

John Stuart Mill and John Henry Newman on Liberty and Conscience

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This paper explores the nature and basis of religious liberty as a human right. The author argues that a right to hold, express, and act on one's beliefs about ultimate things follows from the moral duty to ask the great existential questions of human nature, dignity, and destiny, and to live with authenticity and integrity in line with one's honest answers. The duty, in turn, is grounded in the fulfillments on offer in asking and answering these questions and ordering one's life in with one's conscientious beliefs, fulfillments that are aspects of the integral flourishing of human beings as agents—free and rational creatures. The paper also offers some reflections on the scope and limits of the right to religious liberty.

John Stuart Mill and John Henry Newman were certainly two of the greatest English intellectuals of the 19th century. They were men of deep and wide learning and formidable intelligence. Both wrote powerful defenses of freedom. Mill's was in the form of an essay entitled simply "On Liberty" (1869). There he defended what he described as "one very simple principle [that is] 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."¹ That principle has been dubbed Mill's "harm principle":

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.²

Mill's principle is frequently invoked in cocktail party conversations and in freshman class discussions. It has, however, been sharply criticized even by philosophers of a generally liberal persuasion, such as the late H. L. A. Hart of Oxford University, who argue that it is too sweeping in ruling out paternalistic reasons for limiting certain forms of liberty. More conservative philosophers, I myself among them, have been even more skeptical and critical. For present purposes, though, I am less interested in the scope or breadth of Mill's principle, or with its content, than with its *ground*. What, for Mill, provides the moral basis for respecting people's liberty? What is the basis of the obligation? Mill doesn't hide the ball.

It is proper to state that I forego any advantage which could be derived to my argument from the idea of abstract right, as a thing independent of utility. I regard

¹ John Stuart Mill, *On Liberty*, ed. David Spitz (New York: Norton, 1975), 10.

² Mill, *On Liberty*, 10-11.

utility as the ultimate appeal on all ethical questions; but it must be utility in the largest sense, grounded on the permanent interests of man as a progressive being.³

Mill grounds his principle of liberty and the obligation to respect it in the belief that respect for liberty will, in its consequences, be net beneficial to . . . well, to whom? Or to what?

To the community? Which community? Local? National? Imperial? International? Mill doesn't exactly say. As we've seen, he does, however, say this: The concept of utility that must govern as the criterion of morality in our choosing, and as the ground of moral obligation, including the obligation to respect and protect liberty, must be utility "in the largest sense, as grounded on the permanent interests of man as a progressive being."⁴

So note two things about Mill's defense of liberty, whether it is freedom of speech, which is a freedom Mill treats as quite central, or freedom of religion, which interests him less, or any other freedom. First, the ultimate basis of the moral claims of freedom is social benefit: "utility." It is not "abstract right." Second, Mill's view of humanity is imbued with 19th century optimism and belief in progress. Man is naturally good—a "progressive being." He therefore will, in his cultural and personal maturity, do well by himself and others if only he is left free of paternalistic and moralistic constraints to engage in experiments in living from which he, corporately and individually, will learn what conduces to happiness and what does not. Freed from the old moralisms and religious and other superstitions—liberated to be the progressive being that, by nature, he is—he will flourish. Those old moralisms and superstitions—far from preventing him from descending into vice and degradation, or even assisting him in that project—tie him down and wound his spirit. They profoundly impede (and have impeded) his full flourishing and self-realization. Free to do as they please, free to do what they want to do so long as they do not harm others, mature persons in mature cultures will, on the whole, want to do good and productive—i.e., utility enhancing—things. (And there is no danger of regression to the former condition of things in barbarian societies and in small threatened communities, in both of which cases Mill's defense of liberty did not, he thought, hold good.)

I began my academic career by writing several articles and a book that were severely critical of the concept and defense of liberty that readers are offered by Mill. I see no reason today to alter any of those criticisms. But Mill was by no means completely wrong. The naïve optimism and progressivism—they were wrong, to be sure. And the utilitarianism, that was wrong, too. The Christian philosophical anthropology Mill regarded as a relic of superstitious ages has proved to be far more plausible and reliable than the alternative that Mill, quite uncritically, accepted. And utilitarian and other forms of consequentialism in ethics are in the end unworkable and even incoherent. They presuppose a kind of commensurability of human values and their particular instantiations that simply does not square either with reality or with conditions of deliberation and choice. The basic aspects of human well-being and fulfillment

³ Mill, *On Liberty*, 12.

⁴ Mill, *On Liberty*, 12.

that, together, constitute the ideal of integral human flourishing are reducible neither to each other nor to some common substance or factor they share. These basic human goods, though they all provide more-than-merely-instrumental reasons for action and are partially constitutive of our all-round well-being (which is how and why they constitute more-than-merely-instrumental reasons—they are intrinsic, rather than merely instrumental, goods), are good not in a univocal sense, as if they were constituted by the same substance but merely manifested it differently, but only in an analogical sense. They differ substantially as distinct dimensions of our flourishing and fulfillments of our capacities as human persons (rational animals); they are, as such, incommensurable in a way that renders hopeless the utilitarian project of identifying an option for choice—or even a rule for choosing—that promises “the greatest happiness of the greatest number,” or the production of the net best proportion of benefit to harm overall and in the long run.

So where was Mill right? He was right, in my opinion, in forgoing an appeal to “abstract right” and looking for the moral ground of liberty in a consideration of the well-being and fulfillment—in a word, the flourishing—of human beings (what he calls in Chapter Three, paragraph 2 “the end of man”⁵ and characterizes in paragraph 10 as “bringing human beings themselves closer to the best they can be”⁶). People have rights, including rights to liberties, because there are basic human goods, i.e. ends or purposes that not only conduce to, but *constitute*, their flourishing. The full defense of any particular liberty, including the freedom of religion, requires the identification and defense of those human goods, those basic aspects of human well-being and fulfillment, that the liberty secures, protects, or advances.

In a recent paper,⁷ I offered a detailed account and defense of religious freedom as necessary for the protection of the human good of *religion*, considered as the active quest for spiritual truth and the conscientious effort to live with integrity and authenticity in line with one’s best judgments regarding the ultimate sources of meaning and value, and to fulfill one’s obligations (spiritual and moral) in both the public and private dimensions of one’s life.

Now, John Stuart Mill, as I mentioned earlier, wasn’t greatly interested in religious freedom, though he did not, so far as I can tell, disdain it. The trouble was, I think, that he had something of a tin ear for religion, at least in its traditional manifestations. His “harm principle” would, of course, extend to religious activity and practices, but I doubt that he viewed those as having much real value. They would, I suspect he believed, soon wither away in an age of freedom (since man is a “progressive being,” and freedom brings “enlightenment”).

By contrast, John Henry Newman did not have a tin ear for religion. He was a religious genius. And his understanding of religion enabled him to produce an account of freedom—in particular the freedom of conscience—that was profoundly superior to Mill’s, and from which

⁵ Mill, *On Liberty*, 54.

⁶ Mill *On Liberty*, 60.

⁷ Robert P. George, “Religious Liberty and the Human Good,” *International Journal of Religious Freedom*, Vol. 4, No. 2 (2012), 35-44.

we today have much to learn. Like Mill, Newman does not appeal to “abstract right” as the ground of liberty, but instead locates the foundation of honorable freedoms in a concern for human excellence and human flourishing. Newman has the immense advantage over Mill of believing in human fallenness (what Christian faith knows as original sin), and so is spared naïve optimism and faith in human progress. Moreover, as a serious Christian, a utilitarian approach to moral decision-making (and all that is presupposes and entails) has no appeal whatsoever to Newman. So he is spared that, too. He is cognizant of both the need for *restraints* on freedom, lest men descend into vice and self-degradation, and on the supreme importance of central freedoms as conditions for the realization of values that truly are constitutive of the integral flourishing of men and women as free and rational creatures—creatures whose freedom and rationality reflects their having been made in the very image and likeness of God.

Newman’s dedication to the rights of conscience is well-known. Even long after his conversion from Anglicanism to Catholicism, he famously toasted “the Pope, yes, but conscience first,” as he put it in his *Letter to the Duke of Norfolk* (1875).⁸ Our obligation to follow conscience was, he insisted, in a profound sense primary and even overriding. Is there a duty to follow the teachings of the Pope? Yes, to be sure. As a Catholic, he would affirm that with all his heart. If, however, a conflict were to arise, such that conscience (formed as best one could form it) forbade one’s following the Pope, well, it is the obligation of conscience that must prevail.

Of course, many a contemporary dissenting Catholic would be tempted right there to shout “right on, brother Newman!” But that’s only if they didn’t know the rest of the story. For Newman, though the most powerful defender of freedom of conscience, held a view of conscience and of freedom that could not be more deeply at odds with the liberal ideology that is dominant (even, dare one say, orthodox?) in the contemporary secular intellectual culture, and in those sectors of religious culture that have fallen under its influence. Let’s permit Newman to speak for himself, for he had already identified in the 19th century the tendency of thought about rights, liberty, and conscience that would become the secular liberal orthodoxy in the late 20th:

Conscience has rights because it has duties; but in this age, with a large portion of the public, it is the very right and freedom of conscience to dispense with conscience. Conscience is a stern monitor, but in this century it has been superseded by a counterfeit, which the eighteen centuries prior to it never heard of, and could not have mistaken for it if they had. It is the right of self-will.⁹

Conscience, as Newman understood it, is the very opposite of “autonomy” in the modern liberal sense. It is not a writer of permission slips. It is not in the business of licensing us to do as we please or conferring on us “the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.”¹⁰ Rather, conscience is one’s last best judgment

⁸ John Henry Newman, *Letter to the Duke of Norfolk*, in *A Newman Reader*, ed. Francis X. Connolly (Garden City, NY: Doubleday, 1964), 383.

⁹ Newman, *Letter to the Duke of Norfolk*, 375.

¹⁰ Justice Kennedy, *Planned Parenthood v. Casey*.

specifying the bearing of moral principles one grasps, yet in no way makes up for oneself, on concrete proposals for action. Conscience identifies one's *duties* under the moral law. It speaks of what one must do and what one must not do. Understood in this way, conscience is, indeed, what Newman said it is: a stern monitor.

Contrast this understanding of conscience with what Newman condemns as its counterfeit. Conscience as "self-will" is a matter of feeling or emotion, not reason. It is concerned not so much with the identification of what one has a duty to do or not do, one's feelings and desires to the contrary notwithstanding, but rather, and precisely, with sorting out one's feelings. Conscience as self-will identifies permissions, not obligations. It licenses behavior by establishing that one doesn't feel bad about doing it, or, at least, one doesn't feel so bad about doing it that one prefers the alternative of not doing it.

I'm with Newman. His key distinction is between conscience, authentically understood, and self-will (conscience as the permissions department). His core insight is that conscience has rights *because it has duties*. The right to follow one's conscience, and the obligation to respect conscience—especially in matters of faith, where the right of conscience takes the form of religious liberty of individuals and communities of faith—obtain not because people as autonomous agents should be able to do as they please; they obtain, and are stringent and sometimes overriding, because people have duties and the obligation to fulfill them. The duty to follow conscience is a duty to do things or refrain from doing things not because one wants to follow one's duty, *but even if one strongly does not want to follow it*. The right of conscience is a right to do what one judges oneself to be under an obligation to do, whether one welcome the obligation or must overcome strong aversion in order to fulfill it. If there is a form of words that sums up the antithesis of Newman's view of conscience as a stern monitor, it is the imbecilic slogan that will forever stand as a verbal monument to the "Me-generation": "If it feels good, do it."

Of course, properly understood, and even toasted ahead of the Pope, there are limits to the rights of conscience, even in the fulfillment of perceived vocational obligations, institutional apostolates, and other religious duties. As I have observed elsewhere, gross evils—even grave injustices—can be committed by people sincerely acting for the sake of religion. Unspeakable wrongs can be done by people seeking sincerely to get right with God or the gods or their conception of ultimate reality, whatever it is. The presumption in favor of respecting liberty must, for the sake of the human good and the dignity of human persons as free and rational creatures—creatures who, according to Judaism and Christianity, are made in the very image and likeness of God—be powerful and broad. But it is not unlimited. Even the great end of getting right with God cannot justify a morally bad means, even for the sincere believer. I don't doubt the sincerity of the Aztecs in practicing human sacrifice, or the sincerity of those in the history of various traditions of faith who used coercion and even torture in the cause of what they believed was religiously required. But these things are deeply wrong, and need not (and should not) be tolerated in the name of religious freedom. To suppose otherwise is to back oneself into the

awkward position of supposing that violations of religious freedom (and other injustices of equal gravity) must be respected for the sake of religious freedom.

Still, to overcome the powerful and broad presumption in favor of religious liberty, to be justified in requiring the believer to do something contrary to his faith or forbidding the believer to do something his faith requires, political authority must meet a heavy burden. The legal test in the United States under the Religious Freedom Restoration Act is one way of capturing the presumption and burden: to justify a law that bears negatively on religious freedom, even a neutral law of general applicability must be supported by a compelling state interest and represent the least restrictive or intrusive means of protecting or serving that interest. We can debate, as a matter of American constitutional law or as a matter of policy, whether it is, or should be, up to courts or legislators to decide when exemptions to general, neutral laws should be granted for the sake of religious freedom, or to determine when the presumption in favor of religious freedom has been overcome; but the substantive matter of what religious freedom demands from those who exercise the levers of state power should be something on which reasonable people of goodwill across the religious and political spectrums can broadly (though perhaps not perfectly) agree.

Let me conclude with a few words about the centrality and, one might even say, *priority* of religious freedom among the basic civil liberties. Observed from a certain perspective, any basic liberty might be assigned a kind of priority: Free speech, for example, which is so essential to the enterprise of republican government (and, in truth, good government of any kind); or freedom of association and assembly; or the right of self-defense and defense of one's family and community. One might note in the case of any of these rights that its collapse would place all the others in jeopardy.

There is certainly truth in the idea that civil liberty is a sort of seamless garment. Basic civil liberties support each other and, in certain ways, even depend on each other. Tyrannical regimes may begin by dishonoring one or a few basic liberties, but they get round in the end to dishonoring them all as the perceived interests of the rulers or dominant classes incentivize them to do so. Still, there is a special sense in which freedom of religion has priority or at least a sort of pride of place. It is rightly labeled in America "the first freedom," not merely because it is listed first in our Bill of Rights, and not only because of its foundational historical role in the establishment of the conditions of free institutions, but even more importantly because it protects an aspect of our flourishing as human persons which is architectonic in the way we lead our lives. Religion concerns ultimate things. In the focal cases, it represents our efforts to bring ourselves into a relationship of friendship with transcendent sources of meaning and value. Our religious questioning, understanding, judging, and practicing, shapes what we do, not only in the specifically "religious" aspects of our lives (prayer, liturgy, fellowship, and so forth), but in every aspect of our lives. It helps us to view our lives as a whole and to direct our choices and activities in ways that have *integrity*—both in the moral sense of that term and in the broader sense of having a life that hangs together, than makes sense.

Religion is not the only basic human good; nor are the other basic human goods mere means to the fuller realization of the good of religion. But religion *is* an intrinsic and constitutive aspect of our integral flourishing as human persons, *and also* a good that plays a shaping and integrating role with respect to all the other intrinsic and constitutive aspects of human well-being and fulfillment.

Finally, there is the critical role of religion, and thus of religious freedom, in civil society in the carrying out of essential health, education, and welfare functions, and limiting the scope of government and checking the power of the state. Religion provides authority structures and, where it flourishes and is healthy, is among the key institutions of civil society providing a buffer between the individual and the state. This is a vital way in which religion and religious institutions, when they respect the legitimate autonomy of the secular sphere and avoid illiberalism, time-serving subservience to the state, and theocracy, serve the common good. In the face of tyrannical regimes, then can, if they avoid corruption and cooptation, serve the common good even more dramatically by doing, for example, what the Catholic Church did in the face of communist tyranny in Poland.

Religion can, in other words, contribute to both the theory and practice of resistance—but only where it is basically healthy (that is, uncorrupted) and capable of providing, or providing resources for, prophetic witness. This is one more reason to cherish religious freedom and to push back hard against forces that threaten to erode or diminish it—especially when the threats come from overreaching governments.