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Foundations of Freedom

DAVID J. GARREN

People use their freedom in all sorts of ways. Some choose to devote their lives to philosophy, diligently pursuing undergraduate and graduate degrees, often foregoing money, marriage, children and numerous other opportunities in the process, all in hopes of overcoming the odds and landing a tenure-track position on the faculty of a college or university; a position which will enable them to teach obscure subjects to often indifferent students, and write articles and books which almost no one, save perhaps a handful of other professors of philosophy, will ever read, all the while consigning themselves, with few exceptions, to a life if not of penury and ill-repute certainly modest wealth and meagre social status, and that is if they are lucky enough to be awarded tenure and not be dismissed after 6 or 7 years of conscientious effort, having nothing to show for it but staggering amounts of student-loan debt and a dearth of marketable skills. Others elect to undergo numerous plastic surgeries in order to have their breasts and buttocks enhanced or, in some cases, to have their faces permanently altered to look like feral animals (Douglas 2012). Suffice it to say the uses adult individuals make of their freedom are various and diverse, and uses that some would deride as laughably absurd (perhaps none more so than pursuing a career in philosophy), others would defend as profoundly meaningful. Given that difference, is it ever permissible to prevent adult individuals from doing as they wish?

In his essay *On Liberty* John Stuart Mill argues that it is not; that so long as the individual is not harming others (and is a competent adult living in a liberal democratic state) he must not be constrained, either by law or custom, from doing as he wishes. As Mill says, ‘The only purpose for which power can rightfully be exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant’ (Mill 1975). Of course one can attempt to reason with and persuade and in that way attempt to convince the adult individual to refrain from doing as he wishes, but one cannot coerce or compel him to do so, and nor, more importantly, can the state.

There are several reasons for this, according to Mill: first, Mill believes that there is a distinctive value in allowing adult individuals to exercise their autonomy and choose their own paths in life, independent and apart from the paths that are actually chosen; second, Mill believes that allowing adult individuals to do as they, rather than others, see fit enables a greater variety of forms of life and therefore a greater possibility of human flourishing, a possibility that Mill believes contributes to the overall progress

and advancement of society; and third and finally, Mill believes that adult individuals generally know their own interests best (certainly better than do states), so paternalistic interferences are bound to be mistaken and misguided, having the unintended but nevertheless perverse effect of causing more harm than good. As such, they are to be prohibited.

Mill does allow for two exceptions to his anti-paternalism, however: two instances where the adult individual's liberty may be constrained through coercion and compulsion in order to prevent him from harming himself rather than others. In the first instance, Mill allows that if an adult individual is about to cross a bridge and does not seem to realize that it is out, he may be stopped, at least temporarily, to ensure that he knows of the bridge's faulty condition. If he does, and does not appear to be mad, and still wants to attempt to cross it, he must, on Mill's view, be permitted to do so. In the second instance, Mill allows that if an adult individual wants to sell himself into slavery it is permissible to prevent him from doing so, even if it is what he genuinely wishes to do and is fully aware and accepting of the likely harms that will befall him, because this type of alienation of liberty (permanent and complete as opposed to temporary and partial) is on Mill's view incompatible with liberalism. Mill also believes that were such contracts permitted the state would be put in the untenable position of having to enforce them when breached, which would result in a form of slavery that is no longer voluntary.

Since the publication of *On Liberty* in 1859 the debate over paternalism has taken place largely within the framework established by Mill, with most of the debate focused on whether a commitment to liberalism and its attendant values of liberty, autonomy and individuality, bars paternalism absolutely, especially as it is practised by governments, or as Mill seems to suggest, merely creates a very strong presumption against its use, though one which can in certain (limited) cases be overcome. In his recent book *Foundations of Freedom: Welfare-Based Arguments Against Paternalism* Simon Clarke comes down squarely on the side of a presumption against paternalism, though one that appears to be markedly weaker than Mill's and thus more easily overcome, and he does so from a welfare-based perspective.¹

Clarke's argument, in brief, is that if one accepts, as he is inclined to do, that freedom or liberty (he uses the terms interchangeably to refer to the absence of external constraint) is valuable because it contributes to the individual's welfare, it can be limited in those cases where it does not do so, or more conspicuously in those cases where it frustrates or otherwise impedes the individual's welfare, and where the loss of liberty is offset by the gain in welfare. This is true, according to Clarke, despite the various ways in which individual welfare might be understood (desire satisfaction, self-development, autonomy, for example) and it is true, according to Clarke, whether these conceptions of welfare are taken separately or together.

Not an altogether surprising conclusion given the underlying premise: if liberty is understood to be of instrumental value, a means to achieving some other more valuable end, such as individual welfare, clearly it can be limited where it frustrates or otherwise impedes that end, at least in those cases where the loss of liberty is offset by the gain in individual welfare. If one accepts the underlying premise (and I am far from convinced that one should) the question no longer is a normative or prescriptive one

1 *Foundations of Freedom: Welfare-Based Arguments Against Paternalism*. By Simon R. Clarke. Routledge, 2012. x11 + 138 pp. £80.00.

(should the individual's liberty be limited for his own good?), but rather an empirical and descriptive one (does the limitation of the individual's liberty preserve or promote his welfare, and does the gain in welfare offset the loss in liberty?). No matter how individual welfare is defined, and no matter how robustly one attempts to link individual liberty to it, so long as liberty remains an instrumental good, valuable only to the extent that it serves as a means to preserve or promote some other more valuable end, Clarke is right that it can at most serve as a presumption against paternalism; it cannot bar it absolutely. But then who thought it could? Indeed, as Clarke himself notes, the welfare-based arguments on behalf of freedom that he examines in this book are a species of utilitarianism, and as such they fall prey to the very same, widely-known, criticism, namely, that such arguments cannot guarantee individual liberty as a matter of inviolable right. I would suggest, however, that that says more about the weakness of utilitarian and welfare-based arguments for freedom than it does the strength of paternalism.

That being said, I think that individual welfare may be a much stronger bar against paternalism than most, including Clarke, seem to realize, and for the following reason: although the question of whether paternalism serves to preserve and promote the individual's welfare, and if so, whether the loss of the individual's liberty is offset by the gain in his welfare, may be an empirical one, it is far from clear that there is any way of answering it with conclusive certainty or even high probability. Clarke, for example, argues that banning unhealthy foods would be an instance of permissible paternalism because in all likelihood it would provide a large gain in individual welfare understood in terms of improved health, while having only a trivial impact on other parts of individual well-being such as self-development and autonomy, thereby justifying the minimal incursion on liberty. Alternatively, he argues that forcing adult individuals into marriages for their own good would probably be ruled out by welfare-based considerations, but forcing them into particular religions would not, because the welfare-gain of eternal salvation would outweigh all other costs. In doing so, Clarke seems to be unaware that he is expressing not some objective, independent, incontestable set of facts about the world but rather a particular and highly prejudicial set of preferences masquerading as fact, a set of preferences that others may not share, and even if they did would be no guarantee of their truth.

The problem with paternalism even on a welfare-based account like Clarke's is that it assumes the complex is simple, the variable stable and the idiosyncratic universal; it assumes, in other words, that there are independent and objective ways of determining when the individual is being harmed and when he is being helped, when his welfare is being preserved and promoted and when it is not, when the gain in individual welfare offsets the loss in individual liberty and when it does not, when in fact no such assumptions are warranted. Take, for example, Clarke's claim that he believes banning unhealthy foods is a justifiable instance of welfare-based paternalism, one where the gain in welfare offsets the loss in liberty. How is 'unhealthy' to be understood? Which foods are unhealthy as opposed to healthy, and in what amounts, and by what standards? Is duck mousse paté or caviar unhealthy or is the label confined to more pedestrian fare such as bangers and mash? And on what basis does Clarke maintain, other than his own subjective preference, that health should be given priority over self-development, autonomy, desire-satisfaction and the like, and on what basis, other than his own subjective preference, does Clarke maintain that the incursion on liberty is minimal? These are highly contingent and controvertible claims, ones that I do not

share and more importantly ones the individual, whose liberty is being limited without his consent, may not share.

So, too, Clarke's claim that forcing individuals into particular religions is a justifiable instance of welfare-based paternalism. Clarke claims that it is justified because the benefits of eternal salvation outweigh any costs, but many people (myself included) find the notion of eternal salvation unintelligible or worse yet delusional and do not believe with Pascal (and Clarke) that we have everything to gain and nothing to lose by wagering that the God of Abraham exists and living in accordance with his dictates. Indeed, given my personal preferences and predilections, I am far more inclined, on a welfare-based account of freedom, to permit the eating of healthy and unhealthy foods alike (assuming there is some consensus about the meaning and application of these terms), because I think doing so will contribute to one's welfare understood as desire-satisfaction, self-development and autonomy, while banning the practice of religion which I think might very well stifle it. This is not to say that I am right and Clarke is wrong, rather it is to point out the enormous difficulty, if not impossibility, of determining in anything like an independent and objective fashion, when the individual's welfare is being preserved and promoted and when it is not and when the gain in individual welfare offsets the limitation of individual liberty. That is why I would suggest that we leave it to the individual to decide for himself; and while Clarke and I can through the force of our arguments attempt to reason with and persuade the individual of the merit of our respective positions, neither he, nor I, nor the state should step in and limit his liberty for what we take to be his own good.

Indeed, even in those cases where the individual is acting in ways that are clearly self-defeating, ways which will frustrate or impede his own conception of welfare, it is far from clear that paternalism is justified on a welfare-based perspective. Doubtless paternalism in such cases may preserve and promote the individual's welfare in the short-term, but what about the long-term; how can we know what the effects will be? It may be the case, for example, that the individual will learn a great deal more, his long-term welfare better preserved and promoted, if he is allowed to engage in and learn from his self-defeating behaviour. Or perhaps his conception of welfare has changed or perhaps he has many conceptions about which he is not entirely certain or to which he assigns various and shifting weights. Conceptions of welfare, like conceptions of the good, can change not only over the course of a life but over the course of an afternoon or an hour, and seemingly incompatible conceptions can be held simultaneously by the same one individual. To assume that Clarke or I or anyone else can know whether the limitation of the individual's liberty is offset by a corresponding gain in his welfare, especially his long-term welfare, when the individual himself may not even know, assumes an omniscience that no human being has or will ever attain.

There is, of course, a wonderful irony here: like many a philosopher writing on paternalism Clarke is comfortable eschewing some forms of life while exalting others, seemingly unaware that his very act of writing and thinking about philosophy is one that the vast, vast majority of humanity is and always has been comfortable dispensing with as the height of folly, a silly if not dangerous waste of one's time and talent. But Clarke would never think to prohibit this form of life, for it is, after all, his. Were he able to more fully appreciate this irony, I think he would be better positioned to answer the question he set for himself at the beginning of his book: to determine

the distinctive value of freedom. Until then, the answer, I suspect, will continue to elude him.

United States Naval Academy
Annapolis, MD
garren@usna.edu

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Mind and Cosmos

DAVID YATES

The central premises of Nagel's argument against what he terms 'the materialist neo-Darwinian conception of nature' (hereafter 'neo-Darwinism') are the following: (1) Remarkable features of the cosmos such as consciousness, cognition and value are *intelligible* to us; (2) such phenomena are not materialistically reducible; (3) only phenomena that are materialistically reducible are intelligible within the framework of neo-Darwinism.¹ In Chapter 2, 'Antireductionism and the Natural Order', Nagel argues for (1) and offers suggestive remarks on what 'intelligible' means, without ever approaching a definition. The remaining three chapters argue in turn that consciousness, cognition and value are not reducible, provide arguments as to why this renders them unintelligible for neo-Darwinists, and develop a sketch of an alternative way of understanding them. As Nagel puts it:

The essential character of such an understanding would be to explain the appearance of life, consciousness, reason, and knowledge neither as accidental side effects of the physical laws of nature nor as the result of intentional intervention in nature from without but as an unsurprising if not inevitable consequence of the order that governs the natural world from within. That order would have to include physical law, but if life is not just a physical phenomenon, the origin and evolution of life and mind will not be explainable by physics and chemistry alone. (32–3)

The explicitly secular alternative that Nagel considers is the addition of *teleological laws* to the non-teleological laws of neo-Darwinism, whose function is to render the emergence of the remarkable phenomena intelligible.

1 *Mind and Cosmos: Why the Materialist Neo-Darwinian Conception of Nature is Almost Certainly False*. By Thomas Nagel. Oxford University Press, 2012. x + 130 pp. £15.99.