On Liberty, by John Stuart Mill, has a reputation as the most robust defense of freedom of expression within the British Enlightenment. For the occasional reader, the defense of freedom of expression in Mill may seem unconditional, as a defense of a free market of ideas prospering without external intervention, as if an invisible hand was regulating the speech interactions between members of a more or less open civil society. In fact, the use of the term "market of ideas" might, quite plausibly, induce the reader to align Mill with Adam Smith and the associated ideal market as a public arena of unregulated competition. Such a view, especially as it has been appropriated by libertarian activists, podcasters, and youtubers, ultimately points at the romantic activism for freedom of the press and freedom of speech in Scottish, British and American Enlightenment as the canonic and very reverend source for a uncanny defense of all sorts of expressions in the public sphere. Elon Musk's recent acquisition of the social network site "Twitter" and his immediate rhetorical crusade for radical freedom of speech – followed by a general amnesty for all suspended accounts not crossing the red line of causing direct harm, including profiles notoriously connected to white supremacist and other hate speech groups[1] – is exemplary of such attitude.

In this article, we intend to demonstrate that Mill is, in fact, aligned with Adam Smith in describing the idea of the "market of ideas", and that the description of an "invisible hand" mechanism "freely" regulating more or less suitable ideas is consistent with Mill's argument. However, contrary to what may appear to an occasional reader, we argue that Mill's defense is not unconditional precisely because it is aligned with Adam Smith's less familiar view of the conditions in which a market works, which, as we will see, are ultimately connected to moral sentiments and the development of positive emotions in an Aristotelian view of moral psychology.

In order to do so, in what follows we will first show that, Smith's underdevelopment of a hard theory for freedom of speech notwithstanding, his theory of moral sentiments provides a framework in which freedom of expression should be understood as a requirement for the development of prudence, which, in its turn, operates as a condition for the promotion of the specific moral virtues necessary for participants in modern public institutions, such as the market of ideas. In Smithian language this seemingly dissonant idea works on the basis of a co-generative and co-dependent relation, where, on the one hand, the prerogative of speech is necessary for the cultivation of prudence, and prudence, as a practical virtue, eventually moderates both speech acts and the administration of the State.

Secondly, based on the presumed moderating character of what we will be calling “liberal prudence” in Smith’s work, we aim to draw a historical line of theoretical development to Mill’s emphasis on the role and importance of “liberal elites”. Liberal elites in Mill, we argue, have a moderating role akin to the role of liberal prudence in Smith, as they will irresistibly move the public debate into more rational and truthful forms of assertion in an open society. This rational and conscious moderation of public discourse, in Mill, requires an unrestricted domain of individual expression while presupposing a moral psychology and an institutional environment that will “freely” move society into more well informed and reflected upon forms of speech.

Through these steps, we aim to persuade the reader that Smith and Mill’s conceptions of freedom of speech are not as radically libertarian as most contemporary activists would expect, while also pointing critically at the elitist and somewhat romantic framework which both authors presuppose in order to defend the connection between an open space for expression and the liberal, institutional, progress of the public sphere. Thus, at the end of the paper we claim that this model (notwithstanding its immense importance for the development of freedom of press and education in the 20th Century) has become increasingly unable to provide interesting regulatory and moderating clues for late modern challenges.

In other words, although a more careful reading demonstrates that the classic defense of freedom of expression relies on the positive emotions and social impact of a liberal elite of prudence, we argue further that this underlying premise is an overly optimistic one considering the new infrastructure of the market of ideas. The introduction of internet and social media has led to an unprecedented democratization of the public sphere, but has also shown – especially as the digital market solidifies – new challenges related to the incentives and externalities of the engage-based business model of the larger bulk of this infrastructure. The externalities in question are not confined to privacy and antitrust issues, nor the digital competence of each user, but also to negative consequences that directly relate to conditions of a self-regulating market, such as the rate of psychological influence on primitive emotions, the amplification of extreme minority content and the collective impact this biased distribution has on misconceptions and polarization.

Similar to the way failures in a free market may qualify state intervention in order to

promote (at least temporarily) the proper virtues and intended distributive outcomes, the marketplace of ideas might also be subjected to intervention when the situation no longer allows the intended deliberative outcomes by self-regulating agents alone. In search of ways to adequately respond to the emerging market failures we suggest, in the concluding part of the article, adopting the comparative, realization-focused approach developed by Amartya Sen based on, among others, Smith's and Mill's methodology. Hence, despite taking some distance from the substantive theories of Smith and Mill, there seems to be a promising potential in their basic approach that might guide the facilitation of the open and informed exchange of ideas.

Ultimately, this points to the realization of a positive freedom of expression, rather than the mere absence of obstructions. This structural requirement implies positive duties of the state to facilitate an open and well-informed public debate, through for instance social policies of education (of readers and authors) and efficient regulations of social media platforms.

I – Adam Smith and liberal prudence

"The desire of being believed, the desire of persuading, of leading and directing other people, seems to be one of the strongest of all our natural desires. It is, perhaps, the instinct upon which is founded the faculty of speech, the characteristical faculty of human nature. "(SMITH, 2010, p. 25)

"The prudent man is always sincere, and feels horror at the very thought of exposing himself to the disgrace which attends upon the detection of falsity. But though always sincere, he is not always frank and open; and though he never tells anything but the truth, he does not always think himself bound, when properly called upon, to tell the whole truth. As he is cautious in his actions, so he is reserved in his speech; and never rashly or unnecessarily obtrudes his opinion concerning either things or persons "(SMITH, 2010, p. 193)

Adam Smith's theory of moral emotions is not simply a treatise on moral psychology, but a guide to the virtues necessary for the creation of the model of person that the ideal mercantile society visualized by Smith in the classic *History of Wealth of Nations* (2016) needs to function in a balanced way. Amartya Sen continually explores this relationship

between the formal and economic aspects of Smith's theory and the different dimensions of moral personality that inform economic liberalism in Smith since the late 1960s. However, it is in *Adam Smith and the Contemporary World* (2010) that Sen consolidates a general panorama of the reconciliation between economics and morals in Smith's work, emphasizing precisely the moral framework that supports the idea of free market in the Scottish Enlightenment. In the same vein, Charles Griswold in "*Adam Smith and the Virtues of Enlightenment*" (1998) argues that Smith's free market theory is based on the action of free people who behave according to a certain set of moral qualities – developed through observing habits of self-interest and cultivating positive emotions such as empathy and charity. Based on the exegesis that follows, we argue that the claim can also be made for a Smithian view on the free market of ideas.

– Aligning self-interest to the common good via sympathy

At a glance, the proposal to cultivate positive emotions related to sociability, and specifically to charity and empathy, may seem irreconcilable with the promotion of self-interest that Smith identifies as inherent in mercantilism and also with the development of the individual. However, as we move forward in reading *Theory* it becomes clear that Smith sees the idea of self-interest displaced from an idea of selfishness or self-centeredness.

Unlike Hobbes and Locke, who saw the modern *self* as a self-interested agent, who acted above all to maximize some idea of individual interest and who only considers the interests of others to the extent that these interests are capable of adding utility to his own well-being, Smith not only understands the *self* as an eminently social unit, capable of considering actions partially or impartially to others, and understands that being partial to others can be more advantageous than being partial to oneself in a social sphere, but also as capable of pure altruistic actions, based only on "the pleasure of seeing" others in fair positions[2]. However, this individual who is able to consider others in social action does not appear in a vacuum. It can only arise within an environment that allows the promotion of moral virtues associated with consideration for other people. There are material and psychological conditions which are required for the proper development of sympathy.

Michel Zouboulakis (2005) points out that this developmental process is gradual in Smith, and linked to the transition from a naive and child-like interest in self-preservation, to the

broad and not just utilitarian consideration of interests, which is socially constructed and through which John Stuart Mill will later, in *Utilitarianism* (2008), call it "criterion of preferred preference", which are individual considerations about the broad consequences of individual choice processes – that is, they are how we consider our preferences after reflecting on the consequences of our preferences and the processes we use to reach our preferences. These considerations have two levels, a level of self-interest, relevant only to our mental and material state, and a social level, related to how our preferences and actions impact others.[3]

As we progress in the *Theory*, we see that Smith emphasizes the importance of prudence for the development of positive emotions, and it is important to emphasize the *moderating* character that prudence has in Smith's work. Of course, the Scotsman does not invent the use of prudence as a moral emotion that moderates our most hedonistic or destructive instincts. In reality, Aristotle's influence on Smith at this point is clear, especially as prudence actually operates as a practical virtue, capable of reorienting behavior and prioritizing, and leading individuals to realize themselves in the best way making decisions about themselves and their relationships with others.

But how does Smith account for the development of this prudence? We will further argue that Smith understands public argument as a tool for this development, and thus recognizes freedom of expression as the main entitlement within such a scenario. Smith, however, does not have a full theory about the importance of freedom of expression. Although at points in both *Theory* and *History* the centrality of guaranteeing freedom of expression for modern societies is suggested, it is only with Mill that we are provided a defense of a broad and (largely) unrestricted freedom of expression. However, before moving on to the specific analysis of the question of freedom of expression in Mill, we want to address the problem of *discourse* for the development of what we will designate as liberal prudence.

– Discourse and development of liberal prudence

The first author to centrally pose the problem of discourse for the formation of a social contract, in the British context, is Hobbes. However, for Hobbes, the fundamentally individual character of relations of object designation through language and discourse makes communication one of the most difficult points to control in societies – we all have

our own designations about objects, our own intentional relations that characterize different *types*, *names* and *denominations*. The nominalist theory of language that we find in Hobbes is quite distant from that developed by Smith – in reality, in Smith the process of forming a representational lexicon that will be operated socially in the form of a speech is never done by an isolated individual – it is always immediately inserted in a political and social context where family, religious, political and economic mores guide the use of language from childhood to old age.

Prudence guides the use of this language publicly, as it will lead individuals to the best possible discursive practices based on trial and error – individuals "calibrate" their use of speech to achieve different ends, and change their use of language to negotiate their wills with other people. Here, we can begin to visualize the emergence of a "market" of ideas that operates in a "free" way, that is to say, without external strings: states of equilibria are generated in the negotiation between different individuals on more or less controversial issues discursively, until the arrival in a common denominator that satisfies all interlocutors involved in the negotiation. In other words, the proper meaning of a word is established in a similar way to the market value of a commodity.

It would be tempting to affirm here a libertarian character for the discursive market in Smith – after all, individuals are able to mediate their opinions without the necessary intervention of the State if they act prudently. This is not to say, however, that there are no limitations or controls in such an incipient market of ideas. Where libertarian activists would expect to find an unconditional defense of any form of assertion whatsoever and no constraints to individual expression, Smith places a strong moderating force onto both self-regulation (well informed individuals will always be partial to truth and rationality) and institutional framing (unequal societies *require* interference in the market of ideas in order to develop into more just social orders). As a matter of fact, prudence functions as a control over the form of expression as it forces individuals to consider not only the individual consequences, but the social consequences of using language inappropriately. Now, it is still somewhat vague what "inappropriately" means in this context – and in order to understand how Smith would understand the "proper" character of speech acts we need to once again remember the Aristotelian influence on the thinking of authors like Smith and Mill.

Neither Smith nor Mill will accept the psychological premise that it is possible to know that

something is wrong and to act in error. In Smith, this is clear in the explicit prohibition of lying: "the prudent man is always sincere and is terrified of even thinking of being caught propagating a falsehood" (2010: 213) – but why does prudence imply sincerity? Because it is inconceivable, when we know that something is true, to propagate the opposite of that something. Evidently, prudence can recommend silence, it can recommend partial information, but it never recommends lying. Smith's liberal prudence designates the duty to speak what we know to be true, and to denounce what we know to be a lie. In that sense, prudence *frames* action in Smith, as it will provide a field in which action will operate: the way in which we speak in public, for example, is directly impacted by the psychological and moderating effect that prudence operates in our speech acts.

Is this to say that for Smith we are all in equal condition to exercise this liberal prudence? Smith certainly does not believe that liberal knowledge and prudence is equally distributed among members of society. However, there is a romantic background in the development of prudence in Smith: as his argument about the positive weight of prudence in moderating our emotions becomes more salient, the relative inevitability of a progress towards prudence also becomes clear. Here, Smith once again anticipates Mill by pointing to the need to open the discursive field to the largest possible number of opinions with a pretense of truth, so that they can be tested according to the criterion of prudence.

But that is not to say that everyone has access to the criterion of prudence in the same way. Carola Von-Villiez (2018) points out that there is an intellectual duty of emotional orientation on the part of those who have already developed the habits of self-observation and consideration of others pertaining to liberal prudence. These individuals have a moral and political duty to direct their fellow citizens to moderate their speech in accordance with the principles of liberal prudence. Sivertsen (2019) points to a potential inconsistency in Smith's work and interpretation with regard to the supposed impartiality of the well-informed agent. In fact, according to Sivertsen, as a well-informed agent, that is to say, an agent who is prudent on the issues to which she/it wants to give a public opinion, she/it is not *impartial* with regard to that information. As a consequence, if you are well informed about issues related to global warming, for example, you cannot be *impartial* in the face of opinions that peremptorily deny anthropogenic global warming. According to this interpretation of Smith, prudence forces me to take a position which is *partial* – i.e. in favor of the position that my specialization in the subject allows me to take. If we read Sivertsen

and Von-Villiez in a combined way on this point, we have a duty to take a position and to educate participants in the public discussion on the issue at hand.

Now, even though Smith does not develop a "hard" theory for freedom of speech, it seems plausible to us that he understands free speech to be situated within the framework of moral emotions and is limited and moderated by what we have coined "liberal prudence". Such prudence frames and conditions the "free" operations of the market of ideas and places weights in the see-saw of different emotional tonalities which become more or less salient as prudence operates more or less effectively in individuals. We have tried to show that Smith trusts that more positively salient emotions will tend to prevail as more well informed individuals enter the free market of ideas. Now, Smith is still rather romantic and Aristotelian about how such operations are possible: once societies are open to all sorts of speech interactions, and more positive emotions become salient in the public sphere, individuals will move towards more prudent positions, all things remaining the same.

From this reading of Smith, one might conclude that free speech and prudence combined provide a self-sustaining process of progression, but as Sen (2010) suggests, it is important to point out that we can already in Smith find elements that indicate the importance of creating public institutions whose main role will be to promote liberal virtues, and provide conditions for the universal development of liberal prudence within different societies which, being more prudent, will be freer.

II – John Stuart-Mill and the Liberal Elites

On Liberty (2008) is famous for the unconditional defense of freedom of expression and for the conditioning, at least apparent, of freedom of expression only the agent's consideration of the direct harm that a declaration can generate for it from a psychological and material point of view. In the introduction, Mill makes quite clear the radicality of his position by his articulation of the harm principle as the limit of state intervention.[4]

In the last twenty years of interpretation on the question of freedom of expression in Mill, David O. Brink's article, *Millian Principles, Freedom of Expression and Hate Speech* (2001) guided the discussion by stating, in summary, that for Mill the price we pay for our freedom of expression is the State giving up the prerogative to regulate any type of speech – even the

most disgusting ones – if these are not linked to a clear and indisputable threat of physical violence. For Brink, it is indisputable that freedom of expression for Mill is non-negotiable – any form of public expression is plausible insofar as it is only by guaranteeing this unconditional freedom of expression for all individuals that we can be sure of the effectiveness of the ban on censorship. Accordingly, Mill insists that the precedent for state intervention would necessarily be negative – even if that intervention initially has morally attractive motives (avoiding the spread of misinformation, for example).

Brink's point is, for all intents and purposes, correct. To a large extent, Mill does not really accept state intervention in the free market for ideas, especially direct intervention in speech acts. But Brink's recap of the Millian argument does not take into account the profound idealism of the idea of rationality and individual action within Utilitarianism, Political Economy and about Freedom.

As we have anticipated, Mill shares with Adam Smith a deep admiration for Aristotle's philosophy. In fact, the idea of utility that Mill aims to "maximize" is perfectly aligned with the idea of "happiness" in Aristotle, as it seeks the best balance between the repetition of certain habits and the promotion of mental states and positive materials. Throughout the work of Mill we have passages that demonstrate this Aristotelianism, especially when we see allusions to the impossibility of rationally desiring minor pleasures when we get used to greater pleasures, or when Mill affirms the impossibility of knowing a good and not promoting that good through of intentional actions whenever promotion is possible.

In this sense, Brink is right when he writes that Mill cannot defend external state interference of speech acts unless their connection to harm is undoubtable (and even so, the interference is based on the *consequences* of speech and not on speech itself), but he neglects an important element in Mill's thesis which is the belief in the gradual emergence of an enlightened liberal elite that will naturally "push" the debate public to a balanced and self-sustainable argumentative logic.

This idea of a dominant moderation of the free market of idea by enlightened liberal elites who had access to the best ways to develop habits of self-observation and political prudence brings Mill and Smith's position together once again, and stress the non-libertarian character of freedom of speech in both perspectives. Rather, it points at a subtle sort of

interventionism in the public arena, one which is framed by the public inclination towards the better arguments, and conditioned by the existence of well-informed elites capable of guiding public debate. Where well informed elites are absent, Smith and Mill appeal to either colonialist solutions (better informed civilizations have duties towards less informed civilizations) or to institutional interventions in the market. In any case, both authors trust that even a minor elite is capable of organizing and transforming public discourse through activism and open discussion, and that any elite will, if it is truly well-informed, interfere in markets in what is currently conceived as the best possible alternative – all other things remaining the same.

A salient feature of the last twenty years is, however, that things have not remained the same, in the sense that the infrastructure of the public sphere has gone through a dramatic change with the introduction of the internet and social media. This recent development seems to challenge the assumption of the sufficiency of a small elite in a more radical manner than the introduction of populism and mass media in the last century. In the last section of this paper we will discuss what implications this might have for the possibility of promoting a culture of expression in a digital age.

– Principle of reciprocity and (the sediments of) preferred preferences

Mill trusts that, in the long term, deliberative processes (Brink: 1992) in this free-market of ideas will build a system of informational exchanges that will lead individuals to make the best possible decisions on socio-political priorities – as progressive principles reaffirmed by a political elite and consolidated in laws, contracts, jurisprudence, or other norms with jurisdictional character, will create conditions for an increasingly equalitarian and free social order – and here, the aforementioned decided preference criterion becomes, also, a criterion for assessing social justice within a free market, a kind of regulatory framework (McPherson:1982).

Mill’s system, to function optimally, is moderated with a principle of reciprocity. In other words, as an interlocutor, if you want to have your freedom of expression respected you must necessarily respect the opinion of people or groups who wish to express their opinions. It is also important to note that Mill believes that every public agent who has a reciprocal attitude is willing to learn new information. These requirements are progressive (Brink:

2013), as they arise if and only if the first progressive principle for a liberal society (that of guaranteeing freedom of expression) is implemented. It is interesting to articulate this progressive movement within Mill with Smith's notion of prudence: as individuals realize that reciprocating respect in the free market of ideas generates positive results, they will moderate their speech acts accordingly, adapting their beliefs and attitudes reciprocally as better states of affairs arise within and because of public debate – inversely, reciprocity also guides reaction to harm, as individuals will change their negative or inadequate beliefs and attitudes as the epistemic and moral force of better arguments and attitudes become clear, and the consequences of harmful actions more dense.

In Mill the State's main role, then, is not to interfere in the structure of the free market of ideas, and to work on the representation of those priorities that become more prevalent within that free market – and that are now no longer at the level of ideas but have become public policies. This whole movement presupposes a well-informed, well-intentioned political elite and a realistic moral psychology that limits the processes of moral representation (Brink: 1989; 1997)

In the next section we will further explore challenges to such a framework. While we recognize that we still operate within the regulatory, and to an extent ideological, terms of Mill's conception of freedom of speech, the presuppositions embedded within such perspective are often ignored or taken for granted. Such presuppositions have real effects, we claim, on the current shortcomings and failures of both theoretical and regulatory perspectives in dealing with contemporary issues. Present challenges associated with the new infrastructure of media and social networks turns the Millian and Smithian trust on by moderation and elites redundant, at least to the aggregated consequences of the externalities of the platforms.

III – Elites or Institutions? A return to Smith, via Sen

As demonstrated, both Smith and Mill share an optimism about the capacity for self-moderation of individuals within the free market of ideas, an optimism based, above all, on trust in liberal elites as promoters of positive attitudes and emotions in public debate and on the capacity of individuals for self-determination and self-censorship, which would enable learning and openness to persuasion.

However, we have little reason, in 2022, to subscribe to the optimism and idealism of the two greatest exponents of British economic and moral idealism. In brief, the new media infrastructure challenges both the relevance of the moral psychology of positive emotions and the role of the liberal elites. Firstly, given that the business model of social media platforms, like Twitter, is based on sourcing the attention of its users, it has created conditions for a "race to the bottom of the brain stem"[5], where the appeal to the higher emotions are replaced with the promotion of whatever triggers engagement, be it anger, fear and other basic responses. In other words, the unregulated market of ideas seems in our context to constitute a distraction, or even psychological *obstruction*, from the development of prudence. Hence, the assumption that freedom of speech is a requirement for the development of prudence, needs to be qualified.

Secondly, since the new platforms allow not only everyone to be a reader, but also to be an author, the new infrastructure seriously threatens to compromise the role of a liberal elite. From an egalitarian point of view, this is not necessarily an unwanted development.[6] It does, however, diminish the sociological plausibility of a prudent elite gaining sufficient influence. Partly this case could be made by pointing out the loss of income and reach of the printed press, and with it the influence of the traditional editorial gatekeepers of mass media. Additionally, and more concerning, the algorithms of the new platforms do not favor sincerity, nor prudence in general. The playing field is not only rigged, it seems, for the attention-grabbing obscenity and misogyny of market agents like Andrew Tate, estimates also suggest that a majority of the content produced on these platforms are made by robots (which tend to amplify whatever is gaining attention). Hence, even if the liberal elite were in fact the majority of human content contributors, they could still be deafened by the vicious minority – and this argument still relies on a romantic view of liberal elites as capable of shielding themselves from biases and dissonances in their thought processes. The more profound problem is that in the digital landscape, all public spaces look more like gladiator arenas than forums, courts or parliaments. Hence, the infrastructure does not promote consensus, bridge building or concern for others, and identity checks or moderation would do little to remedy the larger picture.

In sum, Smith and Mill do not satisfactorily elucidate the moderating role of the state in current matters of freedom of expression, and frame a frustratingly romantic role for "higher" emotions and political elites for the political debate. From a Freirean (2019)

perspective it is not enough to trust that if we show individuals the errors of their ways, present them with scientific evidence, and data, graphics, or the beautiful and well written articles of the universal declaration of human rights things will be better. We need to bring such information home – that is, it is necessary to open up a space for social transformation. Paternalistic or rationalistic understandings of science, language and politics will do little for us here.

Evidently, this should not lead us to dismiss the value of Smith's and Mill's theses, nor to underestimate the impact that the utopian and idealistic character of these theses had on the elaboration of legislation and social movements that revolutionized the private press and public education. Rather, what we want to point to at the end of this paper, is that the radicality of the idea of freedom of expression in British liberalism, despite its limitations – also harbor a way to rethink the form of effective moderation of freedom of expression in the 21st century, as a path that seems to necessarily pass through the bet on public institutions capable of including and educating an increasingly broader and more diverse field of speakers who will have to deal with increasingly complex and specialized challenges – and find that the bet that the intentions of a well-placed and well-educated liberal elites moderating the social, political and affective development of peripheral groups have not given good results in recent years.

What we have in mind is the legacy from Smith and Mill in their philosophical approach to these questions, as a realization-focused comparison, as it is developed by Sen (2009). In short, on the basis of this comparative analysis of existing and emerging societies, Sen (2010) insists on the need for an "open" institutionalism, that is, that evaluates institutions not as they "should be", but rather as they really are. This approach would allow us to ask the right kind of questions, such as: How is the behavior of participants in the public affected by the new infrastructure? How do we acquire accurate knowledge about the unintended consequences of the commercial platforms? And, how may we restructure the public sphere (for instance through public, consensus oriented platforms like vTaiwan) to promote and facilitate a substantive freedom of speech?

On this grounds, Sen's reading allows us to criticize both the stance of transcendental institutionalism[vii] and a "progressive" view of institutions , which gradually increases the presence of the State, if and only if the conditions in which public debate is operational are

not equalitarian or informed by adequate arguments and as clear harm is perceptible. As we have seen, a Millian perspective aligned with a Smithian methodology will offer a scenario that will allow intervention in the free market of ideas thusly: where minimal harm is perceived in the operation of the free market of ideas, minimal intervention (if any) is required – conversely, if maximal harm is perceived in the free market of ideas, maximal intervention is required. Even where minimal harm and minimal intervention is required externally, however, liberal elites operate as a *de facto* internal moderation, leading the public debate into more rational conceptions of the good and more truthful epistemic conceptions about things, rendering external intervention progressively unnecessary as their operation within the market of ideas becomes increasingly efficient.

Where liberal elites are less prominent or less informed (and thus, of course, less liberal from a Millian and Smithian perspective), harm in the free market of ideas will be more frequent and require more external intervention – this intervention will "correct", in Millian terms, irrational positions by placing proportional punishment for harmful interactions in the free market of ideas, and progressively increasing punishment as harm is more salient. Nota bene, in neither case, for Mill, it is speech that is regulated, but the harmful consequences of speech that are progressively regulated and punished in order to reframe the causes of such harm – that is, in regulating and punishing the harmful results of speech, Mill trusts that individuals will be able to reconsider the causes of harm.

Such a position, from the perspective suggested by Sen, favor structural inequalities and elites established at the disadvantage of vulnerable populations, who would need immediate and prior measures to conduct public debates – because Mill trusts the rationality of actors in the free market of ideas, he also trusts that a unrestricted domain of expressions will be regulated only by appealing to individual consciousness and harm reduction on the level of the intervention of the results of speech. In the last years, we have seen that such framing has reached a clear limit: the number and speed of interactions in the free market of ideas is increasingly fast, and the moderating character of "liberal elites" has been either unable or unwilling in creating more decent or fair markets of ideas; quite the contrary – well informed and wealthy individuals have been captured by fake news, cognitive biases and framing, and have been moved, along with more vulnerable groups, into increasingly dangerous positions, from anti-vaccination to neo-fascist discourse. At the same time, normative roadblocks to speech are tragically unable to operate as a *ultima ratio* for public

discourse, as libertarian perspectives to freedom of speech become a rhetorical weapon in order to diffuse the operation of regulatory markers. It is somewhat ironic that such logic operates in precisely the opposite direction that John Stuart Mill would expect: unrestricted public discourse ends up decreasing the possibility of effective and efficient normative (and minimal) intervention in the free market of ideas.

* A part of the argument in the first section of this paper has been published in Portuguese, in the conference proceedings of the VII International Congress on Amartya Sen, and is available at https://revistareflexoes.com.br/artigos/da-prudencia-liberal-ao-institucionalismo-aberto-sobre-a-necessidade-da-moderacao-da-liberdade-de-expressao-em-adam-smith-john-stuart-mill-e-amartya-sem/." There are no issues of intellectual property or copyright infringement in the publication of this article.

References:

BENHABIB, S. Democratic Exclusions and Democratic Iterations: Dilemmas of `Just Membership 'and Prospects of Cosmopolitan Federalism. European Journal of Political Theory, v. 6, n. 4, p. 445–462, Oct 1 2007.

BRINK, DO. Mill's Deliberative Utilitarianism. Philosophy & public affairs, v. 21, n. 1, p. 67–103, 1992.

BRINK, DO. Moral Motivation. Ethics, v. 108, n. 1, p. 4–32, 1 out. 1997.

BRINK, DO. MILLIAN PRINCIPLES, FREEDOM OF EXPRESSION, AND HATE SPEECH. Legal Theory, v. 7, n. 2, p. 119–157, Jun. 2001.

BRINK, DO. Mill's Progressive Principles. [sl] OUP Oxford, 2013.

BRINK, DO. Moral Realism and the Foundations of Ethics. [sl] Cambridge University Press, 1989.

EIFFE, FF Amartya Sen Reading Adam Smith. History of Economics Review, v. 51, n. 1, p.

1–23, Jan 1 2010.

FREIIN VON VILLIEZ, C. Emotional Configuration and Intellectual Duty. Journal of Scottish Philosophy, v. 16, n. 3, p. 260–263, 2018.

FREIRE, Paulo . Pedagogia da autonomia: saberes necessários a prática educativa. São Paulo: Paz e Terra, 2004.

FRICKE, C. Adam Smith and “the most sacred rules of justice”. In: The Adam Smith Review, Volume 6. [sl] Routledge, 2012. p. 66–94.

GRAY, J. Mill on liberty: a defense. [sl] Routledge, 2013.

GRAY, J .; SMITH, GW JS Mill’s On Liberty in Focus. [sl] Routledge, 2012.

GRISWOLD, CL. Adam Smith and the Virtues of Enlightenment.Cambridge: Cambridge University Press, 1998

HAMBURGER, J. John Stuart Mill on Liberty and Control. [sl] Princeton University Press, 2001.

LIEBERMAN, D. “Adam Smith on Justice, Rights, and Law.” The Cambridge Companion to Adam Smith, 2006. Available at: <http://dx.doi.org/10.1017/ccol0521770599.009>

MCPHERSON MS. “Mill’s Moral Theory and the Problem of Preference Change.” Ethics, vol. 92, no. 2, 1982, pp. 252–73. *JSTOR*, http://www.jstor.org/stable/2380596. Accessed 25 Nov. 2022.

MILL, JS Utilitarianism and On Liberty: Including Mill’s “Essay on Bentham” and Selections from the Writings of Jeremy Bentham and John Austin. [sl] John Wiley & Sons, 2008.

OFFER, A .; OTHERS. Self-interest, Sympathy and the Invisible Hand. Economic Thought, Vol. 1, n. 2, 2012, 2012.

SEN, A. The idea of Justice. Allen Lane. 2009

SEN, A. Adam Smith and the contemporary world. Erasmus Journal for Philosophy and Economics, v. 3, n. 1, p. 50, 23 mar. 2010.

SEN, AK Rational Fools: A Critique of the Behavioral Foundations of Economic Theory. Philosophy & public affairs, v. 6, n. 4, p. 317–344, 1977.

SIVERTSEN, SS On the Practical Impossibility of Being Both Well-Informed and Impartial. Erasmus Journal for Philosophy and Economics, v. 12, n. 1, p. 52–72, July 24. 2019.

SMITH, A. The Theory of Moral Sentiments. [sl] Penguin, 2010.

SMITH, A. The Wealth of Nations. [sl] Aegitas, 2016.

STIEBEN, I .; GASTÓN, L. Rhetoric, persuasion and invisible man. 2008.

STIEBEN, I .; GASTÓN, L. Errors in the argumentative strategy of the providentialist interpretation of the invisible hand of Adam Smith: the case of the theory of moral sentiments. Philosophical Discussions, v. 12, n. 19, p. 239–256, 2011.

STIEBEN, LGI The focus on capabilities, the ability to search information and self-learn. Science, teaching and technology, 2017.

The Associated Press. (2022, November 25). Elon Musk says he will grant “amnesty” to suspended Twitter accounts. NPR.org. Retrieved November 28, 2022, from https://www.npr.org/2022/11/25/1139197362/elon-musk-says-he-will-grant-amnesty-to-suspended-twitter-accounts

VON VILLIEZ, C. Double standard – naturally! Smith and Rawls: a comparison of methods. In: New Voices on Adam Smith. [sl] Routledge, 2006. p. 137–161.

VON VILLIEZ, CF Adam Smith’s story of moral progress. In: The Adam Smith Review, Volume 6. [sl] Routledge, 2012. p. 50–65.

ZOUBOULAKIS, MS On the social nature of rationality in Adam Smith and John Stuart Mill. Cahiers d'economie Politique / Papers in Political Economy, v. n ° 49, n. 2, p. 51–63, 2005.

Endnotes

[1] The Associated Press. (2022, November 25). Elon Musk says he will grant "amnesty" to suspended Twitter accounts. NPR.org. Retrieved November 28, 2022, from https://www.npr.org/2022/11/25/1139197362/elon-musk-says-he-will-grant-amnesty-to-suspended-twitter-accounts

[2] The opening line of *The Theory of Moral Sentiments* is both an indictment of methodological individualism and self-interest as mores for psychology and politics: *"How selfish soever man may be supposed, there are evidently some principles in his nature, which interest him in the fortune of others, and render their happiness necessary to him, though he derives nothing from it except the pleasure of seeing it"*(Smith, 2010:9)

[3] Cf. Amartya Sen's notion of moral commitments in "Rational Fools" (1977)

[4] Mill's famous passage is: *"The object of this essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties or the moral coercion of public opinion. That principle is that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection. 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. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him or visiting him with any evil in case he do otherwise. To justify that, the conduct from which it is desired to deter him must be calculated to produce evil to someone else. The only part of the conduct of anyone*

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. Over himself, over his own body and mind, the individual is sovereign" (p. Ix)

[5] Tristan Harris, Center of Humane Technology

[6] It could be interesting for instance to compare the descriptive account of Smith and Mill, with the reconstructive account of Habermas (esp. In his newest comment on the structure of the public sphere).

[7] Which focus on ideal institutional arrangements, as we find in John Rawls and Ronald Dworkin, but this discussion is outside the scope of this article