ESSAY

RESISTING THE SEDUCTION OF JOHN STUART MILL

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There are good reasons for modern conservatives to find John Stuart Mill's embrace of liberty attractive. As culture and politics slouch toward statism, Mill's "liberty principle" seems to put definite limits on the reach of the state. As liberal elites come to dominate America's cultural institutions, the "liberty principle" seems to justify maintaining space for traditional family life, traditional gender roles, and "unpopular" or "disfavored" religious practices.

Yet Mill and today's conservatives make strange bedfellows. Mill aligned himself with the radical causes of his day—property ownership for women, the vote for unmarried women, legal contraception. The fact that Mill associated with radical causes should give conservatives pause to consider the extent to which he provides a way to limit the state and protect traditional arrangements necessary to sustain democratic self-government. Today's leading edge is different from the leading edge of Mill's day. Would Mill stay on the edge or would he be satisfied with the level of liberty he was advocating in his day?

Any alliance with Mill is and should be a matter only of prudence for conservatives: Mill's philosophy deeply misconceives the relation between the individual and society and the nature of human freedom and human society. Conservatives must be ever mindful of the problems in Mill even as they might reach toward *On Liberty* to help out in particular circumstances. Ultimately, we see that his defense of liberty is part of a larger project of promoting "moral regeneration." His understanding of moral regeneration undermines family life and erases the limits on government.

Mill appears as an opponent of censorship, conservative public opinion, and social engineering. His *On Liberty* (1859) asserts "one very simple principle" for the governance of human society. "That principle is, that the sole end for which mankind are warranted, individually or collectively, in

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interfering with the liberty of action of any of their number, is self-preservation. 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." What affects an individual directly and primarily is beyond the reach of government, even if it *indirectly* affects others. Mill draws his concept of direct harm quite narrowly over the course of the book, as he defends and applies the principle in a variety of circumstances as a means of illustrating his meaning. The idea of "moral harm" is beyond the reach of government; Mill would permit polygamy.

Mill's simple principle of liberty is attractive for today's conservatives worried about the expansion of the modern state and the powerful attempts at liberal social regulation. Conservative institutions are now under siege from a new hegemony. Traditional family arrangements are frowned on or disfavored by marriage counselors, school textbooks, the tax code, and society's "learned" ethos. One can sense the despotic impulses in many of those advocating a redefinition of marriage. Government intrudes upon the practice of religious institutions, as the recent fracas over the Obama administration's contraception mandate shows. The modern regulatory state intrudes upon almost all areas of private life; the personal has become political. Perhaps, conservatives hope, we can embrace Mill's "simple principle" against today's radicalism; perhaps his "simple principle" provides the space necessary to carve out a good life such that yesterday's radicalism can ground today's conservatism.

Moreover, Mill's noble principles seem to allow conservatives to take a high road. Mill sees individual liberty as a necessary condition for social and individual excellence. The high road appears to be the easier road, for it allows conservatives to defend what is best without betraying the modern commitment to liberty.

Mill provides three arguments for the goodness of liberty against the tendency among modern liberals to encroach upon personal freedom. None of the arguments are fatuous, although all of them have limits in theory and in practice. Mill's "marketplace of ideas" (an apt term Justice Oliver Wendell Holmes used from the bench) argument is his most famous. Mill holds that the truth emerges from the testing and conflict provided by an environment of free expression. The suppression of an idea, on Mill's account, means the suppressor believes he possesses "absolute certainty," a certainty inconsistent with human limits. Liberty is the best way of managing our lack of absolute certainty. It would also be the best way to manage possession of absolute certainty if human beings could attain such a thing. True and partly true opinions can win out only if given the chance afforded by free expression. Exposure to false opinions forces defenders of the true or partly true to stay sharp and maintain a lively sense of why they believe what they believe.

Progress in scientific matters works in the manner Mill suggests. Ideas are put forward in public; those ideas are scrutinized for method, measurement, and conclusion; criticisms help point to the virtues and limits of the findings; and, in its ideal state, the product raises the level of human understanding. One can compare Mill's description of how truth is discovered to a Socratic dialogue or a graduate seminar, where characters raise fundamental questions and engage in radical questioning of society's premises. Certainly there are free market analogues to Mill's argument as well, where efficiently produced and attractive products win a market share over the inefficient and outmoded.

No one wants to "win" public debates without evidence or compelling arguments. There is, however, a difference between human society and Socratic dialogue. It is possible (though still extremely rare) to engage in a dialogue where the interlocutors take nothing for granted or where the opinions they bring to the discussion matter but little. In social life, all claims to truth are mediated through a lens of pervasive opinions, ideology, personal interest, and other commitments. Arguments are won, in no small part, by appeals to such prejudice as much as to arguments. The marketplace of ideas is "skewed" toward certain "monopoly interests" that are sown into human affairs. Just as the simple assertion of freedom doesn't ruin economic monopoly, the simple assertion of Truth does not allow it to win out in the marketplace of ideas.

Furthermore, there is a deep, controversial premise that Mill smuggles into his argument: his conclusion about the need for freedom does not follow ineluctably from his premise about human uncertainty. Does uncertainty about the truth or soundness of an opinion require that one embrace a position of liberty? George Grant, the greatest Canadian political philosopher, suggests the opposite conclusion, namely that skepticism about the final good and our inability to know how to realize it leads reasonably to an embrace of tradition. Why should uncertainty in knowledge lead Mill to an embrace of liberty as opposed to tradition?

Perhaps aware of this problem, Mill embraces the "simple principle" of liberty as a means of laying forward a deep-seated critique of public opinion. This is his second argument, which relates to the problem of who will be doing the censoring. "The strongest of all arguments," Mill writes, "against the interference of the public with purely personal conduct is that, when it does interfere, the odds are that it interferes wrongly and in the wrong place." Could this advocate of freedom be for censorship or social control as long as it is done rightly in the right place?

Not by a long shot. Societies are, in Mill's view, so governed by irrational passions, antipathies, and prejudices in matters of "personal conduct" that people should be absolutely denied the power to legislate on all such matters. The content of society's prejudices is so absurd and illiberal—people cling to God and guns—that something must be done to loosen up the stifling environment. Society's tendency toward rigid moralism requires Mill's unbending, absolutist embrace of liberty. (How the truth could win out in such an environment, to be sure, Mill never explains.)

Again, one can sympathize with this prudential argument. As academic "speech codes" and the attempts to silence political speech indicate, today's censors would often interfere wrongly. Norman Podhoretz, in a *Commentary* article some years back, makes a similar point. After providing argument after argument for censorship, he concludes thus: "The reason I hesitate to come out for censorship is that I cannot conceive of government bureaucrats I would trust to do the censoring. In the past, such officials could detect no difference between the likes of D. H. Lawrence and the likes of Larry Flynt; it seems unlikely that their successors would be any more discriminating."[1] How much worse would it be if universities or those minding the scientific consensus decided what is and what is not a legitimate topic for debate?

A deeper irony dogs Mill's argument about the censorious nature of human society. Is society educable? He seems inclined to the position that society is so irredeemably taken with rigid moralism that the only way to deal with the problem is by advocating an absolute principle of liberty. If his diagnosis is

correct, however, we are justified asking why he expects his announcement of a "simple principle" to affect social practice. The fact that he writes books trying to persuade people to his position suggests that, deep down, he thinks that people are educable or at least that they can change. People are tractable enough to replace one rigid moralism with another—the "simple principle" of liberty. Mill abjures attempts to educate popular opinion, to make *intelligent* interference with what he terms purely personal conduct. His absolute principle he takes to be a safer error than the old moralism. Why?

Mill self-consciously promotes a certain morality with his "simple principle" of liberty. The content of this morality is the third and (in many ways) his real argument for liberty. It suggests the importance of "individuality" for a good human life. Liberty fosters the "moral regeneration" of mankind. This suggests that, for Mill, the arrangements of his day deny liberty and stunt the flowering of human development.

"Moral regeneration" appears to be a value-free criterion. Mill's hope for "moral regeneration" suggests that the people of Mill's day are retrograde or morally moribund. Liberty would liven them up. Perhaps, Mill contends, it would liven them up by laying bare the reasons why they do what they do. Perhaps it would liven them up by changing what they do. Conservatives who would embrace Mill must emphasize the former; Mill expects or, rather, demands the latter. Much is at stake in this debate because Mill focuses on the family in discussing moral regeneration.

The principles of *On Liberty*, consistently applied, might suggest, as today's conservatives hope, that Mill wants government to leave the family alone. If people prefer traditional families, they should be able to form them. If they would like to engage in "experiments in living" in their relations with others, public opinion and public laws should not get in the way. Everyone wins when people test different social arrangements in the "marketplace of ideas." One can almost hear Mill, with some of today's well-meaning opponents of gay marriage, say, "Get the state out of marriage." Mill's principles seem to provide a defense against the leftish social engineering of the modern state. While there is something to this, Mill's principles ultimately corrode traditional family life and cultivate a spirit of independence from the family.

Readers of *On Liberty* are insufficiently sensitive to his concentrated critique of (I almost said attack on) the opinions on which traditional family life rests. Thus *On Liberty* presages and indirectly supports Mill's *The Subjection of Women* (1869), where the family is under fire directly. Concern for promoting what Mill regards as the "moral regeneration" of mankind links the two works.[2] Moral regeneration, or "the permanent interests of mankind as a progressive being," is the standard by which Mill judges all ethical questions. The chief obstacle to such a moral regeneration is, in Mill's view, the traditional family.

Traditional marriage and family life that Mill wanted to dismantle rest upon a sexual division of labor. The sexual division of labor had been thought legitimate, just, and suitable because it reflected *natural* differences between men and women. Alexis de Tocqueville's description of the American family provides a classic modern account of this traditional bourgeois family. Because Americans thought "nature had established such great variation between the physical and moral constitution of man and that of woman, [nature's] clearly indicated goal was to give a diverse employment to their

different faculties." Men were more suited for public and economic life, while women were more suited for domestic life.[3]

Like Tocqueville, Mill recognized the power of "social tyranny" or "custom" to constrain the thinking of individuals in modern society. Each of them also seems to have thought that opinions about family and sex were an important, if not the crucial, part of that complex of opinions dominating society. Mill thought "moral regeneration" lay at the other end of escaping society's opinions about the family. Consider the following from *On Liberty*:

> Not only in what concerns others, but in what concerns only themselves, the individual or *the family* do not ask themselves—what do I prefer? or, what would suit my character and disposition? or, what would allow the best and highest in me to have fair play, and enable it to grow and thrive?…I do not mean that they choose what is customary, in preference to what suits their own inclination. It does not occur to them to have any inclination, except for what is customary. Thus the mind itself is bowed to the yoke.[4]

In *Subjection*, he argues that "legal subordination" of women in the family is "one of the chief hindrances to human improvement."[5] It is also at the root of all vice. "All the selfish propensities, the self-worship, the unjust self-preference, which exist among mankind, have their source and root in, and derive their principal nourishment from, the present constitution of the relation between men and women."[6]

How had marriage and family life prevented the moral regeneration of mankind? How had they caused the moral degeneration? Mill's argument is, once again, not entirely foreign to our ears. When critics think about the Islamic world today, they are likely to lament the woeful subordination of women. In the most extreme form, women are "kept in their place" through burkas, honor killings, stoning for adultery, and prohibitions against driving (as in Saudi Arabia). As a consequence of subordinating women, men come to dominate Islamic society, and such dominance provides insufficient conditions for self-government for children. The problem of patriarchy *can be* a problem in political and moral life. It can stifle human development when practiced in its most extreme forms.

Mill perhaps thought that the position of women in Victorian England was no better than that of women under the Taliban in our time or chattel slaves in his own. Men beat their wives; husbands stole the property of their wives; men were hypocrites, cheating on their wives while demanding female chastity and fidelity. With nowhere to turn, women suffered what they must. Traditional marriage practicing the sexual division of labor is, Mill writes, the "primitive state of slavery lasting on."[7]

Mill spent a great deal of his public career and his philosophic polemics attempting to deconstruct the *legal* basis for the traditional family. In so doing, he often says that he would like simply to remove the legal support for traditional marriage and to allow such marriage to continue on its own. Opposing coverture laws (where women's ownership of property was covered by her husband) and advocating woman's suffrage, Mill found it necessary to argue that husbands and wives cannot join together in a tight community of interest so that one person could represent the whole. He also encouraged women to have the freedom to work outside the home: "The power of earning is essential to the dignity of a woman."

Conservatives who would embrace Mill pin their hopes on his distinction between legal power and the power of public opinion. Mill wants women, they could argue, to have the freedom to choose careers or their property arrangements and to vote, but he still seems open to women choosing traditional family life or to public opinion's providing some encouragement to traditional family practices. Many feminists, indeed, condemn what they view as Mill's halfway defense of women's liberation: women free in law but not in society's opinion of them.

There is reason for seeing this in Mill. Unlike many modern feminists, Mill occasionally has nice things to say about mothering as a challenge to the active faculties, and he defends the custom of practicing the sexual division of labor as the best way heretofore invented for making sure that children are taken care of and so that the family earns enough money.[8] That Mill would countenance such a proposal is enough to warm the hearts of conservatives and draw the ire of today's feminists. He seems open to a new motherhood—a freely chosen, fulfilling dedication to the common good of the family. His principles do not demand such a motherhood but seem to allow it.

Yet conservatives have given away much more in this bargain. Mill defends the sexual division of labor as a custom, not as something founded on nature. His criticisms of traditional marriage go far beyond the legal basis of that marriage. Anticipating arguments of contemporary feminists who hold that gender is a social construct, Mill claims that the minds of women are so enslaved to public opinion that none can be said to consent to marriage. The "whole force of education" is designed to pigeonhole women in their "roles" as mothers and wives. Censorious public opinion forces women into a "Hobson's choice" of marrying a potential tyrant or starving. "*All opinions, customs,* and institutions" that favor traditional marriage are, in Mill's view, "relics of primitive barbarism." Feminists object that Mill merely calls marriage and family life barbaric forms of slavery but does not call for state power to go after the root of the problem, allowing things simply to sit at his "liberty principle." If Mill wanted to liberate women, they reason, he would defend the welfare state (which with its generous provisions can replace dependence on a husband for survival), equal pay laws, and other ways of displacing the family.

Does Mill have an argument against the feminist critique? I do not think he does. He accepts the diagnosis that females have been made subservient to family arrangements. His critique of the construction of gender is as thoroughgoing as any feminist critique today. His "liberty principle," which could provide a limit to any of society's attempts to reconstruct gender, marriage, and family life, is, in the final analysis, put in the service of promoting the "moral regeneration" of mankind; it cannot be used as a roadblock to "moral regeneration" as Mill understands it, because it is a means to that end. Moral regeneration requires female freedom from the family.

To fix the family, Mill suggests a thinning of the obligations of family life. "The moral training of mankind will never be adapted to the conditions of the life for which all other human progress is a preparation, until they practice in the family the same moral rule which is adapted to the normal constitution of human society."[9] If individual choice does not work to promote the "moral regeneration" of mankind, then Mill would have to be open to employing other means.

Feminists save Mill's ideal of moral regeneration by changing his principles, away from an embrace of the "liberty principle" and toward an embrace of greater social

reengineering with the hopes of deconstructing gender. This change is in keeping with the spirit of Mill's broader thought, and there are few resources within Mill's thought to resist this change. Mill would, I believe, accept the friendly feminist amendment.

Conservatives might also salvage much from Mill. The real debate centers not so much on the limits of governmental authority (as Mill frames the issue) but rather on Mill's vision of "moral regeneration." For Mill, moral regeneration has to do with promoting spontaneous individuality and a thinner vision of marital relations.

Spontaneous individuality is, for Mill, the great desideratum, "one of the leading essentials of well-being." Mill's conception of individuality reflects a character filled with personal energy, originality, activity, and vitality. It may produce excellent genius (Mill mentions Socrates in this context), but it always promotes vitality.[10] Habituation, or the "dead hand" of custom, is, as Mill presents it, always the enemy of such spontaneous individuality.

There can be little doubt that "individuality" so conceived is an element of the human good. A robot following custom is hardly an admirable self-governing citizen or a self-aware human being. Yet Mill's extreme rejection of custom and habit reveals insufficient reflection about the nature of individuality itself. Aside from the problem of distinguishing "good" vitality (Socrates) from "bad" vitality (Marquis de Sade?), there is the inevitable role that habit and custom play in human life. To be governed by reason requires that one develop the habits of self-control. To be governed by laws one must develop a customary attachment to decent laws. To love another human being means that one is, in some sense, dependent on that other person, which can certainly limit one's individuality. Once these and similar aspects are taken into account, marriage and family life appear much more necessary and much less unattractive than Mill lets on. Genuine individuality, as opposed to the illusory moral regeneration Mill peddles, is much more difficult to come by and requires some institutional support from the family, among other things.

Mill's version of marital relations also contains something attractive. Mill envisions a new marriage founded on "a union of thoughts and inclination of two persons of cultivated faculties, identical in opinions and purposes," and on "the best kind of equality, similarity of powers and capacities in reciprocal superiority in them." Nothing in this description rules out traditional marriage with its division of labor. What Mill misunderstands, however, is that this union and reciprocity necessarily entail a limit on what he conceives of as "individuality." This union is inconsistent with the independence and spontaneity he would cultivate. This union of love and affection forms the basis for a relation that involves the dependence of two people on each other.

Conservatives can indeed take the high road against Mill. The high road involves explicating the nature of love, which involves a partial surrender of independence and individuality in the formation of a lifelong relation with another person. Mill's principle of "moral regeneration," which he intends to make such a union possible, undermines it. A genuine moral regeneration involves seeing the goodness and beauty of the love at its heart. ✝

1 Norman Podhoretz, "*Lolita*," My Mother-in-Law, the Marquis de Sade, and Larry Flynt," *Commentary* (April 1997).
2 *OL* 8:257 and S 21:336. Citations to Mill's works are to *The Collected Works of John Stuart Mill* (Toronto: University of Toronto Press, 1963–1991) followed by volume number. For clarity's sake, references to *On Liberty* are abbreviated *OL* and to *Subjection of Women* are abbreviated *S*; I drop the volume number after the first usage, as both books are contained in a single volume.
3 See, generally, Tocqueville, "How the Americans Understand the Equality of Man and Woman," in *Democracy in America* 2.3.12, trans. Mansfield and Winthrop, 274.
4 *OL* 264–5, emphasis supplied.
5 *S*, 261. See also *S*, 294–5 and 340.
6 *S*, 324.
7 *S*, 264. "The present legal and moral subjection of women is the principal, and likely to be the latest remaining relic of the primitive condition of society, the tyranny of physical force" (21.386) (written with Harriet Taylor, "Papers on Women's Rights").
8 *S*, 338.
9 *OL*, 261; *OL*, 270; *S*, 295. "The moral regeneration of mankind will only really commence, when the most fundamental of the social relations is placed under the rule of equal justice, and when human beings learn to cultivate their strongest sympathy with an equal in rights and in cultivation" (*S*, 336).
10 Harry M. Clor, *Public Morality and Liberal Society* (Notre Dame Press, 1996), 141–42.