '60s. 1860s. And was the first person to propose there that women should be allowed to vote on equal terms with men. Didn't pass, but he was an egalitarian, but he also could recognize that there could be some negative consequences of greater equality along with a lot of positives.

**Nico:** So, let's move in now, because I realize time has just flown by. We should talk about the free speech argument that John Stuart Mill makes in the second chapter of On Liberty. The first chapter lays out the framework of what he's gonna do in the entire essay. He talks about the nature of the limits of power which can legitimately be exercised by society over the individual. He talks about tyranny of the majority. He talks about the proper role of government. And then he says at the end of that introduction, I wanna first talk about the freedom of expression, or the freedom of inquiry. Because he says, more or less says without saying it, that that is the matrix.

It's the indispensable condition of nearly every other form of freedom, and it speaks to more sorts of freedom, greater sorts of freedom. Had Mill written about free expression before, or was this his launching off point? Was this the first time anyone had heard these arguments from him?

**Professor Miller:** There were things he had written before, I believe I'm correct to say, that touched on this, including some early things that actually went in a somewhat different direction and were less supportive of free speech. But On Liberty is really sort-of the definitive statement. And nobody reading it would've thought it was just a rehash of things we had done before.

**Nico:** So, in On Liberty, in the second chapter he lays out more or less three arguments in favor of free expression and he tackles them head-on. He says we need free speech because the speech, or the expression that might be expressed, might be true. He also says we need free speech because it might be

false, and then he says we need free expression because it might be partially true or partially false. He says, too, “If an opinion is compelled to silence, that opinion may, for ought we can certainly know, be true.” And he said, “To deny this is to assume our own infallibility.”

He says, “Secondly, though the silenced opinion be in error,” this is if it is incorrect, “it may, and very commonly does, contain a portion of the truth and since the general or prevailing opinion on any subject is rarely or never the whole truth, it is only by the collision of adverse opinions that the remainder of the truth has any chance of being supplied.” And then he also talks about how, “Even if an opinion is true, it’s collision with error gives a greater conception of the truth. It helps the arguer for that opinion argue the truth more vigorously.” They fail to hold it as a prejudice in that case, or dead dogma, and it becomes a living truth.

So, I guess we can maybe go through some – I don’t know the best way to do this. I’m thinking through it as I go, go through some of his famous quotations in this section and discuss them. One of my favorite begins the essay. He says, “If all of mankind minus one 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 mankind.” And this kinda goes back to his earlier thesis about the proper role of government that, “Over himself, over his own body and mind, the individual is sovereign, “ correct?

**Professor Miller:** Right. And not just government, of course, but as we were talking about, society as a whole. Mill is as worried about threats to freedom of speech that come from extra legal sources as he is about state censorship.

**Nico:** Yeah. I’ve always wondered about that, though, because getting back to the tyranny of the majority, is he essentially arguing for people to not argue vociferously, or if they hold a strong opinion – and I know at the end of this chapter he kind-of says as much, but how are we supposed to convince other people of what is right and what is wrong without some sort of social pressure that comes from making the argument? Does that make sense?

**Professor Miller:** If it’s pressure that comes from the argument, if it’s intellectual pressure, it’s persuasion, it’s logic, it’s compelling research, that’s not the kind of pressure that Mill is concerned about. On the other hand, there are certain kinds of social pressure that go beyond that. I don’t wanna say too much about this because this could take us down a wormhole. I could keep you here all day. I’ve been exercising my own freedom of speech at too great of length, I realize, in answering your questions. So, there’s a project that I’m working on now that talks about boycotts.

And when somebody like Mill might think that boycotts were justified as a response to things that were said and when he wouldn’t think that. In some cases he might see a boycott as a kind of illegitimate social push.

**Nico:** I’m looking here, I’m trying to find it in the essay, but there’s a paragraph where he talks about more animated ways of expressing one’s self. So, I think he references satire, and he takes on the argument that okay, speech might be – allowing for vigorous expression might be okay but only if it’s argued rationally. But I can’t find where it is in the essay. There’s a lot else to go into there, but –

**Professor Miller:** Right. One thing he says, and this may be the passage that you have in mind and it’s toward the end of the chapter, is that to the extent that we’re going to try to enforce any kind of rules on the way in which discourse is conducted, the kinds of speech that are allowed. That we ought to be much more protective of the people who are expressing unpopular views than we are people who are expressing more popular ones. So, often what happens is that people who express unpopular views are criticized for the way that they do that. That they’re too dramatic, too provocative.

It’s hard not to think about Colin Kaepernick right now, for example, given that he was just in the news because of this workout that he had. People will say well, it’s okay for you to believe that but you shouldn’t express it in this way. And I’m not gonna try to figure out what Mill might think about Colin Kaepernick,

but in general he thinks we have to be more permissive when we're looking at people who express unpopular views than people who are expressing the mainstream view. That if anybody ought to be given more latitude in terms of how they express themselves, it's them.

**Nico:** So then, to reconcile my concern earlier, he places a great emphasis on that word majority in the tyranny of the majority. The idea being that social oppression, or social concern if it's exercised by a majority, is more concerning than a vigorous condemnation coming from a small minority. Although, sometimes even on Twitter you see a small minority that can force people into silence based on the way they express themselves.

**Professor Miller:** Yeah. It's not just a question of numbers, it's a question of energy and coordination also. So, yeah. It can certainly happen sometimes, that it's a relatively small number who can exercise that kind of power.

**Nico:** And Mill has a great concern in this chapter with the idea of fallibility or infallibility. He thinks – this is kind-of the thing that animates most of his argument, the idea that we can't be so certain that we're right.

**Professor Miller:** Right. So, as you said, Mill thinks about three cases. That if society is wanting to censor, to suppress some viewpoint, to keep people from expressing it, that there are three possibilities. The view that they want to censor might be true, it might be false, or – and for Mill, this is actually the most common case, it might be a mix. It might be partly true and partly false. And Mill thought that most people's beliefs were partly true and partly false. So, the infallibility discussion comes in the first of these cases, where he's considering the point that there's a good chance that any view that somebody wants to suppress or censor will actually turn out to be true. And against that somebody might respond well, no. In this case, we're just sure. We know this doctrine is false, we know that what we believe is the truth. That's something the majority, for example, might say. And Mill argues look, you're just not justified in making that claim because, in essence, you're claiming to be infallible, and no one is.

You might have good grounds for believing as you do, but part of those grounds has to be that people are allowed to disagree with you. And unless people have that freedom to express different views, the only way you can be sure you're right is if you think that you're not capable of making mistakes.

**Nico:** And he uses as an example here, Christianity, as a view that – he almost suggests, and he might even go so far as to suggest, that Christianity is true but he says even still, if we want it to be a vibrant Christianity we need to let it –

**Professor Miller:** For the sake of argument we might say, he takes for granted, in the course of that discussion, that Christianity is true. And then he points out that the people who persecuted Christianity, for example Marcus Aurelius, had every bit as good of reason to censor Christianity as people in his time have to censor views that they disagree with. And so essentially the argument is, do you think you're smarter than Marcus Aurelius? If he was capable of making this mistake, then don't you have to admit that you're capable of making mistakes also? And mistaking true doctrines for false ones?

**Nico:** So, that's why he thinks it's important to allow for free expression even if an opinion be true, but what about if we're confident that it is false? This is where he gets into the idea that you get a greater conception of the truth through its collision with error.

**Professor Miller:** Yeah. I'm gonna be a little picky about wording here.

**Nico:** Oh, please. Yeah.

**Professor Miller:** The first case that he considers is one where people are confident that the doctrine is false but it is, in fact, true. The second case he thinks about is one where people believe it's false and it really is. So, the doctrine the people want to censor – let's say for the sake of argument they're right. That this doctrine really is mistaken. Well even in this case, Mill thinks, it's important that people be allowed to

express the doctrine not because people who listen to them are going to be led to truth, exactly, but because the very possibility of disagreement and argument changes the way that people who hold true beliefs hold them. Mill believes that even if your beliefs are true, if you're not worried that you might have to debate somebody, you're not worried that you have to defend those views, then you're going to hold them as – you used this phrase earlier, dead dogmas.

You're likely to lapse into a kind of state where you give lip service to these ideas, but you don't really understand why you believe them and they may not really make much of a difference to how you live. So, the example that Mill eludes to here, and it's one that I think will be familiar, probably, to a lot of people in the US, is [inaudible] [00:57:30] Christian. The person who goes to church, they sing the hymns, they say the prayers, and then they come out of church and the rest of the week they live in a completely un-Christian way. For Mill, that person has embraced Christianity as a dead dogma.

And he would think the reason for that is, they're not really worried about having to defend their Christianity. It's largely so much taken for granted here that they're not worried about suddenly needing to come up with some kind of justification for what they believe. As he says, back in the days when Christians got thrown to lions, there may not have been a lot of Christians, but they certainly took it very seriously, and it really informed the way they lived.

**Nico:** So, two of the most – use the word here, beautiful, quotes that come from this section is that he says, “Both teachers and learners go to sleep at their post as soon as there is no enemy in the field.” And he continues, “The fatal tendency of mankind to leave off thinking about a thing when it is no longer doubtful is the cause of half their errors.” “A contemporary author,” he states, “has well spoken of, ‘The deep slumber of a decided opinion.’” And I've always been curious who, actually, he's quoting there because he doesn't give a name. “The deep slumber of a decided opinion.” Do you happen to know?

**Professor Miller:** Well, not off the top of my head, but hey, I'm sitting at a computer so let's find out.

**Nico:** We can look it up that way.

**Professor Miller:** That's something I'm sure I would've known at one time, because I once did some footnotes for a – well, I'm seeing it attributed to him. So, I don't – if it's got a source before him I don't know. I did some footnotes once for an addition of *On Liberty*, where I had to research all of these things, but that was a long time ago and a lot of those details I've long lost.

**Nico:** Yeah. Well, it's not a big deal. I just thought I would ask because I had an expert here. So, that is the second justification for free speech, or the scenario in which he makes his argument for free speech or expression. And then there's the third, which as you stated earlier, is perhaps the most important one and emblematic of more situations that we might find ourselves in. That is that an idea is partially true and partially false.

**Professor Miller:** Yeah. And Mill thinks that that is, like I said, the norm. And Mill thought of himself, his intellectual contribution, what he was best at, was not really coming up with entirely new ways of thinking himself, but finding the little bits of truth in different people's ideas and integrating them, making them coherent. And so, in Mill you find a mix of, for example, conservative and more liberal ideas, you find a mix of – you might even say religions and atheistic ideas. He was a complex thinker in that way. But he thinks that that depends on free discussion, right?

That depends on these people who have different pieces of the truth being able to engage with each other, and – we haven't used this phrase yet, and it's not a phrase that Mill uses, but essentially the marketplace of ideas. That's where this gets sorted out.

**Nico:** Is there any indication that John Stuart Mill had read John Milton's *Areopagitica*?

**Professor Miller:** Certainly a lot of commentators draw the comparison between the two. Off the top of my head, I don't recall specifically him saying that, but I'm almost certain that it would be the case that he did, and just as a funny little piece of trivia, Mill's family once lived in a house that belonged to Milton.

**Nico:** Oh, wow.

**Professor Miller:** It was actually, if I remember this correctly, it was on a property that belonged to Bentham, and Bentham was sort-of putting them up. I may be conflating different residences there, but at any rate yeah, they once, when he was young, lived in a house which was rather too small for them, that had been Milton's.

**Nico:** So, there is a line in Areopagitica, and I can't quote it verbatim, but essentially John Milton writes that who knows truth to be put worse to the wear in a free and open encounter with error. And people have always seized on that as being inaccurate. There are times when truth loses to error. And I was struck that John Stuart Mill in On Liberty tackles this head-on. And he says that, "The real advantage which truth has consists in this, that when an opinion is true, it may be extinguished once, twice, or many times," that is, it may lose when confronted with error, "but in the course of ages there will generally be found persons to rediscover it, until someone of its reappearances falls on a time when, from favorable circumstances, it escapes persecution until it has made such head as to withstand all subsequent attempts to suppress it."

I agree for the most part with that argument. I guess you wouldn't really know until you've gone through the ages whether, all ages, whether truth will survive, because our lifetimes are limited. But I do appreciate that John Stuart Mill addresses that argument head-on in a way that John Milton does. And that's what leads me to ask the question as to whether John Stuart Mill had read John Milton and perhaps been unsatisfied with that argument as well.

**Professor Miller:** You know, that detail I'm not going to – I don't know the answer to. But I think Mill would have no trouble recognizing that there are market failures in the marketplace of ideas, just like there are in every other marketplace. And of course, so much depends on educating people. The marketplace of ideas only works the way we want it to if we've got educated consumers. People who are able to recognize the difference between good and bad arguments. People who are able to reject fallacious reasoning. And so, I talked before about Mill being an egalitarian. Part of that was in his wanting everybody to receive an education, which in the 19th century obviously wasn't the case. Not necessarily a state education.

Mill was in favor of, what today we would call vouchers, at least in some cases. But he believed that you've got to prepare people for the kind of liberty that he believes they ought to have.

**Nico:** I wanna ask, by way of closing here because I've kept you longer than I said I would keep you, about one shortcoming that appears in On Liberty. And it's a shortcoming that you find in John Milton's Areopagitica, too. In Areopagitica, John Milton argues, essentially, against prior review. In certain extents, those arguments can be extended to freedom of expression. But he says not for papists, not for Catholics. In On Liberty, John Stuart Mill says that, "Despotism is a legitimate mode of government in dealing with barbarians, provided the end be their improvement and the means justified by actually affecting that end. Liberty, as a principle," he writes, "has no application to any state of things anterior to the time when mankind have become capable of being improved by free and equal discussion."

This is an argument for colonialism if there ever was one, coming from a man who, of course, worked for East India Company. How has this –

**Professor Miller:** Yeah, well, we know he was a colonial. That passage is – certainly to use a popular word of the day, it's problematic. And as I said before, Mill was sometimes willing to speak a little too freely about people in other parts of the world that he didn't really know that much about. One thing I would say there is that, Mill would apply that as much to earlier periods of western society, as to societies in other parts of the world. And he wouldn't necessarily have applied it to every non-western society in his day. But yeah. Mill was a kind of cultural relativist.

In the sense that – we started out by talking about his utilitarianism and what I suggested was his rule utilitarianism. He wouldn't necessarily think that the best sets of – the set of rules that's best in one time and place is best in every other.

**Nico:** Would you say that John Stuart Mill, looking at America today with our first amendment framework, would recognize his arguments within it and approve of the way that we've handled freedom of expression in the United States? At least from a governmental perspective, to speak nothing of his concerns regarding the tyranny of the majority?

**Professor Miller:** You know, I think that on the whole, he would think we got it right. There's a funny little passage – it's not in chapter two, it comes later in the essay, where he talks about society being able to regulate offences against decency. And really, it's a very brief passage, and it comes out of nowhere, and we've never really known what to do with this. I suspect though, and this probably reflects his Victorian sensibilities, that Mill would think that in some ways we've gone further with free speech than he was willing to. For example, in terms of things like erotic dancing or something like that being given first amendment protection, I don't know that Mill would necessarily see something like that as falling under the kinds of arguments that he gives in chapter two. His focus is much more on intellectual discussion. Although, there are things in other parts of the essay that would still, I think, probably support that kind of freedom. It's just that Mill might not frame that as a free speech issue, the way that the first amendment law has.

**Nico:** Well, that's one of the issues that we, who work in the free expression sphere, it's one of the things we see often is, we'll make an argument for free expression but someone will say oh no, that's not free speech, that's conduct, for example. Or, oh, nude dancing, to take an example you put before, well that's not free expression, that's a sort of conduct. And first amendment scholars sometimes look at, "Congress shall make no law abridging the freedom of speech," as a phrase that requires definition. The freedom of speech, what does "the freedom of speech" mean? What is encompassed within that, rather than the whole – than accepting that speech anytime you express yourself, that is expression.

I don't know if that makes any sense, but it's a challenge. And people who look to censor are always looking to define that which they seek to censor, outside of the definition of freedom of speech.

**Professor Miller:** Right. And I think that Mill can be misused in a certain kind of way.

**Nico:** And that was gonna be my last question, there. Are free speech advocates misusing Mill when they use him to make arguments?

**Professor Miller:** You know, I was actually thinking more the opposite. I was thinking more, the person who wants to shut down speech. If they just pointed to chapter two by itself, I think they could say look, here's the classic case for freedom of speech. And it doesn't cover this activity that we're wanting to shut down. It doesn't apply. I think the misuse would be not to read chapter three. Not to read chapter four. Because there may be certain kinds of activities that Mill wouldn't want to frame as speech, but that he would still believe ought to be protected from social interference. It's just that he would put them under a different heading.

So, it would be that kind of cherry picking reading Mill. I don't have a great example off the top of my head of somebody actually doing this, but as we're talking I can see how Mill might be liable to be misused in this way.

**Nico:** Well, I'm looking here in chapter five, and he's got a paragraph here. He says, "Again, there are many acts which being directly injurious only to the agents themselves, ought not to be legally interdicted, but which, if done publicly, are a violation of good manners, and coming thus within the category of offences against others may rightfully be prohibited. Of this kind are offences against decency." So, in that case you might argue that public nudity, though it doesn't really harm anyone else, if done publicly, he says, it could be a violation of good manners. And even if it –

**Professor Miller:** Yeah, that's the passage that I mentioned earlier. It's just really hard to know what to do with. And it's a case in which, I think, Mill would've almost – and these are the Victorian sensibilities at work, he probably couldn't have brought himself to talk about examples. He probably couldn't really do

much more to help us understand what he had in mind because he was such a Victorian gentleman, he couldn't bring himself to talk about those things in the first place.

**Nico:** I'd like to think that he struggled in his time with his own issues, at the same time that we struggle with our own contemporary issues as well. Accepting a very broad, expansive protection framework for expression in America today requires allowing for people to express some pretty important things. His blasphemy is our hate speech that we deal with today. If you're gonna make a consistent philosophical –

**Professor Miller:** Well, maybe.

**Nico:** – argument in favor of free speech, you need to be willing, it seems to me, to defend it at the extremes.

**Professor Miller:** There are hard cases. Hate speech, I think, is probably different from blasphemy in that with hate speech – we've said that for Mill, if behavior is harmful, that doesn't automatically mean that society ought to regulate it, but at least it means that society has a choice to make. As he puts it in some cases, if it's harmful, that puts it in society's jurisdiction. And with hate speech – I think hate speech is a really broad term.

**Nico:** Well, you're getting the same issue –

**Professor Miller:** It covers a lot of –

**Nico:** – that you get with harm, and what is good. We've talked a lot here about using those terms to determine a path forward for society, and I think you get into that same vagueness problem with hate speech as well. I mean, one person's hate speech might be another person's great truth.

**Professor Miller:** Right. Certainly there will be disagreement about what counts as hate speech. It may be that some of the things that we count as hate speech really are harmful, and if they are then that would mean that Mill's principle doesn't protect them from social interference. I'm no expert on first amendment law, but in first amendment jurisprudence for example, we have this idea of fighting words. The idea that certain kinds of words are, themselves, so harmful, so provocative, that society is able to step in and say okay, in these circumstances you're not allowed to say this. And Mill's doctrine, I think, [inaudible] [01:15:06].

**Nico:** Yeah, but even in the case law defining fighting words, you find this vagueness problem. That fighting words doctrine comes from a case in which a Jehovah's witness told a police officer who refused to prevent a mob from attacking him that the police officer was a God damn racketeer. Those were the fighting words of those days. And so in a certain sense, it can be in the eye of the beholder in the same way that harm can be in the eye of the beholder, or good can be in the eye of the beholder. And this is the challenge you get into when you start creating carve outs for freedom of expression.

People like to say well, you can't shout fire in a crowded theater. That might be true, and that might be proscribed by law –

**Professor Miller:** I think that's true.

**Nico:** Yeah, falsely, and people often forget falsely. You can't falsely shout fire in a crowded theater. If there is a fire in your theater, you should probably shout that there is a fire, but it was a phrase that came into being from Justice Oliver Wendell Holmes in the context of him and the rest of the court throwing in jail a group of socialists protesting World War I. The theater in that case was the theater of war, and the fire that was being created, they said, was being created by these anti-war protestors. So, people always find unique ways to use the carve outs for freedom of expression to justify the censorship of the speech that they want where – and this gets back to Mill talking about how our times change. You look 50 years from now and you say, we really threw someone in jail for calling a police officer a God damn racketeer and justifying it under a fighting words doctrine? Or we really threw socialists into jail in the early part of the



20th century for anti-war protest and justified it by saying that they were essentially falsely shouting fire in a crowded theater? So, that's the challenges that we all try and grapple with. People can always come up with an argument for harm that not everyone in society might see as harmful.

I can imagine during Mill's day, arguments in favor of blasphemy laws, the idea being that it would whittle away at the moral fabric of society. And you actually got that –

**Professor Miller:** Or Sodom and Gomorrah, right? Look, I think that's certainly true, and Mill's doctrine, just like any other, is not self-applied. Mill doesn't give us this kind of algorithm that we can use so that we can arrive at complete social consensus about when censorship is or isn't justified. But what it does do, at least, is give us a kind of framework that we can use to structure the disagreement so that if somebody wants to claim that censorship is justified, here's the kind of case they have to make. And in some cases at least, they're probably not gonna be able to say anything very convincing in those terms, even if they can come up with some kind of cooked up rationale about how somebody is being harmed.

**Nico:** Well, professor, I think we'll leave it there. Do you have any last words, any last thoughts about Mill and On Liberty that we should leave our audience with that I didn't get to in my winding way of questioning?

**Professor Miller:** Well, so many, I suppose.

**Nico:** We'll have to have you back.

**Professor Miller:** I would just leave it with this, that Mill, as I said, really was writhing for a wide audience, and everyone who's listening ought to read On Liberty. It's not necessarily a page turner that you won't put down once you start it. Only a few of us maybe had that reaction to it. But everybody ought to read it. You're not an educated person in our world today if you haven't read it.

**Nico:** Well, I first read it when I was an intern here at the Foundation for Individual Rights in Education. It was required reading. And it was a page turner for me, in so far as it was like a revelation, some of the arguments that he was making. He was taking the best arguments for censorship and, in my eyes, turning them on their head. He was taking the best possible argument they had on their side, that an idea is false and saying well, we should still allow it for these reasons. So, I do encourage our listeners to check it out. There's also a recently released, I think it was Jonathan Haidt and Richard Reeves who put out All Minus One, which is I guess an abridged version of chapter two, and it's graphically illustrated. I don't know if you've seen that. I recommend reading the entirety of chapter two.

**Professor Miller:** Yeah. You don't need – with all due respect to Haidt and Reeves, both of whose work I've read and profited from, you don't need cliff notes for On Liberty. Just dive right in.

**Nico:** Yeah, and it can be found free online too, for anyone who's interested. I'll link it in the show notes. Well, professor –

**Professor Miller:** In fact, maybe if I can just stick in one other thing worth mentioning, a lot of your listeners are probably familiar with the group Liberty Fund. Liberty Fund did an amazing thing a few years ago, which is that they bought the rights from the University of Toronto Press, to the entire 33 volumes of John Stuart Mill's collected works and made the PDFs available freely online in their online Library of Liberty. So, not only are there a million free copies of On Liberty floating around on the internet, but essentially every word that Mill ever published is available freely. So, this is about, I'd say four feet on a bookshelf, worth of Mill. So, get started.

**Nico:** Yeah. It might take you a couple of years but I'm sure it's well worth the effort. I will try and hunt that down from the Liberty Fund, which is based in Indianapolis, I believe. I went to school at Indiana University, Bloomington so I always like to hear of folks in Indiana doing good stuff. I will try and hunt that down and I will link it in the show notes. And professor, I really appreciate you coming on and lending your insights.

**Professor Miller:** All right. Thanks very much.