

Freedom of Expression: J.S. Mill versus Jeremy Waldron

[Libertatea de exprimare:
J.S. Mill versus Jeremy
Waldron]

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Abstract: *The first section will give an overview of case that Udo Pastörs brought to the European Court of Human Rights (EC(t)HR) case and the decision that was made.*

This will be followed up with Mill’s theory and what he would have most likely concluded on the topic, followed by Waldron’s perspective.

This article argues that Mill would have agreed with Pastörs and would not have chosen to limit his freedom of speech, while Waldron would have agreed with the court, limiting Pastörs’ freedom.

Keywords: *freedom of expression, the harm principle, Holocaust denialism, utilitarianism.*

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1. Introduction

Individuals' freedom of expression is a widely discussed subject.

Both Jeremy Waldron and J.S. Mill agree on the importance of the harm principle in this discussion, but they hold differing opinions on what classifies as harm.

The topic of freedom of speech came into play in the court case that Udo Pastörs brought to the European Court of Human Rights (EC(t)HR), arguing that his freedom had been infringed.

2. Holocaust denialism

On October 3rd 2019, the EC(t)HR had to take a stance on a case about Holocaust denialism. Udo Pastörs had been criminally convicted in Germany after one of his speeches was seen as denying Auschwitz.

This speech was made the day after the Holocaust Remembrance Day where he spoke ill of the Holocaust and denied its existence, leading to his conviction. Following this, Pastörs appealed to the EC(t)HR saying his right to freedom of speech was infringed (2019).

According to the article on freedom of expression of the EC(t)HR, "everyone has the right to freedom of expression [...] without interference by public authority" (European Convention on Human Rights., 2010, p.12).

Nevertheless, this freedom may be subjected to various "formalities, conditions, restrictions or penalties" (p.12) to help maintain our society by, for example, protecting morals and protecting others' reputation. Hence, this freedom is limited to some extent.

The EC(t)HR, hence, concluded that Pastörs had intentionally lied to defame Jewish people. Since this opposes the values of the Convention, Pastörs' statements were not under the protection of the freedom of speech article and so, his application to classify this event as having infringed his right was unanimously dismissed (Pastörs v. Germany, 2019).

3. Mill's perspective

J.S. Mill was a strong supporter of the freedom of expression, but believed there should also be a limitation on this liberty. Society would have no right to intervene when action affected only the individual himself, but it has legitimate power over an individual whose actions directly affect others. This refers to the harm principle which is completely against paternalism, so that one's own good is not enough for the state to intervene. This principle

only applies to adults and those that have the capacity to be guided to their own improvement (Mill, 2019).

This liberty is comprised of the “inward domain of consciousness” - referring to the liberty of thoughts, feelings and opinions (p.96) - and the liberty of expression and the publishing of opinions. Mill concluded that a society lacking these elements is not free and that the only true freedom is that of pursuing one’s own good as long as it doesn’t harm others. Hence, Mill would say that Udo Pastörs has the right to express himself unless it harms others.

The key element here is concluding whether Pastörs did harm others and so, whether his freedom should be restricted.

Mill believes that the only manner in which one can develop their ideas is to discuss them with others. He says that if we were to forbid opinions for possibly being wrong, and so not act on our opinions just because they may be incorrect, we may as well never follow our interests or perform our duties (p.98).

So, in this context, Pastörs should be allowed to voice his opinions even though they may be wrong as this is in his individual interest.

Furthermore, Mill saw freedom of opinion and expression as bringing two main benefits to society (collective interest).

Firstly, by offering this freedom, we can avoid the danger of suppressing ideas that may be true.

One can never be absolutely certain of their truth, but when there are no opposing ideas then that is as close to the truth as possible.

Hence, by suppressing Pastörs’ opinions and limiting his freedom, we might be depriving society of a more accurate representation of the truth behind the Holocaust.

The second alternative benefit is the strengthening of the current true ideas.

Even if the expressed opinion is incorrect, by keeping the true idea constantly under attack, it maintains its strength and vigour and prevents the truth from becoming a dead dogma (Mill, 2019).

Hence, even if Pastörs’ opinions on the Holocaust are known to be incorrect, Mill believes that he should still be allowed to express them as it will help society progress and it does not harm anyone (he only considers physical, financially assessable damage).

So, Mill would support Pastörs and would not conclude that his freedom of speech should be curtailed.

4. Waldron's perspective

Jeremy Waldron agrees on Mill's harm principle, but disagrees on his outdated interpretation of harm. Waldron states that as long as people advocate racial and religious hatred, society can't be well-ordered.

This society would be governed by a conception of justice and would not tolerate hate speech within the free market of ideas (Waldron, 2012).

So, while Mill's argument requires the metaphor of this marketplace where the best arguments remain and the weak ones wither away, this argument is outdated in today's world. His arguments focused on religious power and the censorship of the church, which are no longer the main problems today.

While Waldron knows that free speech is fairly unlimited as long as it doesn't harm others, he raises a counterargument as a legal principle. He believes that a well-ordered society still requires laws, but is built on security and assurance (pp.80-82), where everyone in the society accepts the same principles of justice.

Waldron states that, "hate speech or group defamation involves the express denial of these fundamentals with respect to some group in society" (p.83).

Unlike Mill, he also believes that every member in a society deserves protection from violence and guaranteed dignity.

Hate speech undermines the idea of this equal dignity.

This well-ordered society would convey to all citizens an assurance that they will be treated justly.

However, when society is defaced with, for example, anti-semitic arguments or defamatory racial leaflets, this assurance disappears.

In conclusion, it is clear that Waldron would oppose Pastörs' public speech and would agree with the court in denying his appeal to classify his criminal charge as an infringement on his freedom of speech.

Pastörs is undermining the implicit assurance offered by society to vulnerable groups, in this case Holocaust survivors.

Hence, Waldron would most likely conclude that Pastörs' freedom of speech should be curtailed.

5. Conclusion

In conclusion, Mill's utilitarianism argues that freedom of speech should be reasonably unlimited as speech does not cause harm and even

contributes to society by either discovering a new truth, or by sharpening the current truth.

Hence, he would not restrict Pastörs’ freedom of speech.

Alternatively, Waldron’s argument about the importance of equal dignity in a well-ordered society - free from hate speech - demonstrates that he would have agreed with the EC(t)HR and restricted Pastörs’ freedom of speech.

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