

# WHY TOLERATE? REFLECTIONS ON THE MILLIAN TRUTH PRINCIPLE'

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## *I. Introduction*

The aim of this essay is to reflect on the Millian, utilitarian argument from truth that is held as one of the most conspicuous answers to the question Why tolerate? This argument postulates that only in a free market of ideas may the truth be discovered. Even the most unpopular idea may contain some truth in it and may contribute to the advancement of knowledge. It further commands us to contest those opinions which are believed to be true vigorously and earnestly to explore some further truth, and to acknowledge their false aspects. The results of free exchange of opinions will either confirm our idea, or bring some doubt to our attention, to cast accounts and maybe change our opinion, at least to some extent.

After reflecting on some of the common arguments that are frequently mentioned in this connection, I discuss Mill's formulation of the Truth Principle as it came into expression in his writings. Here I reflect on his article "Law of Libel and Liberty of the Press" which did not receive adequate attention by scholars. I show that it is difficult to reconcile what Mill had to say in this article with what he later said in *On Liberty*. I further maintain that the Millian view of truth as superior to all other social values might endanger the very ground which the Truth Principle is intended to safeguard, i.e., tolerance. The holding of truth as the most important value might result in harming individuals, and in generating an atmosphere of intolerance.

One note on terminology is in order before commencing discussion. The terms "toleration" and "tolerance" are employed

interchangeably throughout the study, and so are the terms "liberty" and "freedom."

## *II. The Arguments from Truth*

One of the major arguments for tolerance of speech, frequently made in order to grant expressions with immunity which is not accorded to actions, is the Truth Principle.<sup>2</sup> It postulates that one has to be tolerant of every irregular view simply because a possibility exists that one is wrong. The argument holds that one has to be somewhat uncertain even while being certain, for toleration is connected with the willingness and the ability to acknowledge the presence of different approaches that are remote from oneself. One may discover in time that while grains of truth reside in one's view, it nevertheless remains partial and could be completed by joining with other partial truths. Even if one believes that one knows what the truth is, one must not rest and still put one's truth in trial-and-error tests, in order to prove to oneself, as well as to others, that one is not mistaken.

Further, we should guarantee each and every opinion the opportunity to be heard, for otherwise we might put barriers on the way for the discovery of the truth. The assumption is that to admit the possibility that the other's ideas may be true, though I do not believe in them myself, is to acknowledge the possibility that my ideas may be false. The further assumption is that enough room occurs for groups and individuals who may hold totally different opinions. Suspicion of views simply because they are held by a minority might hinder the discovery of new truths. After all, every new idea, every innovation, starts with a minority of one or of a small group of persons. We have to bear in mind that even the most unpopular idea may contain some truth in it and may contribute to the advancement of knowledge.<sup>3</sup> That is to say that one has to be open to hear different views that sometimes contradict the ideas one holds, because of the respect one feels regarding other's freedom of thought and expression; because one realizes that one is not infallible; because of the desire to advance the search for the truth; and also because debates on different views help citizens to become aware of the interests of others, which may be different from theirs, thus contributing to a sense of community.

This argument for tolerance emphasizes that nobody has a complete hold of the truth and, as a result, free speech must be granted to everybody. It implies that all human beings are prone to err, and that we must not rely only on what appears to us as true. It also implies that "truth" (some would prefer to say "some form of truth") can be found within our ambit of reach, after separating it from error by evidence and verification. The argument further postulates that each may hold her own truth, and by seeking truth she develops her autonomy, her own faculties. Thus, if A offers B "The Truth," A's promised truth, without offering B some alternatives for searching for the truth through the exercise of B's power, then B's autonomy will be diminished. This is because one person's truth is not necessarily the other's truth, and everyone should be able to decide which avenues to pursue. No party enjoys a monopoly on the truth. No one has full possession of an exclusive truth. This argument may resemble an argument of skeptical spectators, who contend that they believe that the pictures they see are real and alive, but question the objectivity of the photographer (or the director) who decides **where** to place the camera. Our spectators, therefore, wish to explore the same scene from every possible angle, not only from that of the photographer, so as to bring to light the whole picture. The underlying assumption is that the search for truth is infinite, and hence a free market-place should exist for truths, in which every person is able to advance that person's partial truth while considering other truths.

The leading exponent of these ideas was, undoubtedly, John Stuart Mill. Although Mill was not the first (or the last) to develop the Truth Principle, still no other figure is associated with this argument more than Mill. Under his influence this argument came to be one of the keystones of the plea for tolerance.

### *III. The Millian Truth Principle*

According to Mill, the quest for truth is of paramount expediency. He proclaimed that every opinion should be checked against experience, without the fear of consequences. If one believes one's opinion to be true, one must not hesitate to verify it by every possible way. Mill went on to stress that when opinion is verified by experience and observation, then we have sufficient ground to argue for holding it to

be true. This, of course, does not entail that it is true. One can never be sure that the truth in one's possession is the truth, the whole truth, and nothing but the truth. One cannot expect to find more than beliefs that are provisionally regarded as true. The result of these views was an avowed commitment to the idea that we can never be sure where the truth lies, hence all our answers must be tentative: a universal, single truth is not, and cannot be found.

In formulating his Truth Principle Mill regarded truth as an **ideal**, for absolute certainty can be a dream to which we all should aspire but in reality it cannot be reached. The search for truth is a search for beliefs that we could hold with more confidence, rather than for beliefs in which we could be absolutely certain. Mill put forth the familiar hypotheses that, firstly, we can never be sure that the opinion we are endeavoring to stifle is a false one; and secondly, that even if we were to be sure, stifling it would be an evil.<sup>5</sup> He urged that false opinions must be tolerated for the sake of the true; for it is impossible to draw any clear line which would distinguish between true and false views: "[E]veryone who has even crossed the threshold of political philosophy" knows, that on many of its questions the false view is greatly the most plausible: "... and a large portion of its truths are, and must always remain, to all but those who have specially studied them, paradoxes; as contrary, in appearance to common sense, as the proposition that the earth moves round the sun."<sup>6</sup> Therefore, we should always question common beliefs which are held as "truths", for truth is an ideal that we can never reach, but for which we should nevertheless continue to struggle.

Two crucial considerations for advocating the Truth Principle were offered: The infallibility and the vitality arguments. The **infallibility argument** is based on the assumptions that (1) there are beliefs which admit of, or have a claim to holding of the truth, in areas which it is impossible to hold with certainty any belief to be true; and that (2) any intolerance of opinions involves, *ipso facto*, a claim to infallible knowledge. Even those opinions which we are confident in their truthfulness, such as "Newtonian philosophy", must be exposed to scrutiny and doubts.<sup>7</sup> Those who assume that they know what is the truth provide reasons against pursuing a constant inquiry and debate,

which deprive humanity of exploring further truths, with the result of inserting sticks in the wheels of progress. Thus Mill wrote:

"If all 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."<sup>8</sup>

It was not for the sake of the dissenter that Mill denied the right of society to silence her, but rather for the sake of truth and progress. Silencing of an opinion is resembled to "robbing the human race". Mill urged this argument in support of his demand for tolerance in the spheres of politics, morality, religion, and taste, spheres that are frequently invaded by intolerance.

In turn, the **vitality argument** suggests that without free exchange of ideas the common views would be rigid, lack adaptability, and soon turn into a dead dogma. However true an opinion may be, if it is not fully, frequently, and fearlessly discussed, it will cease to be held as a "living truth".<sup>9</sup>

Mill came to hold the following implicit assumption. Although acknowledging the fact that, indeed, "the dictum that truth always triumphs over persecution is one of those pleasant falsehoods which men repeat after one another till they pass into commonplaces, but which all experience refutes",<sup>10</sup> Mill reasoned that free and open discussion is bound to bring about truth. In a somewhat similar way to Adam Smith's belief in the "invisible hand" function in regulating the economic powers of the market, Mill believed in such a "hand" which regulates the "market-place of ideas", leading to the discovery of truth. He proclaimed that truth in the long run never fails to prevail over error: it may be extinguished once, twice, or many times, but in the course of the ages there will generally be found persons to rediscover it.

Mill's arguments together seem to establish quite a powerful defence of tolerance in the name of truth. The question is whether it means that in the name of truth we should allow every opinion, whatever this may be, to be heard. We may press this question further, asking whether it means that all paths for discovering the truth should be left open, so as to enable each person to find his or her truth; and

whether it entails that the Truth Principle is immune to qualifications, e.g. that we should never lie. Surely this was not what Mill had in mind when formulating his principle, for he himself acknowledged that lying is wrong—depending on the circumstances. Despite his emphasis on truth, its value and its contribution to well-being, Mill was willing to allow exceptions to his professed principle. Look at the tentativeness of his remarks against lying, in support of the virtue of justice:

"Yet that even this rule, sacred as it is, admits of possible exceptions, is acknowledged by all moralists; the chief of which is when the withholding of some fact (as of information from a malefactor, or of bad news from a person dangerously ill) would save an individual (especially an individual other than oneself) from great and unmerited evil, and when the withholding can only be effected by denial".<sup>11</sup>

If we bear this argument in mind, then we can envisage situations in which we may reach the paradoxical conclusion that lying may serve to safeguard the conditions for searching for truth. It is plausible to conceive of occasions where we might resort to lying, believing that in so doing we could gain further knowledge. We, for instance, might lie in order to induce a friend to take a stand on issue which previously she remained unclear, or to reveal information she decided to keep secret. We might also deny freedom of expression to others, claiming that they obstruct, with their "nonsense", the way to the discovery of truth. Thus, the Truth Principle might be stretched to absurdity, to a point at which it not only demands compromises, but also allows for its refutation. In neglecting the task of prescribing well-defined boundaries for his principle, Mill opened the way for the negation of the principles in which he believed. Consequently, the Truth Principle might permit the defeat of liberty, tolerance, and the very Principle of Truth itself.

Mill continued to say, in a similar fashion, that to break faith with anyone is confessedly unjust. Yet again, this obligation is not an absolute, but is "universally considered" as capable of being overruled by a stronger obligation of justice on the other side.<sup>12</sup> That is to say, if the withholding of some fact or information would save an individual,

then Truth Principle admits of "possible exceptions". The direct derivative from this argument is, therefore, that restrictions on freedom of expression are legitimate if done for the same reasons. Indeed, in his early essay "Law of Libel and Liberty of the Press" Mill wrote:

"There is one case, **and only one**, in which there might appear to be some doubt of the propriety of permitting the truth to be told without reserve. This is when the truth, without being of any advantage to the public, is calculated to give annoyance to private individuals."<sup>13</sup>

Two points are in order here: one concerns the place of this "annoyance principle" within the Millian theory, and the other touches on its practicality for our discussion. First, this principle is quite puzzling, for Mill himself implied when formulating his theory that there has to be more than annoyance to justify interference in one's liberty.<sup>14</sup> Second, the meaning of the term "annoyance" is unclear.<sup>15</sup> Mill preferred not to use the terms "harmful", or "offensive", but this much more general term; one so vague that we may wonder if it could serve as a guideline at all. It is difficult enough to clarify the meaning of "harm", or "offence",<sup>16</sup> but annoyance may encompass so wide a range of possibilities that it resists any kind of systematic analysis. What annoys one may enchant another. One, for instance, might be annoyed when encountering white girl holding hands with a black guy. And more fundamentally, what if truth might annoy some individuals?

Mill does not supply any answers to these questions. In any event, more than "annoyance" has to prevail to persuade us to restrict liberty. To take a common example, when someone decides to enter politics or to become a celebrity, a figure whose life is of public concern, then that person has to take into account the possibility of being criticized, laughed at, and discredited for things and behavior that the person does or does not do. Some of the slurs may go well beyond mere annoyance, on the border of slander, and then sufficient reason would exist for appealing to the courts. Those who decide to live their lives in the spotlight are well aware of the pros and cons involved, and they know that they might be the target of annoying jokes.<sup>17</sup> Therefore, to consider this "annoyance principle" seriously is difficult. Only when the level of annoyance is such as to bring about substantial harm to the point of ruining a person's name, does a case exist for the courts to

decide whether a reason is present for restraining the defamer's freedom.<sup>18</sup>

Incidentally, Mill went on to speak of another qualification, which concerns the publication of false facts, thus modifying his contention regarding "one case, and only one" almost with the same breath. By distinguishing between publication of opinions and of facts, Mill explained that while publication of false opinions should be tolerated for the sake of the true, no corresponding reason exists for the publication of false statements of facts:

"The truth or falsehood of an alleged fact is matter, not of opinion, but of evidence; and may be safely left to be decided by those, on whom the business of deciding upon evidence in other cases devolves."<sup>19</sup>

Later in his *On Liberty* Mill modified his views, further compounding any attempt at reconciliation between these two qualifications and the general arguments as presented in his book. In *On Liberty* Mill contended that it is impossible to fix bounds of fair discussion. He admitted that the manner of asserting an opinion may be very objectionable, and may justly incur severe censure. However, the principal offenses of the kind are such as it is mostly impossible to bring to conviction. He maintained that the gravest of them are those which twist the facts: "to argue sophistically, to suppress facts or arguments, to misstate the elements of the case, or misrepresent the opposite opinion". Nevertheless, Mill urged, all this, "even to the most aggravated degree, is so continually done in perfect good faith" that it is rarely possible to stamp the misrepresentation as morally culpable, and still less could law presume to interfere with this kind of "controversial" misconduct.<sup>20</sup>

Another criticism of the Truth Principle concerns the infallibility argument. In formulating this argument Mill assumed that all suppression is based on the asserted falseness of the opinion to be suppressed. But this is often not the case, for opinions are more commonly suppressed because their expression is thought to impinge interests of some powerful people. We can plausibly argue that the dissemination of some views, quite possibly true, ought to be banned in some circumstances because of their destructive impact on the public good. Putting restrictions on freedom of expression does not

ultimately involve a claim to infallibility. As we have seen, Mill acknowledged this when he introduced qualifications to what otherwise be regarded as an "absolute" principle.

Mill's arguments imply that the value of truth is superior to other social interests. He believed that the inherent value of truth outweighs the values of those goods which are endangered through the discovery, or debating, process. His appeal was for "the fullest liberty of professing and discussing, as a matter of ethical conviction, any doctrine, however immoral it may be considered."<sup>21</sup> This assertion could hardly be reconciled with the above annoyance qualification. In the name of intellectual development, Mill was willing to allow the expression of every opinion, however annoying these might be. Moreover, the endeavor of discovering the truth through the free expression of opinions might, as Mill thought, contribute to self-development and progress, but by the same token, it might also endanger them by advancing, to use Mill's terminology, "false" views. Although he acknowledged that most of the people lack the degree of rationality he wished they would have, Mill allowed almost complete liberty of expression to convince them to believe in false views. This is because he believed that truth is bound to win over the false **in the end**.<sup>22</sup> The questions are how to recognize that it is the end, and how significant are the developments that take place in the meantime. In addition, Mill ignored the possibility that an unscrupulous propagandist may cause a rationally grounded, true belief to be abandoned for a false one based on pure emotion, and that free speech can have a debilitating effect, weakening rather than strengthening human consciousness of truth.<sup>23</sup> For, as John Rawls reflects, not all truths are established by ways of thought recognized by common sense; and it would be highly arguable to proclaim that everything is, in some definable sense, a logical construction out of what can be observed or evidenced by rational scientific inquiry.

In parenthesis we should note that Rawls, indeed, has come some way since he offered us his constructivist model of justice, arguing unequivocally that justice is the first virtue of social institutions, as truth is of systems of thought, and that a theory must be rejected or revised if it is untrue;<sup>24</sup> to asserting nine years later in his third Dewey Lecture that "[T]he idea of approximating to moral truth has no place

in a constructivist doctrine".<sup>25</sup> Rawls explains that what justifies a conception of justice is not its being true to an order antecedent to and given to us, but its congruence with our deeper understanding of ourselves and our aspirations, and our realization that, given our history and the traditions embedded in our public life, it is the most reasonable doctrine for us.<sup>26</sup> Rawls implies that whenever truth comes into conflict with his doctrine, then the latter must be held prior. This is in a similar line to his argument that in some situations liberty has to be limited in order to preserve just institutions.<sup>27</sup>

Mill probably would not agree with this assertion. He viewed truth as superior to all other social values without realizing that if we pursue this reasoning, the search for truth might come into conflict with what Ronald Dworkin calls "background rights", i.e., rights that provide a justification for political decisions by society in the abstract, without connecting them to any specific political institution. These rights are essentially derived from conceiving human beings as persons. Such is the right for equal respect and concern.<sup>28</sup> For my part, this deontological right overrides the value of truth. It is a better guiding principle for answering the question Why tolerate? And in a case of conflict between the deontological arguments and the Truth Principle, the first should have preference over the second.

The Kantian deontological directive sees persons as individuals who are capable to reason and to decide their own course of life. Individuals are conceived of as being entitled to the respect which enables them to determine the course of their lives as reasoning beings who are capable of deliberation, of taking responsibility for their specific conduct as well as for the kind of life that they wish to lead. That is, respecting others entails viewing others as people who are realizing themselves as autonomous choosers who examine their goals and, when needed, revise not only their ideas regarding their goals but also their views about the ways to seek them.<sup>29</sup> If we pursue this reasoning for tolerance to its logical extreme, then to regard the other with respect is to respect her decisions, because they are **her** decisions, regardless of our opinions of them. We simply assume that each person's course of life has intrinsic importance, at least for her, and we respect her judgment.

The Kantian directive further urges that, contrary to utilitarianism, each individual possesses inviolable rights that the benefit or welfare of

everyone else cannot override. Consequently the loss of liberty for some is not made right by a greater sum of advantages enjoyed by the entire society as a result of discovering further truth. To grant toleration solely on the ground that it advances truth is a proposition that might serve intolerance. The reason **for** tolerance could make tolerance a self-defeating idea. Thus we may pose the questions: **(a)** what if in order to achieve the desired end of "truth", a person (or persons) would have to suffer? and **(b)** does the end of truth justify all costs? Let us look at the case of individual libel. Here the story of Oliver Sipple may serve as an example.

#### *IV. Applications*

Sipple is the ex-marine who knocked a gun out of the hands of a would-be assassin of then American President Gerald Ford. Shortly after the incident, it was revealed by the media that Sipple was active in the San Francisco gay community, a fact that had not been known to Sipple's family, who thereupon broke off relationship with him. He then sued the newspaper for invasion of his privacy.

Sipple's homosexuality surely was not a fact relevant to the act of saving the life of the President. The news media would not have made a point of his being heterosexual if that had been the case. Nevertheless, the media did not distort the truth. It brought a true fact to public attention. Accordingly, a strict view may be offered that in the name of truth, every item that may be seen relevant to the making of "a story" can be published, no matter what the consequences may be.

A less rigid view would qualify this, holding that the Truth Principle cannot be seen as a sufficient justification, and that attention should be paid also to the consequences of the publication. In this context some have argued that Sipple's sexual identity was relevant because members of the gay community found significance and value in this news report, for it publicized the idea that a homosexual can be a hero like anybody else.<sup>30</sup> That is, in reflecting on this issue we should consider the benefit accruing to the entire gay community from the publication. This argument, however, concentrates on hypothetical benefits for some, while ignoring the actual damage inflicted upon Sipple. His act of bravery had shattered his family life. The crucial

question is, thus, whether the making of Sipple into a "hero model" for the gay community outweighs the harm that was caused to Sipple and to his family. The answer appears to be negative. The gay community would prefer to identify with someone who is proud of his sexual identity than with someone who tries to hide it. Moreover, we can assume that truth was not the main motivation of the journalist who revealed this fact about Sipple. The desire to sell more newspapers by pumping gossip was the main drive, without paying enough consideration to the harmful results which Sipple was likely to endure and without appreciating Sipple's right to privacy. Hence, the consideration of privacy outweighs in such matters the consideration of profit (disguised as coming from consideration of truth), unless a public interest is at stake, such as when the issue involves a public figure whose trustworthiness is a matter of public concern. If, for instance, extra-marital love affairs of a public figure inhibit his functioning to the extent that he is unable to carry his official responsibilities adequately, the public has a right to demand his dismissal.

Returning to Sipple's story, Mill did not consider cases in which his Harm Principle clashes with the Truth Principle and, therefore, it is not entirely clear what would have been his position regarding this matter. Bearing in mind Mill's "annoyance principle" we may nevertheless assume that he might have argued for restricting freedom of expression in the said circumstances. We may expect Mill to favor respect for Sipple's privacy. This is provided that he would have thought the truth was of no contribution to the public. Now let us move from the particular to the general and consider two related, though different, issues in which the harm is inflicted on more than one individual. The first issue is concerned with commercial speech, the other with group libel.

Focusing attention on commercial speech, liberals who are generally for a free market of opinions are reluctant to endorse this position when it comes to expressing views in the free market of goods. The common arguments are that given existing economic structures, commercial speech is not a manifestation of the liberty of the speaker, and that market determination breaks the connection between commercial speech and individual choice.<sup>31</sup> The inclination is

to give precedence to the Harm Principle when it is proved that the good in question has harmful results, no matter whether the commercial speech promoting it is true or false. An example is the note incorporated in cigarette advertisements. An advertisement may claim that a brand of cigarettes is low in nicotine, excellent in taste, cheap, and made from tobacco of the highest quality. All of these assertions may be true. Still the advertisement is required (in the United States, England, Israel as well as in other countries) to contain an additional statement that smoking is bad for your health.<sup>32</sup>

The matter of libel, particularly of group libel, presses the issue of weighing the end of truth against the costs involved. We can envisage situations in which the belief that we should tolerate anything that could assist the progress of truth might serve those wishing to curtail tolerance. Consider the case of the North American scientist who conducted the research on the brain configuration of the blacks and brought forward evidence to prove that they are intellectually inferior to whites. Let us assume for a moment that this scientific, or quasi-scientific, proof may contain a grain of truth. Moreover, let us say that this evidence is completely true. Should we allow the publication of this research?

One view answers this question positively, holding that we may allow the publication of the research. It might postulate that the reason for permitting the publication has nothing to do with whether its findings contain some truth, with the value or the "truth" of the research, or with its contribution to science. Instead, the underlying reasoning could be that through this research we might learn more about white-black relationships, the prejudices and feelings against blacks that pervade the white population of the United States, and maybe elsewhere. This knowledge could assist us in bridging gaps and in fighting these opinions. We may allow the publication not because consideration of the scientist and his followers is foremost in our eyes, but because consideration of the blacks and the whites who resent these findings, as well as those who remain undecided, is what really counts. The Truth Principle is still in place, but not the truth that the research explores. Instead, it is the truth with regard to race relations, the truth as emerged from the discussion of these findings.

Let us go one step further and add more factors to this example. Assume that we accept this view and allow the publication of these findings under the arguments of free inquiry and the search for truth; now, however, we give an account of the specific time, manner, and place in which this scenario takes place. Suppose that this scientist wishes to disseminate the results of his research in a violent pamphlet in Atlanta, Georgia at a time of severe riots against black people in the South of United States.<sup>33</sup> Should we remain faithful to our belief in the free exchange of opinions in the market-place of ideas? Here it appears that the circumstances prescribe a restrictive attitude. This is not because the racist view has to be banned *per se*, because of its repugnant content, but because of its harmful **consequences** and its probable inimical contribution to the current mood in the South. The general line that is plausible to pursue is that if truth is likely to lead to the persecution of some people, we ought better to leave knowledge in its present state, without clinging to the desire of discovering a further truth. The mere possibility of contributing to the truth does not justify endangering groups in society by publishing unsubstantiated (or even substantiated) evidence, which might be distorted by prejudices.<sup>34</sup> In this example the implications are that the possibility for the discovery of truth should be postponed. Sometimes, however, it may be argued that some possibilities in the pursuit of truth should be terminated altogether. Consider the following relevant issue.

Suppose a distinguished scientist, in opposition to all other experts in her field, and without relying on facts and scientific evidence, urges that AIDS can be passed to others by merely shaking hands with a homosexual. One person (Harry) may argue that such an assertion, when not substantiated by facts, should be prohibited. AIDS is such a traumatic disease because a cure for it is yet to be found, that we can expect horrendous consequences for the homosexual community. The search for the truth may be infinite, Harry would say, but the ways and means according to which the truth is advanced and pursued are finite.

Many liberals would dispute Harry's reasoning. Following Mill they would allow the publication because this form of expression cannot be considered as an instigation. According to this view grounds for restricting speech are provided when it is closely linked with action, and thus might lead to causing harm to others.<sup>35</sup> To publish an

unsubstantiated theory of the sort in a newspaper or journal is simply to advocate it, and the way to fight against it is by counter-arguments, by more speech.

In response, Harry may then assert that although the scientist's theory may be denied by many other distinguished scientists who would show that what that scientist had said has nothing of substance, still her theory is likely to get much publicity and to fall on prejudiced ears. Harry may maintain that nowadays, experts explain time and again that the most common ways by which the HIV virus can be transmitted to others are sexual intercourse, infected mothers to their children, blood transfusion, or by use of contaminated needles or syringes.<sup>36</sup> Still, many people do not want anything to do with people who are infected by AIDS. Some doctors and nurses who are familiar with the scientific data, nevertheless are reluctant to give medical assistance to AIDS victims. So many prejudices occur with regard to AIDS that such a theory might create segregation between heterosexuals and homosexuals. It would vilify and condemn an entire group of people. Thus, Harry would agree that this is not a case of instigation, in the sense that the harmful results are immediate, but it is a damning of a group. This bogus argument, coming from a scientist, might even entail persecution of the entire homosexual community. It might condemn the homosexuals to live in isolation from the entire society, bringing upon them the same fate which lepers shared in the past. In such instances, after considering the reasonableness of the advocated truth, examining the grounds on which it is based, as well as the seriousness of the objections to it, if we come to believe that (1) the "truth" is controversial, and (2) that the consequences of preaching that "truth" might cause harm to others - then the Truth Principle does not possess sufficient force to demand toleration on our part. Harry may say that the interests of the homosexual community in particular and of society in general in having a "good environment", are more important than the interests of the scientist in publishing her beliefs.<sup>37</sup> Harry may argue in sum that the Truth Principle cannot justify cases in which there are grounds to believe that the intention is to condemn a specific group.

If Harry is correct in the assumptions, then we may have a new category of forbidden speech. This is the category of **group damning**.

However, liberals would then argue that Harry is too pessimistic in the assumptions. They would further assert that not long ago three distinguished scientists had brought forward a somewhat similar theory, which might have condemned the homosexual community in the way that Harry describes. Nevertheless, reality shows that the homosexual community, although it may have suffered a draw-back in its position in society, is not treated (not yet, anyway) in the way that lepers were treated in the past. We may recall that in 1988, Masters, Johnson, and Kolodny published a book claiming that it is possible to become infected with the AIDS virus from skin contact with contaminated toilet seats, and implying that people might contract the HIV virus by mosquito bites.<sup>38</sup> Because AIDS is very much associated with homosexuals, their thesis might have had the potential of being group damning in the way described by Harry. The implication could have been to propose segregation in order to prevent the spread of the disease. In reality this did not happen. The scientists' theory evoked much discussion and debate. It was not totally refuted, nor substantiated by scientific research but the scientific community did not adopt their theory.<sup>39</sup> As far as the homosexual community is concerned, it is not persecuted or segregated as a result of the publication. Thus, the facts support the liberal viewpoint of affirming the publication. We have to be extra careful in considering prohibition on books and journals. For my part, I cannot think of cases in which prohibition on such publications should ever take place. Liberals would agree, however, that if we were to add considerations of time, manner, and place in a similar vein to our example of publishing a study about the inferiority of blacks in a violent vehement pamphlet during a period of riots, then the pursuit of truth should be held secondary so as to secure the safety of individuals and groups.

#### *V. Concluding Remarks*

The utilitarian Truth Principle does not supply solid basis for guiding us when we should tolerate. This is not only for ethical reasons but also for methodological reasons; for we have seen that the Truth Principle cannot serve as a well-defined principle for prescribing tolerance and its confines within a well-organized framework, safe from the fallacies of the argument itself. Truth should not be held superior

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to other social values such as the liberty and autonomy of individuals, for although the Truth Principle is intended to defend tolerance, its very reasoning might open way for the intolerant, and paradoxically even for the negation of truth. The search for the truth, as Mill contended, may be infinite, but the ways and means according to which the truth is advanced and pursued are finite. Indeed, Mill himself recognized in his corn-dealer example that speech, which is closely linked with action thus might lead to causing harm to others, should be restricted.<sup>40</sup>

Finally, I may add, truthfulness has not always been counted among the political virtues. Arendt carries the argument too far in her assertion that lies have always been regarded as necessary and justifiable tools not only of the politician's or the demagogue's but also of the statesman's trade.<sup>41</sup> Of course, not every issue that arises in political life is about discerning the truth. But questions of public policy are not of a uniform character. In some, truth is at issue; in others it is not.

However, qualifying Arendt's observation we may say that, on many occasions, truth does not serve as a guiding principle. If we consider one of the basic principles which underlies the working of democracies then we may say that the majoritarian principle is viewed as a more just procedure than minority rule not because it is thought that the ideas of the majority are truer than the ones of the minority, but despite the acknowledged possibility that it might be wrong. The liberal view is that it is not truth which we ought to seek in politics, but rather a way in which we will be able to secure the rights and liberties of all citizens, without supplying a basis for attempts at exploitation; without allowing some to further their interests at the expense of others.

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NOTES

- <sup>1</sup> I wish to thank Geoffrey Marshall and Eric Barendt for their comments on earlier drafts of this essay. I also acknowledge the support of the Ben-Gurion Foundation in conducting this research. An earlier version of this essay in Cohen-Almagor, *The Boundaries of Liberty and Tolerance* (Gainesville, FL.: University Press of Florida, 1994).
- <sup>2</sup> On the logic of the distinction between the category of action and that of expression see Thomas I. Emerson, "First Amendment Doctrine and the Burger Court", *California L. Rev.* 68, No. 3 (1980), 422-481, at 432, 477-481.
- <sup>3</sup> This argument which commands us to contest opinions that are believed to be true vigorously and earnestly to explore some further truth, and to uncover their false aspects was utilized by the United States Supreme Court in several decisions. Cf. Justice Holmes in *Abrams v. U.S.* 250 U.S. 616 (1919); Justice Brandeis in *Whitney v. California* 274 U.S. 357 (1927); and Justice Frankfurter in *Kovacs v. Cooper* 336 U.S. 77 (1949).
- <sup>4</sup> Cf. John Milton who published his *Areopagitica* in 1644, advocating that truth is a perpetual progression, thus every idea should be tolerated.
- <sup>5</sup> J.S. Mill, *On Liberty in Utilitarianism, Liberty and Representative Government* (London: J.M. Dent. Everyman's edition, 1948), p. 79.
- <sup>6</sup> J.S. Mill, "Appendix", in *Dissertations and Discussions*, Vol. I, p. 474; "Democracy and Government", in G.L. Williams, ed., *John Stuart Mill on Politics and Society* (Glasgow: Fontana, 1976), p. 184.
- <sup>7</sup> Mill, *On Liberty*. p. 83.
- <sup>8</sup> Mill, *On Liberty*, p. 79.
- <sup>9</sup> Mill, *On Liberty*, p. 95. Bearing these arguments in mind, it is quite puzzling to reflect on Mill's reaction when asked to join a society he did not appreciate. Mill declined the invitation of the *Neophyte Writers Society*, commenting that he was not interested in aiding the diffusion of opinions contrary to his own, but only in promoting those which he considered "true and just". Cf. Francis E. Mineka *et al.*, *The Later Letters of J.S. Mill, 1849-1873*, Vol. XIV of *Collected Works* (Toronto: University of Toronto Press, 1972), p. 205. 23 April 1854.
- <sup>10</sup> Mill, *On Liberty*. p. 89.
- <sup>11</sup> Mill, *Utilitarianism*, p. 21. Note Mill's cautiousness in phrasing this exception to one of his most "sacred" ideas, calling "all moralists" in support.
- <sup>12</sup> Mill, *Utilitarianism*, p. 41.

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- <sup>13</sup> Mill, "Law of Libel and Liberty of the Press", in G.L. Williams, ed., *John S. Mill on Politics and Society* (Glasgow: Fontana, 1976), 143-169, at 160-161, bold mine.
- <sup>14</sup> Mill, *On Liberty*, p. 138.
- <sup>15</sup> I thought maybe the term 'annoyance' had a stronger sense in the nineteenth century than the one prevailing today. The first edition of Oxford dictionary, however, did not supply ground to validate this suspicion.
- <sup>16</sup> The Millian Harm Principle holds that restrictions on liberty may be prescribed when there are sheer threats of immediate violence against some individuals or groups. The Offence Principle is concerned with cases of indecent conduct that is performed in public. There are intimate matters which do not concern anyone but the individual, so long as they are done in private. But when they are done publicly, then they might cause offence to others, and the State may legitimately control them. Of this kind, Mill said, are offenses against decency. The Offence Principle also covers expressions which are morally on a par with physical harm, which inflict psychological damage. For an elaborated discussion on the Harm and the Offence Principles see my "Harm Principle, Offence Principle, and the Skokie Affair", *Political Studies* XLI, No. 3 (1993), 453-470. Reprinted in Steven J. Heyman (ed.), *Controversies in Constitutional Law: Hate, Speech and the Constitution* (New York and London: Garland Pub., 1996), Vol. II, 277-294.
- <sup>17</sup> One may argue that Mill was talking not about public figures but rather about private people. He, however, refrained from qualifying his assertion and did not make this assumption explicit.
- <sup>18</sup> There are specific categories of cases in which prior restraint by injunction is thought legitimate (as sometimes in cases of libel, privacy, security, contempt of court and copy-rights).
- <sup>19</sup> Mill, "Law of Libel", p. 160.
- <sup>20</sup> Mill, *On Liberty*, p. 112.
- <sup>21</sup> Mill, *On Liberty*, p. 78. In a letter to Sterling (cf. Mineka, *The Earlier Letters of J.S. Mill, 1812-1848*, in *Collected Works* XII, 1963, p. 77) Mill wrote that "In the present age of transition, everything must be subordinated to freedom of inquiry".
- <sup>22</sup> Mill, *On Liberty*, p. 90.
- <sup>23</sup> Eric Barendt (*Freedom of Speech*. Oxford: Clarendon Press. 1985, pp. 10-13) makes two further important notes: first, that it seems facile to argue that in all circumstances the best remedy against evil speech will

be more or better speech. Second, Barendt agrees with the Millian claim that it would be wrong to prohibit even false speech. He admits that if opinions are not contested, their vitality will decline. Nevertheless, Barendt thinks that a government worried that inflammatory speech may provoke disorder is surely entitled to elevate immediate public order considerations over the long term intellectual development.

- <sup>24</sup> John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1971), p. 3.
- <sup>25</sup> Rawls, "Construction and Objectivity", *The Journal of Philosophy* LXXVII, No. 9 (1980), 554-572, at 564.
- <sup>26</sup> Rawls, "Rational and Full Autonomy", *The Journal of Philosophy* LXXVII, No. 9 (1980), 515-535, at 519.
- <sup>27</sup> Rawls, *A Theory of Justice*, p. 219. The relevant virtue of Rawls's constructivist theory consists in its justice rather than its truth. Instead of evaluating different claims to truth by reference to how true they really are, it abstains from any such judgement and tries only to deal with them fairly. The moral force of his theory lies not in its claim to some ontological status which can be described as "true" but in its reasonable dealing with different conceptions of the true. That is why justice as fairness is political not metaphysical doctrine.
- <sup>28</sup> R.M. Dworkin. "Hard Cases", *Harvard Law Review* 88, No.6 (1975), 1057-1109, at 1069-1071, reprinted in *Taking Rights Seriously* (London: Duckworth, 1977), pp. 81-130.
- <sup>29</sup> For further discussion of the respect for others argument in the context of Ronald Dworkin's theory see my "Between Neutrality and Perfectionism", *The Canadian Journal of Law and Jurisprudence*, VII, No. 2 (1994), 217-236.
- <sup>30</sup> Cf. Franklin S. Haiman, *Speech and Law in a Free Society* (Chicago and London: University of Chicago Press, 1981), p. 73.
- <sup>31</sup> Cf. Edwin C. Baker, *Human Liberty and Freedom of Speech* (N.Y.: Oxford University Press, 1989), pp. 194-224.
- <sup>32</sup> Notice in this connection Mill's recommendation to label drugs with some word expressive of its dangerous character so as to inform the buyer that the thing she possesses has poisonous qualities. Cf. *On Liberty*, p. 152.
- <sup>33</sup> Consideration of how the research is published is of crucial importance. It is one thing to release the same study at the same circumstances in a violent pamphlet and quite another thing to publish it in a scientific journal. While I am inclined to think that we should prohibit the first

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means of publication, I would be hesitant to urge prohibition on the second.

- <sup>34</sup> A radical argument may hold that the decisive question here is not whether the racist claim for the distinction between noble and inferior races is true or false. Even if the research contains grains of truth, the issue is not that our truth contradicts the other's. Instead, that very truth and its resultant conclusions with regard to the destiny of the races, namely that the superior, *ipso facto*, should rule the world, and the inferior are doomed to perish, is harmful and destructive. It, therefore, does not deserve to be tolerated and contested in the market-place of ideas. Tolerance is not the guiding formula in such a case, for tolerance means respect for people, and it ought not to be granted to those who base their views on degrading groups. This view, however, may introduce excessive restrictions on freedom of expression. See my discussion in "Harm Principle, Offence Principle, and the Skokie Affair", supra note 16.
- <sup>35</sup> Cf. Mill's corn-dealer example. *On Liberty*, p. 114.
- <sup>36</sup> Another possibility of infection that is hypothesized is through the saliva. The HIV virus is present in the saliva and it might be transferred from an HIV carrier to another through the spit if the other has a cut in the mouth.
- <sup>37</sup> Cf. T.M. Scanlon, "Freedom of Expression and Categories of Expression", *University of Pittsburgh L. Rev.* 40, No. 3 (1979), 519-550.
- <sup>38</sup> W.H. Masters, V.E. Johnson & R.C. Kolodny, *Crisis: Heterosexual Behaviour in the Age of AIDS* (London: Grafton Books, 1988), pp. 83-92.
- <sup>39</sup> I discussed this matter with two specialists in Oxford, England. Dr. Anne Edwards of the Radcliffe Infirmary, Oxford asserts that theoretically, there is a very slim chance to get AIDS either by contaminated toilet seats or mosquito bites. She adds that it is immoral to publish such hypotheses without substantiated evidence. Dr. Tim Pito of the John Radcliffe Hospital in Oxford agrees. He thinks that the toilet seats hypothesis is "rubbish" and that the mosquito theory is quite implausible. Dr. Pito argues that Masters and Johnson know nothing about AIDS and that they probably wanted "a bit of a fun". He adds that it is almost impossible to refute hypotheses that suggest a very low risk.
- <sup>40</sup> Cf. Mill, *On Liberty*, p. 114.

- <sup>41</sup> Cf Hannah Arendt, "Truth and Politics", in P. Laslett et al, eds., *Philosophy, Politics and Society* (Oxford: Blackwell, 1969, Third Series), p. 104. Arendt makes a further point which I dispute. She assumes that truthfulness has little to contribute to the change of world and circumstances which is among the most legitimate activities (p. 123). I do not see why the mere telling of facts leads to no action whatsoever, as Arendt claims. Indeed, the very selection of the facts *in itself* is intended to bring about some action (or inaction).