

Authority, Progress, and the “Assumption of Infallibility” in *On Liberty*¹

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I. INTRODUCTION

John Stuart Mill’s defense of free discussion in Chapter II of *On Liberty* includes the claim that silencing discussion implies an “assumption of infallibility” on the part of the censor. This claim is often ignored or dismissed as absurd on the ground that a censor might attempt to silence an opinion he believes to be *true* but pernicious, or because rational assurance short of infallibility is obviously sufficient to justify censorship. Because the claim also appears to be a non-essential sideshow to the main event of that chapter, few commentators seem *worried* that Mill’s claim might be absurd. As David Brink puts it, “contrary to what Mill sometimes assumes, the argument for censorship need not presuppose the infallibility of the censor. Fortunately,

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Mill's best arguments against censorship do not require this assumption about the argument for censorship."²

In what follows, I reconstruct Mill's argument and demonstrate its significance to the overall structure of *On Liberty*. The argument has roots in the work of John Locke and Jeremy Bentham and concerns the position one assumes with regard to *future* persons and circumstances as a result of attempting to settle some matter irremediably. Seen this way, the argument functions as an important authority-limiting corollary to Mill's practical commitments to progress and intelligent social organization, setting a constraint on what political or social authority may enact in matters that otherwise would fall under its rightful control. It also sets a temporal constraint on Mill's anti-paternalism, prohibiting individuals' "assumption of infallibility" over their future selves. If this is right, it is an essential component of the overall argument of *On Liberty*, not only of his defense of free discussion.

II. ARGUMENT IN THE TEXT

Mill asserts that any restriction on discussion necessarily implies that the censor assumes infallibility:

...the opinion which it is attempted to suppress by authority may possibly be true. Those who desire to suppress it, of course deny its truth; but they are not infallible. They have no authority to decide the question for all mankind... To refuse a hearing to an opinion, because they are sure that it is false, is to assume that *their* certainty is the same thing as

² David Brink, "Millian Principles, Freedom of Expression, and Hate Speech," *Legal Theory*, 7, 2001, p. 123, fn. 7.

absolute certainty. All silencing of discussion is an assumption of infallibility. (CW XVIII, 229)

...if any opinion is compelled to silence, that opinion may, for aught we can certainly know, be true. To deny this is to assume our own infallibility. (Ibid., 258)

Commentary on this claim has not been kind. It has often echoed a complaint of Mill's early critic, James Fitzjames Stephen, that censorship need not involve any assumption of infallibility because it need "not assert the falsehood of the opinion suppressed."³

...an opinion may be silenced without any assertion on the part of the person who silences it that it is false. It may be suppressed because it is *true*, or because it is doubtful whether it is true or false, and because it is not considered desirable that it should be discussed. In these cases there is obviously no assumption of infallibility in suppressing it. (Ibid., 41)

Thus, John Gray writes: "We need not... address Mill's absurd claim that censorship presupposes an assertion of infallibility on the part of the censor in his belief in the falsity of that which is to be censored, if only because we can easily enough envisage circumstances in which censorship of something known to be true can be justified on utilitarian grounds."⁴ The view of Stephen and Gray is widely shared, and understandable, given Mill's language in the above

³ James Fitzjames Stephen, *Liberty, Equality, Fraternity*, London: Smith, Elder, & Co., 1874 (second edition), p. 43.

⁴ John Gray, *Liberalisms*, New York: Routledge, 1991, p. 242.

quotations suggesting that the issue at hand is precisely the attitude of the would-be censor toward the truth of his own, or the falsity of his opponent's, opinion.

Stephen also registers a second complaint, namely, that there are some propositions which, even in the absence of free discussion, we may know with “moral certainty” – that is, beyond reasonable doubt, but short of *absolute* certainty – and which may justify a restriction on discussion.⁵ Stephen seems to accept that a very high degree of rational assurance is required to silence discussion, and focuses on the claim that this degree of assurance can be had in the absence of discussion. A more common variant of this objection is that silencing discussion could be justified under certain conditions by something *considerably* weaker than infallibility on the part of the censor. We need only imagine cases in which silencing discussion is reasonably thought to be required to avert a catastrophe. I turn to this question in section V.

In this section, I focus on the first complaint – that the censor needn't assert his own infallibility in the attempt to silence discussion – in order to set it aside. Before moving forward, however, I want to reject one attempt at a more charitable interpretation of the assumption of infallibility claim, according to which Mill's real worry is that under a system of censorship people won't be allowed to make up their own minds what doctrines to endorse. C.L. Ten writes that Mill's assumption of infallibility claim “is not accurately put” because it refers to “the claim that every person should be able to judge for himself or herself the truth or falsity of an opinion.”⁶ This suggestion is in keeping with our appreciation of Mill's anti-paternalism and regard for individuality, and offers a gloss on his insistence that he is *not* concerned with the

⁵ Stephen, p. 42.

⁶ C.L. Ten, “Mill's *On Liberty*: Introduction,” in *Mill's On Liberty: A Critical Guide*, ed. C.L. Ten, Cambridge, UK: Cambridge University Press, 2008, p. 3. Jonathan Riley appears to make the same argument: “...a silencer merely reveals his desire to impose his judgment on others, without letting them make up their own minds. That sort of undue moral coercion is what is *meant* by the assumption of infallibility.” See Riley, *Mill on Liberty*, New York: Routledge, 1998, p. 57.

attitude the censor takes toward the truth of his own, or his opponent's, opinion: "it is not the feeling sure of a doctrine... which I call an assumption of infallibility. It is the undertaking to decide that question *for others*, without allowing them to hear what can be said on the contrary side" (CW XVIII, 234). Nevertheless, Ten's proposal implausibly holds that Mill could not find the words to avoid conflating the fact of imposing one's views on others with the distinctive charge of having assumed infallibility. One condition on a reconstruction of Mill's argument should be to retain its strongly epistemic character.

Though I disagree with Ten's reconstruction, I agree that the phrase "undertaking to decide a question for others" is crucial for understanding Mill's claim, because it indicates that he is not so much concerned with the censor's attitudes as with the act of silencing discussion itself. Consider his own anticipation of Stephen's first complaint, that the censor might appeal only to the utility or disutility of silencing an opinion, and not to its truth or falsity. To this objection, which "makes the justification of restraints on discussion not a question of the truth of doctrines, but of their usefulness; and flatters itself by that means to escape the responsibility of claiming to be an infallible judge of opinions," Mill responds that it merely moves the bulge around under the carpet, and so misses the point:

But those who thus satisfy themselves, do not perceive that the assumption of infallibility is merely shifted from one point to another. The usefulness of an opinion is itself matter of opinion: as disputable, as open to discussion and requiring discussion as much, as the opinion itself. There is the same need of an infallible judge of opinions to decide an opinion to be noxious, as to decide it to be false, unless the opinion condemned has full opportunity of defending itself. (CW XVIII, 233; emphasis added)

This passage makes clear that, whereas Stephen and Gray focus on the thoughts in the head of the censor when he silences discussion – e.g. “assertion on the part of the person who silences it that it is false” (Stephen) and “his belief in the falsity of that which is to be censored” (Gray) – Mill is concerned rather with censorious actions, however motivated, *that only infallibility could justify*. Mill asserts that only infallibility could justify denying an opinion “full opportunity of defending itself.” (We will turn later to the merits of this claim.) To silence an opinion, then, is to act *as if* one were infallible. The sense of “assume” relevant to Mill’s argument is that of taking on the mantle of something, not that of consciously presupposing something in a chain of reasoning. It is more akin to “assuming responsibility” than to “assuming for the purposes of argument.” He cares not about the conscious motivation of the censor – whether the silenced opinion is regarded by the censor as false or noxious or anything else – but about the silencing of discussion itself, the position of authority or responsibility into which it places the censor, and whether the censor is entitled to take up that position. One might now ask: the position with regard to whom, or what, or when? I propose we begin to try to understand the “assumption of infallibility” argument by examining it as it appears in Locke, Bentham, and in Mill’s own earlier writings.

III. ROOTS IN LOCKE AND BENTHAM⁷

⁷ John Milton’s “Areopagitica” (1644), which Mill admired, also contains a relevant passage in its defense of a free (unlicensed) press: “...how shall the licensers themselves be confided in, unless we can confer upon them, or they assume to themselves above all others in the land, the grace of infallibility and uncorruptedness?” But it offers little evidence of the underlying argument. See *The Milton Reading Room*, ed. Thomas H. Luxon, http://www.dartmouth.edu/~milton/reading_room/areopagitica/.

In “A Letter from a Person of Quality,” Locke balks at an attempt by the established clergy to institute an oath, for political leaders, to forswear any attempt ever to change the teachings of the established church.⁸ He objects “...it is a far different thing to believe, or to be fully persuaded of the truth of the doctrine of our church, and to swear never to endeavour to alter; which last must be utterly unlawful, unless you place an infallibility either in the church or yourself...” and he asks, “whether that legislative power, which imposes such an oath, does not necessarily *assume to itself an infallibility?*”⁹ This brief passage is revealing in two respects. First, the worry about “never to endeavour to alter” contains essentially a future-oriented dimension. Furthermore, it concerns not an imminent and carefully circumscribed period of time only, but one extending indefinitely forward. We shall turn to this issue presently. Second, its language of “place an infallibility” and “assume to itself an infallibility” is consistent with the thought that the assumption of infallibility worry is concerned with actions that only infallibility could justify – i.e., with the entitlement to take up the position or responsibility one assumes in instituting such an oath – and not with the conscious attitude of the censor.

Both these elements are also on display in Bentham’s writings on constitutional codes, in which he rejects the establishment of political or legal codes that refuse reasoned revision. A good constitution for Bentham is one that, among other things, acknowledges within itself the fact that it is unlikely to be ideal. Rules to revise a constitutional code must, therefore, be built into the code itself: “Immutability in the work, assumes infallibility in the workman.”¹⁰ In his

⁸ This piece is sometimes attributed to Locke, sometimes to his patron the Earl of Shaftesbury, sometimes to them both. If Locke is not an author of this piece, the pedigree of the “assumption of infallibility” claim would change, but the passage’s usefulness as a clue to Mill’s meaning would not.

⁹ “A Letter from a Person of Quality to his Friend in the Country; Giving An Account of the Debates and Resolutions of the House of Lords, in April and May, 1675, concerning a Bill, entitled, ‘An Act to prevent the Dangers which may arise from persons disaffected to the Government,’” in *The Works of John Locke*, Vol. X, London: Tegg, et al, 1823. Emphasis added.

¹⁰ Jeremy Bentham, “Third Tract on Spanish and Portuguese Affairs,” in *The Works of Jeremy Bentham*, vol. VIII, ed. Bowring, Edinburgh: William Tait, 1843, p. 483. My discussion was informed by Melissa Schwartzberg,

1791 essay, "Necessity of an Omnipotent Legislature," he rejects the Constituent Assembly's decision to make amending the French constitution exceedingly difficult. Though he imagines the Assembly would admit the possibility of improving individual articles of the constitution, he writes: "You are not persuaded of your own infallibility; and yet you act *as if you were; you engage in a measure which nothing but infallibility could justify.*"¹¹ Bentham explicitly distinguishes between the attitude the legislator takes toward his own opinion and the state of affairs in which, whatever the attitude of the legislator, he performs an action he is not entitled to perform. He similarly criticizes the Spanish constitution for containing what he calls an "immutability-enacting, alias the infallibility-assuming clause" that restricted amendments.¹²

In each case, Bentham also clarifies – consistent with Locke's objection to the proposed political oath "never to endeavour to alter" – that the temporal element of the "assumption of infallibility" argument concerns the indefinitely extending future rather than some limited and immediately approaching period of time. In the French case, though amendment was allowed after ten years, the hurdle-jumping required was so difficult as to make the constitution essentially unamendable. Bentham repeatedly laments the "perpetuity of the constitution" or the "perpetuating clause" restricting amendments, and suggests that the effect of this is to "tie the hands of authority for ever" by establishing a "law grasping at eternity."¹³ In the Spanish case, he similarly extends the time-frame of effective constraint due to practical considerations: "Amendment—none for eight years to come, and nobody can say for how much longer! As well

"Jeremy Bentham on Fallibility and Infallibility," *Journal of the History of Ideas*, Oct 2007. Vol. 68 , Iss. 4.; See also her *Democracy and Legal Change* Cambridge, UK: Cambridge University Press, 2007, Ch. 4.

¹¹Jeremy Bentham, "Necessity of an Omnipotent Legislature," in *Rights, Representation, and Reform: Nonsense Upon Stilts and Other Writings on the French Revolution*, eds. Philip Schofield, Catherine Pease-Watkin, and Cyprian Blamires, Oxford: Clarendon Press, 2002, p. 273. Emphasis added. See also Schwartzberg, "Jeremy Bentham on Fallibility and Infallibility," p. 578.

¹² Bentham, "Third Tract...," p. 483.

¹³ Bentham, "Necessity of an Omnipotent Legislature," pp. 274, 275.

might it have been said, *no amendment till the end of time*. The longer the thing continued without change, the stronger would be the reasons against change...”¹⁴

Bentham’s related advocacy of legislative “omnicompetence” – the right of the legislature to review and revise any and all governing principles – brings out the epistemic nature of the “assumption of infallibility” claim concerning the standing of any legal or political body to stifle legislators’ future judgment. A constitutional convention granting to itself, at a particular time, the authority to decide some matter for *all* time, could be justified, other things being equal, only if that judgment were infallible. Every judgment or legal provision must therefore remain open to revision. Otherwise, it would severely harm the prospects of social progress: “Why render the legislature omnicompetent? Because it will the better enable it to give effect to the will of the supreme constitutive, and advancement to the interest and security of the members of the state.”¹⁵

An arrangement suppose, is proposed, which, in the unanimous opinion of the whole legislative, with the addition of the unanimous opinion of the whole constitutive, would be immediately contributory to the greatest happiness of the greatest number. For a certain length of time it cannot be carried into effect. Why? because it is repugnant to that which was the will of the constitutive at the moment at which this restrictive arrangement was established.

On one supposition alone can it be supported, namely, that on the part of the constitutive *and* legislative, at the time at which it received its establishment, *appropriate aptitude had place in a greater degree than it can have place at any succeeding point of*

¹⁴ Bentham, “Third Tract...,” p. 483. Emphasis added.

¹⁵ Bentham, *Constitutional Code*, in *Works IX*, ed. Bowring, (1843), p. 119.

time: in particular, than at any point of time at which a proposition would be brought forward for some change of the number of those on which the restrictive arrangement in question would put a negative. The untenableness of this supposition has been already exposed.¹⁶

Because no one has the “appropriate aptitude... in a greater degree than it can have place at any succeeding point of time,” Bentham concludes, immutable law is a “veto upon remedy and improvement” and those who would set up laws for all-time are “would-be tyrants over futurity” (Ibid.).

This does, however, leave the door open to carefully circumscribed limits on constitutional amendments. In the Spanish case, Bentham writes: “I, who have been thinking of such matters for more than fifty years, would no more think of giving a twelvemonth’s immutability to any such work of mine, than I would set myself up for that Being who is as immutable as infallible.”¹⁷ While the letter of this passage states that Bentham would *not* justify even a year-long restriction on amendments, the spirit of it is to allow that great “aptitude” (such as Bentham’s) *could* justify very limited restrictions. Whether this is the case or not, it is important to notice that the “infallibility” claim seems to require that the proposed restriction will be effectual in perpetuity. More limited restrictions do not plausibly involve an assumption of *infallibility*, even though they may also extend beyond a party’s epistemic entitlement.

Given this evidence, the assumption of infallibility argument as it appears in Locke and Bentham appears to have four main elements.

¹⁶Ibid. Emphasis added.

¹⁷Bentham, “Third Tract...,” p. 483.

First, the problem is not with actually thinking oneself infallible (as in Stephens' first complaint), but – as we saw Bentham put it – to “engage in a measure which nothing but infallibility could justify”. It involves *taking up a position*, or taking on a mantle, that one is not epistemically entitled to take up.

Second, what is most instructive in the passages from Bentham and Locke – because unstated in the passages from *On Liberty* – is that the assumption of infallibility claim has a temporal element. Permanent oaths and immutable constitutions involve taking up an epistemic position with regard to *future* persons and circumstances that one is not entitled to take up.

Third, the temporal element concerns the epistemic position one takes up with regard to the indefinitely extending future, perpetuity, or “any succeeding point of time,” and not to the clearly circumscribed and immediate future. Whether temporary restrictions can be justified is an open question, though presumably to Bentham's mind the question will still turn largely on what a governing body is epistemically entitled to claim.

Fourth, it seems that assuming *infallibility* is a bit of hyperbole, because it would be just as objectionable to assume a position of unsurpassable epistemic superiority, in which one denies that anyone else – including one's own future selves – is likely ever to be in a better position to decide matters than one is now. The hyperbole may be justified in this sense: for those like Locke and Bentham, who were impressed by the growth of knowledge, to assume unsurpassable epistemic superiority is to assume superiority over something like asymptotically-increasing knowledge over time, which is tantamount to assuming infallibility.

Two further points not explicit in Locke or Bentham are worth noting. Implicit in their argument seems to be the claim that an “infallible” – in the sense just described¹⁸ – social

¹⁸ Going forward, I will use “infallible” as shorthand to include the case of unsurpassable epistemic superiority even over one's own future selves.

authority *could* be justified in silencing discussion, if it were appropriately oriented to the public good and satisfied other non-epistemic conditions on rightful authority.¹⁹ Locke and Bentham simply deny that there realistically could be an infallible authority. Finally, it also seems that an assumption of infallibility can have a wider or narrower scope, so that in attempting to settle something in a permanent manner, one assumes infallibility just to the extent of the matter at hand.²⁰

Drawing on Locke and Bentham, then, what does the assumption of infallibility claim come to? It is that, assuming social authority to be sufficiently oriented to the public good, its undermining the possibility of all counteractive future decision-making on some matter implies, to that extent, adopting a position of epistemic superiority with regard to future persons (including one's future selves) that no one is entitled to adopt.

In the next section, I attempt to show that this worry – about adopting an epistemic position to which one is not entitled – is a persistent theme in Mill's political writings. In the section following that, we will examine the extent to which silencing discussion implies adopting such a position, as Mill claims in *On Liberty*.

IV. DEVELOPMENT OF THE ARGUMENT IN MILL

In this section, I want to examine the numerous places in Mill's writings in which he makes the Locke/Bentham argument, without using the "assumption of infallibility" language. We will find

¹⁹ Bentham, for instance, argues that "official aptitude" has, in addition to the intellectual component, "moral" and "active" components. Roughly, a ruler should be wise, oriented to the public good, and energetic in his pursuit of it. For an enlightening discussion, see Philip Schofield, *Utility & Democracy: The Political Thought of Jeremy Bentham*, Oxford and New York: Oxford University Press, 2006, p. 274f.

²⁰ Joel Feinberg makes this point with regard to Mill's claim about silencing discussion in "Limits to the Free Expression of Opinion," in *Freedom and Fulfillment*, Princeton: Princeton University Press, 1994, 126.

all of the main elements of the argument, giving us strong reason to read *On Liberty's* “assumption of infallibility” claim in that light.

In “The Coalition Ministry” (1827), Mill attacks the notion that a man might “gravely pledge himself to be always of the same opinion,” arguing that “the man who can form such a resolution is in a state of mind than which one more immoral is not to be found in human nature” (CW XXVI, 402). He then explicitly ties this immorality to the removal of one’s judgment from the influence of reasons, and so from the very mechanism of improving one’s judgment in addressing social ills, and asserts that this positioning implies the resolution that one will “never grow wiser” – which is a version of the core assumption of infallibility claim:

A resolution to be regardless of evidence implies on any subject, indifference to truth. But indifference to truth where the alternative of truth or falsehood involves that of justice or injustice, benevolence or cruelty, doing our duty or not doing it—causing the happiness or the misery of our country, is indifference to every human virtue. Parliamentary reform [the matter at hand] is a measure of which it is not criminal in any one to disapprove. But it is a measure which sincere men, virtuous men, aye and wise men, have approved of; and most certainly, if it is to be approved of, it is of such tremendous moment to the happiness and virtue of countless myriads, that hardly any human interest can compare with it in magnitude. And that this should be the question which a man chuses in order to resolve *that he will never grow wiser—that because he, a fallible man, thinks that he is in the right, sooner than be convinced of the contrary he will practise every species of dishonesty upon himself—that on this subject his intellect*

shall be hood winked, his reason chained down—Sir, I can never believe that this was what Mr. Canning intended. (Ibid., 402-403; emphasis added)

This passage suggests again that one needn't *think* oneself infallible to assume infallibility – one must merely act in such a way that only infallibility could justify, namely, by chaining one's reason down as if no new information could rationally change one's mind. Besides the negative social consequences of doing this, he makes clear in “The Universities” (1826) that no one is epistemically entitled to do it: “[i]t would be a considerable stretch of arrogance in mankind to suppose that they had already attained the pinnacle of knowledge either in religion or politics; it is highly probable that there is still room for improvement in both” (CW XXVI, 350).²¹

In a passage that recalls both Locke and Bentham, Mill argues in “Political Oaths” (1834) that an oath of office requiring one not to work to change the government or church or constitution, even where the public good demands it, is absurd:

It would be monstrous, if one generation could thus tie up the hands of all succeeding ages, and impose its institutions upon the most remote posterity, against their will. The living will never submit themselves to the tyranny of the dead. Happily, though self-conceited legislators may say to their own handiwork *esto perpetua*, it is out of their power to make it so... But this they may do; they may render it impossible to make the most necessary alteration without perjury.” (CW VI, 187)

²¹ The line is repeated in “The Church” (1828), CW XXVI, 425.

Not only does Mill address the same problem as Locke, and in the same way, this passage reflects Bentham's language about "would-be tyrants over futurity" who would "tie the hands of authority for ever," in "perpetuity," or "at any succeeding point of time."

Similar considerations apply to Mill's extended commentary on the long-term direction of endowments, such as those supporting civic foundations or educational and other social institutions. In "Corporation and Church Property" (1833), he writes:

The sacredness of the founder's assignment should continue during his own life, and for such longer period as *the foresight of a prudent man* may be presumed to reach, and no further. We do not pretend to fix the exact term of years; perhaps there is no necessity for its being accurately fixed; but it evidently should be only a moderate one. For such a period, it conduces to the ends for which foundations ought to exist, and for which alone they can ever rationally have been intended, that they should remain undisturbed. *All beyond this is to make the dead, judges of the exigencies of the living*; to erect, not merely the ends, but the means, not merely the speculative opinions, but the practical expedients, of a gone-by age, *into an irrevocable law for the present*... There is no fact in history which posterity will find it more difficult to understand, than that the idea of perpetuity, and that of any of the contrivances of man, should have been coupled together in any sane mind... do not pretend that it is a crime to disobey a man's injunctions who has been dead five hundred years... (CW IV, 198, 200; emphasis added)

In *Principles of Political Economy* (1843), he repeats the argument:

A similar abuse of the power of bequest is committed when a person who does the meritorious act of leaving property for public uses, attempts to prescribe the details of its application in perpetuity; when in founding a place of education (for instance) he dictates, for ever, what doctrines shall be taught. It being impossible that any one should know what doctrines will be fit to be taught after he has been dead for centuries, the law ought not to give effect to such dispositions of property, unless subject to the perpetual revision (after a certain interval has elapsed) of a fitting authority. (CW II, 223)²²

As in the cases of political oaths and constitutional codes, Mill focuses on the distinctive problem that arises when a fallible person or group of people, by attempting to dictate or settle some matter into the future beyond “the foresight of a prudent man,” place themselves in a position they are not epistemically entitled to occupy.

As a final example, Bentham’s apprehension concerning irremediable constitutional codes appears to have had a direct effect on Mill:

...[Bentham] demonstrated the necessity and practicability of codification, or the conversion of all law into a written and systematically arranged code... one containing within itself all that is necessary for its own interpretation, together with a *perpetual provision for its own emendation and improvement.*” (CW X, 104; emphasis added)

We thus find Mill repeatedly making the same argument found in Locke and Bentham: that an attempt to dictate terms or policies beyond what one may claim as within one’s epistemic

²² Mill there applies the same argument to the propriety of placing conditions in one’s will on the use to be made of what is left to one’s heirs.

entitlement places a veto on remedy and, to the extent that it extends indefinitely into the future, it places the person who makes the attempt into an epistemically unjustifiable position.

With the claims of *On Liberty* in mind – in particular, Mill’s regard for discussion as the main driver of mental and moral improvement – it now seems clear that the attempt to silence discussion on some matter going forward is to be approached in light of Mill’s repeated applications of the Locke/Bentham argument. In the next section, I try to show the fruitfulness of this approach, despite the second complaint mentioned at the start, i.e. that only something considerably weaker than infallibility is required to justify silencing discussion under certain circumstances.

V. SILENCING DISCUSSION

In *On Liberty*, Mill anticipates this second complaint. He imagines his opponent saying: “There is no such thing as absolute certainty, but there is assurance sufficient for the purposes of human life. We may, and must, assume our opinion to be true for the guidance of our own conduct: and it is assuming no more when we forbid bad men to pervert society by the propagation of opinions which we regard as false and pernicious” (CW XVIII, 231). To this, he famously replies: “...it is assuming very much more. There is the greatest difference between presuming an opinion to be true, because, with every opportunity for contesting it, it has not been refuted, and assuming its truth for the purpose of not permitting its refutation” (Ibid.). In this section, I puzzle out Mill’s reply.

The immediate reason Mill gives for his reply is that, unlike most actions a government might perform, restrictions on discussion strike at the very mechanism of individual and social progress:

...the source of everything respectable in man either as an intellectual or as a moral being, namely, that his errors are corrigible. He is capable of rectifying his mistakes, by discussion and experience...The whole strength and value, then, of human judgment, depending on the one property, that it can be set right when it is wrong, reliance can be placed on it only when the means of setting it right are kept constantly at hand..." (CW XVIII, 231-232)

What concerns him is, then, whether a decision by some authority would undermine the conditions of intellectual improvement and, relatedly, what would have to be true of that authority for the undermining of those conditions to be justified. Here we shall focus on whether this concern justifies an absolute restriction on silencing discussion.

The short, though potentially misleading, answer is "no." In certain kinds of cases, as of impending disaster, the temporary silencing of discussion might be justified even if the authority is not infallible (or otherwise of unsurpassable epistemic superiority). For instance, in the face of a major military threat to the very existence of our society, the suppression of the public expression of certain ideas for a time might reasonably be judged necessary to mobilize society's resources efficiently. Such cases are not very likely, but they are not too strange to imagine. The question is this: why does Mill not notice such obvious cases?

In fact, I think, he is aware of these cases and seems to address them along three lines. First, in a related context, he appears to commit himself to allowing temporary exceptions to the restriction on silencing discussion in specific circumstances he is not directly addressing in *On Liberty*. Second, in the broad range of cases he is considering, the attempt to silence discussion permanently does more plausibly involve an assumption of infallibility. Third, he worries that any allowance for temporarily silencing discussion would involve a serious risk of permanent censorship and despotism, and so would share in the problem of the permanent cases. These considerations go some way toward making the argument less obviously mistaken than many have thought. Below I present them in turn, before attempting in the final three sections of the paper to demonstrate the importance of Mill's argument to a full understanding of the structure of *On Liberty*.

First, in *Considerations on Representative Government* Mill seems to allow exceptions to the restriction on silencing discussion in particular circumstances. In a slightly different context from Chapter II of *On Liberty* – concerning the inappropriateness of despotism in a civilized society, and not specifically the need for freedom of discussion within that society – Mill explicitly allows that in cases of “extreme exigency” of the sort described above, despotism might be temporarily justified on certain conditions. Mill, who appears to argue in unqualified terms for the application of the liberty principle in civilized society, in fact allows for special exceptions, under certain conditions:

I am far from condemning, in cases of extreme exigency, the assumption of absolute power in the form of a temporary dictatorship... But its acceptance, even for a time strictly limited, can only be excused, if, like Solon or Pittacus, the dictator employs the

whole power he assumes in removing the obstacles which debar the nation from the enjoyment of freedom.” (CW XIX, 403)

The temporary dictatorship is justified on the ground that it is necessary for the protection or re-establishment of liberal, civilized society. Surely one liberty at stake in such cases would be the freedom of discussion. It is implausible, therefore, to think Mill did not envision exceptions to his restriction on silencing discussion in similar special circumstances. His absolute defense of free discussion, I suggest, applies only to a very broad, but unspecified range of non-extreme cases. In extreme cases, the value of free discussion may justify the temporary undermining of discussion with no implied assumption of infallibility.

Second, the silencing of discussion that Mill explicitly discusses is similar to the cases presented earlier in its *permanent* character. It is the “*esto perpetua*” that leads Mill, like Bentham and Locke before him, to invoke infallibility. And, in the range of non-extreme cases, here the assumption of infallibility charge seems apt. Though this restriction to permanent cases seems to limit severely the scope of Mill’s prohibition on silencing discussion, it does not completely eviscerate the argument expressed in *On Liberty*, because – as Mill’s strenuous objections to the dogmatism of the Church make clear – he thought powerful forces were attempting to settle social matters permanently.²³

This invites speculation – which Mill does not himself entertain – about the justifiability of temporarily silencing discussion within the range of non-extreme cases. Might a social authority be epistemically entitled to impose a limited restriction on discussion? Consider Mill’s comment in the case of endowments that restrictions “beyond the foresight of a prudent man” are unjustified. He thereby seems to allow that a party’s judgment might have standing for *some*

²³ See, e.g., “The Church,” CW XXVI, pp. 424- 426.

period of time going forward, though the limits of this time-frame may be somewhat vague. Of course, while the temporary silencing of discussion might be justified, on this view, it would not be justified beyond the epistemic entitlement of social authority to do so.

Part of the question about temporary restrictions on free discussion concerns whether society might actually have good *epistemic* reason to restrict discussion even in the non-extreme range of cases. Far from transgressing its epistemic entitlement, society might be justified in silencing discussion on the very grounds that it contributes to the growth of knowledge. For instance, worries have been raised about the epistemic benefits of discussion in light of phenomena such as group polarization and cascade effects that skew epistemic outcomes for some deliberative groups.²⁴ To fully address these issues would be too much for the present context, but it bears mentioning that Mill's intuitions about the importance of free discussion have received considerable empirical support by some researchers who point out that problems like group polarization and cascade effects are typically due to initial bias or like-mindedness in the group, which Mill thought inconsistent with proper discussion. Where deliberation is not biased from the start, but exhibits certain deliberative virtues, the best corrective for poor individual or group judgment is, it seems, more group deliberation.²⁵ This result may yet allow that temporary constraints on free discussion could sometimes be justified.

Third, Mill elsewhere provides an argument for collapsing our evaluation of the temporary cases into our evaluation of permanent cases. This may help to explain Mill's failure to emphasize possible exceptions to his assumption of infallibility claim. It also echoes

²⁴ See, e.g., Cass Sunstein and Reid Hastie, "Four Failures of Deliberating Groups," April 2008. U of Chicago Law & Economics, Olin Working Paper No. 401; U of Chicago, Public Law Working Paper No. 215. Available at SSRN: <http://ssrn.com/abstract=1121400>.

²⁵ See, e.g. Hugo Mercier and Helene Landemore, "Reasoning is for Arguing: Understanding the Successes and Failures of Deliberation," *Political Psychology*, forthcoming, and Scott Page, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies*, Princeton: Princeton University Press, 2007.

Bentham's exclamation in the Spanish case that an eight-year ban on constitutional amendments may as well have said "no amendment till the end of time." In his early essay "Law of Libel and Liberty of the Press" (1825), Mill argues that, in fact, allowances for temporary silencing of discussion open the door to abuse, and so, to permanent restrictions. (He does not here address the question of "extreme exigency."):

...Where, then, is the line to be drawn? At what point is the magistrate's discretionary power of suppressing opinions to end? Can it be limited in such a manner as to leave him the power of suppressing really mischievous opinions, without giving him that of silencing every opinion hostile to the indefinite extension of his power?

It is manifest, even at first sight, that no such limit can be set. If the publication of opinions is to be restrained, merely because they are mischievous, there must be somebody to judge, what opinions are mischievous, and what the reverse... To decide what opinions shall be permitted, and what prohibited, is to choose opinions for the people, since they cannot adopt opinions which are not suffered to be presented to their minds. Whoever chooses opinions for the people, possesses absolute control over their actions, and may wield them for his own purposes with perfect security.

It thus appears, by the closest ratiocination, that there is no medium between perfect freedom of expressing opinions, and absolute despotism. Whenever you invest the rulers of the country with any power to suppress opinions, you invest them with *all* power; and absolute power of suppressing opinions would amount, if it *could* be exercised, to a despotism far more perfect than any which has yet existed, because there is no country in which the power of suppressing opinions has ever, in practice, been altogether unrestrained. (CW XXI, 6-7)

It is striking that Mill does not utilize this argument in *On Liberty* itself, and so one might wonder whether in his mature writings he stills holds to it. One reason to think he might, is its help in explaining Mill's insistence that all silencing of discussion implies an assumption of infallibility. Any authority to silence discussion, even temporarily, is liable to abuse, thereby threatening a permanent despotism. While this does not address the special case of a temporary despotism justified on the ground of restoring liberty, it does address *in principle* the range of typical cases Mill likely had in mind.

To summarize these points, it seems that Mill's assumption of infallibility argument against silencing discussion is limited only to a non-extreme range of cases and then, strictly speaking, only to attempts to permanently settle some matter. The latter consideration is made stronger by his observation that the temporary silencing of discussion carries a serious risk of permanent restriction, and so may be covered by the assumption of infallibility argument (for practical purposes), or at least may sufficiently partake in the problem associated with permanent restrictions to preclude the need to specify degrees in his discussion of the problem in *On Liberty*.

A final point about Mill's defense of free discussion is worth noting for how it further limits the scope of his claims: that by "discussion" he intends only a specific subset of speech.²⁶ He expressly rejects the view that speech in general should always be protected, but is emphatic that "free discussion" should never be silenced (permanently). "Discussion" is Mill's consistently-employed word for the joint, reasoned examination of some (usually public) matter,

²⁶ Jonathan Riley has a helpful section on this point in his "J.S. Mill's Doctrine of Freedom of Expression" *Utilitas* Vol. 17, No. 2, July 2005, pp. 168-171.

governed by norms of truth, fair play, and sincere attention to the general good.²⁷ In “The French Law Against the Press” (1848), he identifies “free discussion” with the freedom to bring “opinions to the touchstone of the public reason and conscience... the chance which every sincere opinion can justly claim, of triumphing in a fair field.”²⁸ This is reinforced in his description of the “real morality of public discussion” in *On Liberty* itself:

...condemning every one, on whichever side of the argument he places himself, in whose mode of advocacy either want of candour, or malignity, bigotry, or intolerance of feeling manifest themselves: but not inferring these vices from the side which a person takes, though it be the contrary side of the question to our own : and giving merited honour to every one, whatever opinion he may hold, who has calmness to see and honesty to state what his opponents and their opinions really are, exaggerating nothing to their discredit, keeping nothing back which tells or can be supposed to tell, in their favour. (CW XVIII, 259)

Prime examples of discussion are the debates in which Mill participated during the 1820s, as well as his many contributions to newspapers and other periodicals. There are other less public forms of discussion, as well. But discussion is not instantiated, for instance, by manipulative speech, by expressions of mere prejudice, or even by expressions of lazy thinking in a like-minded group. (Such speech should also be free, Mill might argue, but it is not his focus in *On Liberty*.) At the core of the assumption of infallibility argument in *On Liberty*, and the defense of

²⁷ Mill may also believe that other forms of expression should be protected, but they are not his concern in *On Liberty*.

²⁸“The French Law Against the Press,” (1848; CW XXV, 1118). The fuller passage is interesting also because of the evidence it provides that, for Mill, the freedoms of thought and discussion are among those that no government may legitimately undermine (except temporarily in extreme circumstances).

free discussion more generally, is a concern to avoid destroying whatever mechanism (whether free discussion or something else) is most directly responsible for intellectual development.

That “free discussion” is not free speech is demonstrated by the occasions, in *On Liberty* and elsewhere, on which Mill points to justified restrictions on speech. He allows for rightful restrictions on (1) private libel, (2) incitement or other speech placing “the safety of the public peace” at risk and (3) offensive speech violating “public decency.”²⁹ In “Mr. O’Connell’s Bill for the Liberty of the Press” (1834) he offers a general policy of “free discussion” according to which “...it shall be lawful to controvert any political doctrine, or attack any law or institution, without exception; in any manner and in any terms not constituting a direct instigation to an act of treason, or to some other specific act to which penalties are attached by law” (Ibid., 166). “Discussion,” then, does not include *all* modes of publicly attacking others, or their doctrines, through speech. It is a certain way of challenging others, or their doctrines, involving reasoned appeals to the general good, under fair terms of debate.

For Mill, permanently undermining discussion on some matter to that extent makes future decision-making, for fallible creatures like us, a function of mere preference. And this undermines future claims to decision-making authority on that matter. He writes in *On Liberty*, “[t]he beliefs which we have most warrant for, have no safeguard to rest on, but a standing invitation to the whole world to prove them unfounded” through reasoned discussion (CW XVIII, 232). By contrast, “an opinion on a point of conduct, not supported by reasons, can only count as one person’s preference: and if the reasons, when given, are a mere appeal to a similar

²⁹See the private libel case in “Mr. O’Connell’s Bill for the Liberty of the Press” (1834), CW VI, 166-167; the corn-dealer’s house case in *On Liberty*, CW XVIII, 260; and the “hooting” case in “Thornton on Labour and Its Claims” (1869), CW V, 660. Mill also briefly mentions restrictions on private libel in “Law of Libel and Liberty of the Press” (1825), CW XXI, 14-15.

preference felt by other people, it is still only many people's liking instead of one" (Ibid., 221).³⁰ This explains his complaint in "The French Law..." that by restricting discussion, the French government rather "fights... with weapons which can as easily be used to put down the most valuable truth as the most pernicious error" (Ibid.) – in other words, it sets aside regard for reason as the standard of judgment for political and social decision-making. And we saw in "The Coalition Ministry" Mill's opinion that severing one's opinion from reason is one of the greatest immoralities "to be found in human nature" because it implies "indifference to every human virtue" (CW XXVI, 402). For the permanent reversion to a standard of mere preference *not* to undermine the prospects for social improvement and threaten the rightful authority of the government going forward, the government would need to be infallible (or otherwise occupy an unsurpassable epistemic position).³¹

How important is the assumption of infallibility argument in Mill's political framework? In the remainder of the paper, I explore its place in the overall structure of *On Liberty*. I will argue that it plays an important role as a constraint – informed by Mill's commitment to progress and intelligent social organization – on rightful interference by social or political authority. Further, I argue that the same considerations limit the sovereignty of the individual over the good of his own future selves (and so helps to explain his otherwise paternalistic prohibition on placing oneself into irrevocable slavery).

³⁰ In a related passage that helps bring out this rationale for maintaining free discussion, Mill writes in *Considerations on Representative Government*: "Those who are supreme over everything, whether they be One, or Few, or Many, have no longer need of the arms of reason: they can make their mere will prevail; and those who cannot be resisted are usually far too well satisfied with their own opinions to be willing to change them, or listen without impatience to any one who tells them that they are in the wrong... [O]f all resting-points, temporary or permanent, in the way to ascendancy, the one which develops the best and highest qualities is the position of those who are strong enough to make reason prevail, but not strong enough to prevail against reason..." (CW XIX, 478-479).

³¹ I assume here that social authority is oriented to the general good.

VI. AUTHORITY, “DISCUSSION,” AND SOCIAL PROGRESS

The assumption of infallibility claim is, I have asserted, an authority-limiting corollary of Mill’s commitment to the conditions required for individual and social improvement in civilized society, specifically for ongoing, intelligent decision-making by fallible individuals and social authority. This means that, for both social authority and the individual, in matters that otherwise would seem to be under their jurisdiction, they may not rightfully make certain decisions. On one hand, social authority, no matter how well-ordered, may not undermine the conditions of “discussion and experience” that allow fallible human beings to “rectify their mistakes” (CW XVIII, 231). To silence discussion is, on Mill’s view, to do just that; it would be justified only if social authority had a rational claim to being less mistaken now than at any future time, under conditions of free discussion. On the other hand, the individual, no matter how rational, may not agree to “contracts in perpetuity” (CW III, 953). Voluntarily entering slavery would be justified only if the individual now had a rational claim to know better than his own distant future selves what would be good for him/them under conditions of continued rational capacity. I will take these cases in turn, focusing on the former. If I am right, the assumption of infallibility claim provides a key constraint on the assignment of authority contained in Mill’s liberty principle, both with regard to social authority’s control over the interests of society and to the individual’s sovereignty over his own good.

To explicate the discussion-related restriction on what social authority may rightfully decide, let us look more closely at the connection between free discussion and the social good. In his diary in 1854, Mill writes, “In government, perfect freedom of discussion in all its modes—speaking, writing, and printing—in law and in fact is the first requisite of good because the first

condition of popular intelligence and mental progress. All else is secondary. A form of government is good chiefly in proportion to the security it affords for the possession of this” (CW XXVII, 661-662).³² This sentiment, we shall see, is expressed repeatedly in Mill’s political writings. Yet the fundamental place of Mill’s commitment to free discussion in the overall argument of *On Liberty* is, I think, often missed (leading to insufficient attention to the assumption of infallibility claim).

The significance of this argument to *On Liberty* depends on the importance of reasoned discussion to individual and social improvement, and the centrality of individual and social improvement as an end in his political framework. Taking the latter issue first, over the course of Mill’s political writings, from early speeches to *Representative Government*, society’s capacity for, and orientation toward, improvement is the central theme of his *practical* political thought. Even in *On Liberty*, Mill identifies a “progressive principle,” which takes priority in his thought over his commitment to liberty:

The despotism of custom is everywhere the standing hindrance to human advancement, being in unceasing antagonism to that disposition to aim at something better than customary, which is called, according to circumstances, the spirit of liberty, or that of progress or improvement. The spirit of improvement is not always a spirit of liberty, for it may aim at forcing improvements on an unwilling people: and the spirit of liberty, in so far as it resists such attempts, may

³² The focus on government does not limit the passage’s importance for society generally. Mill writes in *Representative Government*: “In all states of human improvement ever yet attained, the nature and degree of authority exercised over individuals, the distribution of power, and the conditions of command and obedience, are the most powerful of the influences, except their religious belief, which make them what they are, and enable them to become what they can be. They may be stopped short at any point in their progress, by defective adaptation of their government to that particular stage of advancement” (CW XIX, 394).

ally itself locally and temporarily with the opponents of improvement: but the only unfailing and permanent source of improvement is liberty, since by it there are as many possible independent centres of improvement as there are individuals. The progressive principle, however, in either shape, whether as the love of liberty or of improvement, is antagonistic to the sway of Custom... (CW XVIII, 272)

Mill's support for despotism in "backward states of society" (CW XVIII, 224; see also CW XIX, 394) reinforces the thought expressed here, that the value of protecting individual liberty is contingent on its contribution to individual and social progress.³³ Only in "civilized" societies, in which individuals by and large are motivated to cooperate rather than compete, does individual liberty become central in Mill's progressive account.³⁴

In *Considerations on Representative Government* (1861), he argues that, properly understood, the idea of progress "includes the whole excellence of a government." (CW XIX, 388). Again, this means different things for different societies and different times. But the commitment to progress remains:

...the one indispensable merit of a government, in favour of which it may be forgiven almost any amount of other demerit compatible with progress, is that its operation on the

³³ Mill is a liberty-lover, but we should tread carefully. On one hand, he thinks that the justificatory burden falls on those who would restrict individual liberty, but on the other hand, he argues that any society requires some restriction of liberty, so the mere fact that some policy involves a constraint on individual liberty doesn't tell us the overall good or bad of it. That depends on other considerations, as well, first and foremost progressive ones. For comments striking a balance between the value of liberty and the need for restrictions on liberty, see: CW I, 296; CW III, 938; CW XVIII, 220; CW XXVI, 321.

³⁴ Besides *On Liberty* itself, the two main sources for this account are "Civilization" (1836), CW XVIII, 117-147 and Chapter II, "The Criterion of a Good Form of Government," of *Considerations on Representative Government* (1861), CW XIX, 383-398. Mill's acceptance, for purposes of argument, of a hypothetical *Hobbesian* state of nature is not often remarked upon. See "Civilization" as well as "Chapters on Socialism" (1879), CW V, 749.

people is favourable, or not unfavourable, to the next step which it is necessary for them to take, in order to raise themselves to a higher level. (CW XIX, 394)

Let us now turn again to the connection between discussion and improvement. We saw from his diary that he identifies free discussion as the key progressive social condition in a “civilized” society. For fallible human beings living in a civilized society (in which despotism no longer can be justified), individual and social improvement requires basic liberties of discussion and “experiments in living.” In “Corporation and Church Property,” he characterizes the balance that must be struck between authority and free discussion:

No government is entitled (further than is implied in the very act of governing) to make its own opinion the measure of everything which is useful and true. A perfect government would, no doubt, be always under the guidance of the wisest members of the community. But no government can unite all the wisdom which is in all the members of the community taken together; much less can a mere majority in a legislative body. A nation ought not to place its entire stake upon the wisdom of one man, or one body of men, and to deprive all other intellect and virtue of a fair field of usefulness, whenever they cannot be made to square exactly with the intellect and virtue of that man or body. It is the wisdom of a community, as well as of an individual, to beware of being one-sided: the more chances it gives itself, the greater the probability that some will succeed. *A government, when properly constituted, should be allowed the greatest possible facilities for what itself deems good; but the smallest for preventing the good which may chance to come from elsewhere.* (“Corporation and Church Property,” CW IV, 217; emphasis added)

Though it has rightful authority to – and must – make decisions in light of its own judgment of the general good, even the wisest human government may not undermine the means by which that judgment is likely to be improved. Human epistemic limitations are a constant theme in his writings, most famously in *On Liberty* itself. In a vivid passage from “Utility of Religion” (1874), he writes that “human existence is girt around with mystery: the narrow region of our experience is a small island in the midst of a boundless sea... To add to the mystery, the domain of earthly existence is not only an island in infinite space, but also in infinite time. The past and future are alike shrouded from us: we neither know the origin of anything which is, nor its final destination” (CW X, 418-419). What is more, people and circumstances themselves change over time – changes to which our government, and even our practical morality, must adjust.³⁵ As a result, Mill emphasizes that morality is “a progressive body of doctrine,” meaning secondary maxims evolve over time (CW X, 73),³⁶ and that happiness itself is a “complex and indefinite” end (CW X, 110). In such uncertain and changing circumstances, the commitment to progress becomes a commitment, first and foremost, to those conditions that (history tells us) are prerequisites for intelligent adjustment.

³⁵ This concern should inform our understanding of what Mill intends in *On Liberty* when he writes that he will “forego any advantage” that might come to his argument from the “idea of abstract right, as a thing independent of utility” (CW XVIII, 224). In *System of Logic*, Mill rejects “those who deduce political conclusions... from *unbending practical maxims*. Such, for example, are all who found their theory of politics on what is called *abstract right, that is to say, on universal precepts*; a pretension of which we have already noticed the chimerical nature” (CW VIII, 888-889; emphasis added). Similarly, we should avoid what Mill charges the political economists of his day with doing: “...they attempt to construct a permanent fabric out of transitory materials; that they take for granted the immutability of arrangements of society, many of which are in their nature fluctuating or progressive; and enunciate with as little qualification as if they were universal and absolute truths, propositions which are perhaps applicable to no state of society except the particular one in which the writer happened to live” (CW IV, 225; repeated in his *System of Logic*, CW VIII, 904).

³⁶ See also *Utilitarianism*: “The corollaries from the principle of utility, like the precepts of every practical art, admit of indefinite improvement, and, in a progressive state of the human mind, their improvement is perpetually going on” (CW X, 224).

These conditions, as we saw earlier, are the conditions of “discussion and experience” that allow us to rectify our mistakes. Mill emphasizes that it is “[n]ot by experience alone. There must be discussion to show how experience is to be interpreted” (CW XVIII, 231). In an early speech, Mill states that by the “progressiveness of the human mind” he means only “that it is of the nature of the human mind to profit by experience” (CW XXVI, 424). In his *Principles of Political Economy*, he writes that profiting from experience requires those liberal conditions allowing for:

...that multiform development of human nature, those manifold unlikenesses, that diversity of tastes and talents, and variety of intellectual points of view, which not only form a great part of the interest of human life, but by bringing intellects into stimulating collision, and by presenting to each innumerable notions that he would not have conceived of himself, are the mainspring of mental and moral progression. (CW III, 979)

Discussion and experience drive intellectual growth and, as he writes in *System of Logic* (1843), the influence of “speculation, intellectual activity, the pursuit of truth... is the main determining cause of the social progress” and “the order of human progression in all respects will mainly depend on the order of progression in the intellectual convictions of mankind” (CW VIII, 927). Discussion and experience is, then, the main engine of intellectual improvement and adaptation, and therefore of individual and social progress. A young Mill declares confidently in 1825:

Experience proves and proves fully, that men do follow their interest more steadily, in proportion as they know better what it is. It is easy to say that those who have most knowledge do not always act the most wisely—but the gentleman I presume, will scarcely on that account affirm that it is not the tendency of knowledge, to make men act wisely. Nor have I ever yet heard of any other recipe of making them wise except by giving them knowledge, uncertain as that method may be. (“Population: Reply to Thirlwall,” CW XXVI, 305)

The importance, then, of individual and social improvement as an organizing practical commitment in Mill’s political philosophy, and of discussion to that practical commitment, seems clear. The main argument of *On Liberty*, I believe, concerns the contribution of individual liberty to individual and social improvement, specifically through discussion and experiments in living.³⁷ Mill encourages this thought when he writes in his *Autobiography* that *On Liberty* is “a kind of philosophic text-book of a single truth,” namely, “...the importance, to man and society, of a large variety in types of character, and of giving full freedom to human nature to expand itself in innumerable and conflicting directions” (CW I, 259). The significance of the assumption of infallibility claim is, then, a function of these deep progressive commitments. In the next section, I address the particular role of the assumption of infallibility claim, as a limit on the application of the liberty principle, in light of these commitments.

³⁷The liberty principle is, I believe, then introduced to perform a particular job within those progressive conditions appropriate to a “civilized” society; namely, it is an anti-paternalism principle, justified on the basis of the relative expertise of society and the individual with regard to certain questions. Certainly, all of *On Liberty* is concerned with the scope of individual liberty, but it would be wrong to think that the only principle doing work in *On Liberty* to specify that scope is the liberty principle.

VII. FREE DISCUSSION AND THE LIBERTY PRINCIPLE

In the most famous of its many formulations in *On Liberty*, the liberty principle reads:

That the 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... The only part of the conduct of any one, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. (CW XVIII, 223-224)

There is, of course, a lot one might say about this principle, but for our purposes what needs pointing out is the *jurisdictional* nature of the principle: it concerns the apportioning of decision-making authority on the basis of what sorts of considerations are properly handled by one party (society) or another (the individual). It concerns the question of “who should decide” and not directly that of “what should be done.” It does not, in and of itself, tell society that some proposed interference is *justified* or not, only that (assuming a well-organized social authority) some interference would be *rightful*, i.e. that the issue at hand falls within the jurisdiction of society. To elide the distinction between jurisdiction and justification (or *rightful* and *right*, if you prefer), as many do, is to fail to grasp the limited jurisdictional concern of the liberty principle. I will not here pursue the *rationale* of this jurisdictional allocation, but the purely jurisdictional nature of the principle is clear from the text. Consider two other prominent formulations of the liberty principle, at the beginnings of Ch. IV and V:

As soon as any part of a person's conduct affects prejudicially the interests of others, society has jurisdiction over it, and the question whether the general welfare will or will not be promoted by interfering with it, becomes open to discussion. But there is no room for entertaining any such question when a person's conduct affects the interests of no persons besides himself, or needs not affect them unless they like (all the persons concerned being of full age, and the ordinary amount of understanding). In all such cases there should be perfect freedom, legal and social, to do the action and stand the consequences. (Ibid., 276)

The maxims are, first, that the individual is not accountable to society for his actions, in so far as these concern the interests of no person but himself. Advice, instruction, persuasion, and avoidance by other people, if thought necessary by them for their own good, are the only measures by which society can justifiably express its dislike or disapprobation of his conduct. Secondly, that for such actions as are prejudicial to the interests of others, the individual is accountable, and may be subjected either to social or to legal punishments, if society is of opinion that the one or the other is requisite for its protection.

...it must by no means be supposed, because damage or probability of damage, to the interests of others, can alone justify the interference of society, that therefore it always does justify such interference. (Ibid., 292)

In both of these formulations, Mill takes care to highlight the purely jurisdictional nature of the liberty principle, leaving for a next, further step the tally of goods and harms in the justification

of interference. That tally is not, in and of itself, part of, or an application of, the liberty principle. It is a calculation by the party that has jurisdiction in cases where interference might (rightfully) be justified, i.e. political or social authority. An application of the liberty principle, by contrast, merely assigns rightful authority on the basis of whether some matter does or does not involve “harm to others” considerations or “conduct [that] affects prejudicially the interests of others”.

Now, consider Mill’s defense of free discussion in Chapter II of *On Liberty*. He does not deny that society has rightful authority to consider restrictions on discussion, but rather that restrictions on discussion would never, in fact, be *justified* once social authority takes into account all of the relevant goods and harms. Whether received opinion is possibly false or certainly true, the harms of restricting free discussion always outweigh the benefits: if possibly false, we lose the opportunity to exchange falsehood for truth, or less-adapted partial truth for more-adapted partial truth; if certainly true, we lose the opportunity to recall the rational grounds of, and to keep vital, true belief.³⁸ He does not say that discussion is never harmful – he clearly states it can be harmful³⁹ – only that the benefit of the “mental well-being of mankind (on which all their other well-being depends),” which free discussion affords, always outweighs any harm it might bring.

The structure of this argument suggests that social authority might rightfully interfere with free discussion if it were to decide that, in some particular case, the goods of restriction

³⁸In his speech “Catiline’s Conspiracy” (1826), Mill credits Condorcet with originating this argument: “It is a remark of Condorcet, that he is a public benefactor, who questions the authority of received opinions: and this not only when the received opinions are wrong, but sometimes even when they are right. If they are wrong, it is of course an advantage to get rid of an error: if they are right, it is still no small advantage, to believe upon evidence what we had hitherto believed upon trust” (CW XXVI, 341).

³⁹“I acknowledge that the tendency of all opinions to become sectarian is not cured by the freest discussion, but is often heightened and exacerbated thereby: the truth which ought to have been, but was not, seen, being rejected all the more violently because proclaimed by persons regarded as opponents” (CW XVIII, 257). I’m grateful to Brian McLean for pointing out this passage.

outweigh the harms. But the assumption of infallibility argument attempts to short-circuit that apparent authority and, as a result, assure the absolute protection for free discussion in a civilized society (at least short of extreme cases). One might explain this in two related ways. First, given the foregoing, Mill argues that, because no one is epistemically entitled to settle matters for all futurity (or set mere preference as the standard of public decision-making) – and silencing discussion does just that – the authority granted to social authority by the liberty principle does not extend to the decision of whether to undermine discussion.⁴⁰ Second, and less straightforwardly, Mill’s commitment to the conditions of progress for a civilized society, including free discussion, provides the very context within which the liberty principle is introduced. Where mere preference is the standard of public decision-making, the liberty principle has no place. That is part of the significance of the opening paragraphs of *On Liberty*: to set up reason as the standard of public decision-making (which requires free discussion) before addressing the question: “between society and the individual, who should decide what?” His answer, the liberty principle, is moot unless those conditions exist. At the point of considering what sort of jurisdictional allocation is appropriate to a civilized society, he has already secured, argumentatively (by appeal to individual and social improvement), the conditions of reasoned discussion. His handling of the question about the limits on the rightful interference of social authority with individual liberty assumes that both social authority and the individual are rational parties. To undermine the conditions of discussion and experience is to undermine the very conditions that make sense of introducing the liberty principle in the first place. This is because, if one is not infallible (or otherwise appropriately superior), then the

⁴⁰ Again, I have left to the side the question of the *rationale* of the jurisdictional allocation in the liberty principle, but if one were to focus exclusively (as I recommend) on the role of relative expertise in Mill’s explanation of the liberty principle, then this limit on rightful authority is explained straightforwardly as a function of the limit on all claims to expertise by fallible human beings.

effect of silencing discussion is to revert decision-making going forward to a matter of mere preference. And Mill does not address who has authority over what in the case that mere preference reigns.

VIII. SLAVERY AND “CONTRACTS IN PERPETUITY”

We finally come to the question of how the assumption of infallibility claim limits not only the rightful authority of society, but the individual’s right to determine his own good. Consider what has been a thorny problem in the interpretation of *On Liberty*, namely, Mill’s endorsement in Chapter V of the apparently paternalistic restriction on voluntarily selling oneself into irrevocable slavery, in the same text in which he argues that, for the competent individual, “[i]n the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign” (CW XVIII, 224). Isn’t his position on selling oneself into slavery inconsistent with his anti-paternalism?

To see that it is not, we need only connect the foregoing considerations with Mill’s comments in his *Principles of Political Economy* about “contracts in perpetuity”⁴¹:

A second exception to the doctrine that individuals are the best judges of their own interest, is when an individual attempts to decide irrevocably now, what will be best for his interest at some future and distant time. The presumption in favour of individual judgment is only legitimate, where the judgment is grounded on actual, and especially on present, personal experience; not where it is formed antecedently to experience, and not

⁴¹ CW III, 953. The following considerations thus apply, *mutatis mutandis*, to other perpetual contracts, including life-time marriage contracts, which Mill famously opposed.

suffered to be reversed even after experience has condemned it... The practical maxim of leaving contracts free, is not applicable without great limitations in case of engagements in perpetuity; and the law should be extremely jealous of such engagements; *should refuse its sanction to them, when the obligations they impose are such as the contracting party cannot be a competent judge of*; if it ever does sanction them, it should take every possible security for their being contracted with foresight and deliberation; and in compensation for not permitting the parties themselves to revoke their engagement, should grant them a release from it, on a sufficient case being made out before an impartial authority. (CW III, 953-954; emphasis added)

Contained in the foregoing paragraph are all the elements of the assumption of infallibility argument. To see this, bear in mind three considerations. First, as we saw earlier, Mill writes that “it is not the feeling sure of a doctrine (be it what it may) which I call an assumption of infallibility. It is the undertaking to decide that question *for others*, without allowing them to hear what can be said on the contrary side” (CW XVIII, 234). Second, in “Coalition Ministry,” we saw Mill introduce the idea that among those “others” over whom we may assume infallibility are our own future selves, when he worries that a person may resolve to have his “reason chained down” going forward. Third, in “Corporation and Church Property,” he limits the extent of a donor’s right to determine an endowment’s use to such period of time as the “foresight of a prudent man may be presumed to reach, and no further”. It does not extend forever forward. Thus, contracts in perpetuity, in which one irremediably constrains one’s own future judgment beyond one’s own reasonable foresight, imply an assumption of infallibility.

To reinforce this reading of Mill's apparent exception to his anti-paternalism, consider that Bentham similarly endorsed the sovereignty of the individual over his own good, but then expressed a temporal limit on that authority. In the first instance, he writes:

Is there—can there be—that man who knows or who can know as well as yourself what it is that has given you pleasure or what it is that has given you most pleasure?... what is the most obvious practical conclusion? That, being the best judge for himself what line of conduct on each occasion will be the most conducive to his own well-being, every man, being of mature age and sound mind, ought on this subject to be left to judge and act for himself: and that every thing which by any other man can be said or done in the view of giving direction to the conduct of the first, is no better than folly or impertinence.⁴²

This passage anticipates Mill's claim that "with respect to his own feelings and circumstances, the most ordinary man or woman has means of knowledge immeasurably surpassing those that can be possessed by any one else" (CW XVIII, 277). However, like Mill, Bentham also argues that the further into the future the individual's judgment is meant to extend, the less likely it is that the individual has epistemic entitlement: "Each man best judge of present pleasure or pain—but not every man of future. Like a 3^d person his future contingent individual pleasure or pain can not be judged of by him otherwise than from the species it belongs to."⁴³

As with social authority's assumption of infallibility, this places an instructive qualification on Mill's liberty principle, for the sovereignty of the individual over his own good reaches only so far as he may reasonably be thought to be a better judge of it than social

⁴² Quoted in Schofield, *Utility and Democracy*, p. 48.

⁴³ Quoted in Schofield, p. 49.

authority. As we move further away from our present experience and understanding, our claim to know better diminishes. Unfortunately, I cannot here address the many questions this limit on Mill's anti-paternalism raises. We might note two pressing issues. First, there will be gray area concerning whether social authority or the individual should decide some matter regarding the individual's own future good, including complicated cases in which my future good depends on my taking a certain course of action now – it cannot be left to my future self – though there is the chance of making a decision that my future self, though a psychological extension of my present self, regrets. Second, it is not clear to what extent Mill might worry that even a potentially justifiable temporary contract to enter servitude might risk abuse, and so, permanent slavery.

Nevertheless, this understanding of the slavery problem helps to see the extent to which the assumption of infallibility claim limits jurisdiction or rightful authority. I had earlier focused on the fact that it restricts what sorts of policies may rightfully be considered by social authority. But here we see it similarly restricting decision-making on the individual's portion of the jurisdictional assignment contained in the liberty principle. On this reading, Mill's restriction on selling oneself into irrevocable slavery is entirely consistent with the assumption of infallibility limit placed on liberty principle, because one's epistemic entitlement breaks down with regard to one's own distant future good. *This* is why Mill concludes that “by selling himself for a slave, he abdicates his liberty; he foregoes any future use of it beyond that single act. He therefore defeats, in his own case, the very purpose which is the justification of allowing him to dispose of himself” (CW XVIII, 299).