Nurturing the Spirit of Democracy: Freedom of Conscience

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“It should also be noted, however, that an emphasis on individual conscience and individual judgement also lies at the heart of our democratic political tradition. The ability of each citizen to make free and informed decisions is the absolute prerequisite for the legitimacy, acceptability, and efficacy of our system of self-government. It is because of the centrality of the rights associated with freedom of individual conscience both to basic beliefs about human worth and dignity and to a free and democratic political system that American jurisprudence has emphasized the primacy or “firstness” of the First Amendment. It is this same centrality that in my view underlies their designation in the Canadian Charter of Rights and Freedoms as “fundamental.” They are sine qua non of the political tradition underlying the Charter.”

Chief Justice Dickson  
Supreme Court of Canada  
*R. v. Big M Drug Mart Ltd.*  
[1985] 1 S.C.R. 295
Whether or not William Shakespeare knew about the role conscience played in the development of democracy is unknown, but he did have an idea about the role it played in the actions of human beings, for better or worse, as Hamlet shows us. For being such a fundamental component of humanity, very little is written about the concept of conscience. Indeed, most of the literature dates back to well before the Enlightenment. I have divided this paper into a number of sections as follows: an outline of the history of the concept, including the role of freedom of conscience in a democratic society; the key thinkers and ideas surrounding the concept; and pedagogical considerations.

I Ideas in Conscience:

The Society of Friends (the Quakers) refers to conscience as being the “Inner light of God,” while behaviourists regard it as a set of learned responses to particular social stimuli. Intuitionists view conscience as an innate faculty determining the perception of right and wrong. Similar to the Quakers, Hindus consider conscience to be “the invisible God who dwells within us.” Everyone has some conception of what conscience is, and its purpose in our lives. In the Western world, our views about the nature of conscience

“Conscience doth make cowards of us all”
William Shakespeare, Hamlet, Act III, Scene I
have largely been informed through the work of European men nearly one thousand years ago. The Scholastics, William of Ockham and Saint Thomas Aquinas all had a profound influence. The common cartoon depiction (still popular today) is of little angels and devils over each shoulder - each whispering good and bad advice to us - was born out of the ideas of St Thomas Aquinas. Very little has been written about the concept of conscience since that time - which is not to say that people have not thought about it. The context in which they think about it has changed.

For purposes of Nurturing the Spirit of Democracy, conscience is irrelevant What really matters is freedom of conscience, and the fact that, in democratic societies, every individual maintains that freedom. The defining characteristic of conscience in a democratic society is the freedom to have, hold and act upon (or not ) one’s conscientiously-held beliefs. No action, legislative or otherwise, can be taken against the conscience of an individual. One can limit or eliminate privacy, diversity and fundamental justice, but one cannot eliminate conscience. Society can take action to prevent, stop, abolish or outlaw the manifestation or other action or inaction taken on the basis of conscience, but not against conscience, itself. I therefore believe that any further discussion about the nature, content, and component parts of the concept of conscience is not really within the scope of the Nurturing the Spirit of Democracy initiative.

The concept is connected to a number of other ideas in democracy: consent, dissent, and
freedom of speech in the first order, and loyalty and responsibility in the second. The connections between these concepts and conscience will be developed in the pedagogical section of this paper.

Freedom of conscience is often confused or lumped together with freedom of religion. It may be that conscience informs religion, but a religious person may reverse the notion. This dichotomy of meaning is a result of the philosophical debate between the religious ideas of Saint Thomas Aquinas and the modern secularists. With no way for humans to resolve this metaphysical dispute, people have settled to list both freedoms together as one. Article 1 of the *Universal Declaration of Human Rights* reads:

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act toward one another in a spirit of brotherhood.”

While Article 18 states:

“Everyone has the right to freedom of thought, conscience and religion; this included the right to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”

Related to both of these is Article 19, which reads:
“Everyone has the right to freedom of opinion and expression; this includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

The First Amendment to the American constitution, passed in 1791 simply states:

“Congress shall make no law respecting and establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

Section 2(a) of the Canadian Charter of Rights and Freedoms reads:

“2. Everyone has the following fundamental freedoms:
   (a) freedom of conscience and religion;”

Article 28 of the Constitution of the Russian Federation (1993) declares:

“Everyone shall be guaranteed the right to freedom of conscience, freedom of religious worship, including the right to profess, individually or jointly with others, any religion, or to profess no religion, to freely choose, possess and disseminate religious or other beliefs, and to act in conformity with them.”

Article 29, subsection 3, states:
“No one may be coerced into expressing one’s views and convictions or into renouncing them.”

During the 1980-1981 constitutional debates in Canada, there was an on-going discussion about whether or not to include the freedom of conscience in the Charter and about what the effect of such a clause might and should be. Most of the concerns centered around religious freedom and conscientious objection to military service and killing. Other concerns were for the individual nature of the freedom (would groups be covered?).

Jurists in Canada and the United States have regularly interpreted conscience through the freedom that individuals have exercise it, as it is difficult to imagine a situation where the possession of a conscience is pleaded. The two Canadian cases in which section 2(a) of the Charter were the primary defense were R. v. Morgentaler and R. v. Big M Drug Mart Ltd. The first case dealt with the right of a woman to terminate a pregnancy through an abortion while the latter considered the constitutionality of the federal Day of Rest Act. Of the two, R. v. Morgentaler is the most interesting for two reasons. First, Madam Justice Bertha Wilson builds on and further develops the ideas of her colleague, Chief Justice Dickson (in R. v. Big M Drug Mart Ltd), on the role of freedom of conscience in a democratic society. The second reason why this is an interesting case to choose is the controversial nature of it. It remains divisive and an issue in election campaigns fourteen years after the matter was disposed of by the Court. I will not go into any more detail
about the merits and particulars of the case, but rather extract for the readers consideration Justice Wilson’s interpretation of the role freedom of conscience plays in a democratic society.

A consideration of liberty or freedom in general is essential before beginning a discussion dealing with the specific context of freedom of conscience. On the subject of liberty, Justice Wilson states:

The Charter is predicated on a particular conception of the place of the individual in society. An individual is not a totally independent entity disconnected from the society in which he or she lives. Neither, however, is the individual a mere cog in an impersonal machine in which his or her values, goals and aspirations are subordinated to those of the collectivity. The individual is a bit of both. The Charter reflects this reality by leaving a wide range of activities and decisions open to legitimate government control while at the same time placing limits on the proper scope of that control. Thus, the rights guaranteed in the Charter erect around an individual, metaphorically-speaking, an invisible fence over which the state will not be allowed to trespass. The role of the courts is to map out, piece by piece, the parameters of the fence.

The idea of human dignity finds expression in almost every right and freedom guaranteed in the Charter. Individuals are afforded the right to choose their own religion and their own philosophy of life, the right to choose with whom they will associate and how they will express themselves, the right to choose where they will live and what occupation they will pursue. There are all examples of the basic theory underlying the Charter, namely that the state will respect choices made by individuals and, to the greatest extent possible, will avoid subordinating these choices to any one conception of the good life.

Thus, an aspect of the respect for human dignity on which the Charter is founded is the right to make fundamental personal decisions without interference from the state. ...In my view, this right, properly construed, grants the individual a degree of autonomy in making decisions of fundamental personal importance.

...I believe that the framers of the Constitution in guaranteeing “liberty” as a fundamental value in a free and democratic society had in mind the freedom of the individual to develop and realize his potential to the full, to plan his own life to
suit his own character, to make his own choices for good or ill, to be non-conformist, idiosyncratic and even eccentric - to be in today’s parlance, “his own person” and accountable as such. John Stewart Mill described it as “pursuing our own good in our own way.”

...As pointed out by Professor Cyril E. M. Joad, then Head of the Department of Philosophy and Psychology at Birkbeck College, University of London, in Guide to the Philosophy of Morals and Politics (1938), the role of the state in a democracy is to establish the background conditions under which individual citizens may pursue the ethical values which in their view underlie the good life. He states at p. 801:

“For the welfare of the state is nothing apart from the good of the citizens who compose it. It is not doubt true that a State whose citizens are compelled to go right is more efficient than one whose citizens are free to go wrong. But what then? To sacrifice freedom in the interests of efficiency, is to sacrifice what confers upon human beings their humanity.”

In his book, Freedom, Loyalty, Dissent (1954), H.S. Conneger, writing partially in response to the social upheaval brought on by Senator Joseph McCarthy and the American congressional committee on “Un-American Activities,” and the climate of conformity - and fear of non-conformity - that symbolizes the era, discusses what he refers to as “the necessity of freedom.” He claims that without the exercise of freedom society would inevitably arrive at an “official standard of orthodoxy” (p.13), and that anyone who strays from that standard or who is not loyal to that standard, is disloyal to the state. He also says that society will eventually make mistakes and our humanity will perish if criticism, inquiry and originality is considered important enough to protect.

While the pedagogical considerations for the concept of conscience are limited to a discussion about what motivates people to act, but when it is viewed in the context of
freedom of conscience, the ideas are easier to develop.

**Instructional Ideas**

1. Think about Nelson Mandela, Sir Thomas More, Ghandi, Martin Luther King, Jr - What do you think motivated them to do the things they did?

   See also the attached poem, The Unknown Citizen, by W.H. Auden, and consider why the state did not hear from the Unknown citizen during his life.

2. Consider applying the Canadian Charter of Rights and Freedoms over particular pieces of legislation - the 1997 Russian Law “On Freedom of Conscience and Religious Associations,” which has been used to restrict the freedom of almost every religious group other than the Russian Orthodox Church, in violation of Article 28 of the Russian constitution. Weigh the “pros and cons” of the legislation.

3. Why is “freedom of conscience and religion” listed first in the Canadian *Charter*, and why are they listed first in the *Universal Declaration of Human Rights*?

4. Amnesty International and the “prisoners of conscience” letter campaigns. Introduce students to the reasons particular individuals are imprisoned (i.e., for acting on their conscience), and consider what would have to change for a similar situation to develop here.
5. Link to other springboards for the concepts of dissent, freedom of speech, loyalty and responsibility. In doing so, make the connection between freedom of conscience and these concepts - the connection being that they are manifestations of freedom of conscience.

Freedom of conscience is individual in its nature; it does not have a public component on its own. It may inform debate on issues of the Public Good, but nothing more. The role it plays in a democratic society is one of “kingpin,” in that it is from there that freedom and choice flow. It cannot be given or taken away. It can be informed and nurtured, and that is the essence of the task we have undertaken in *Nurturing the Spirit of Democracy.*

The Unknown Citizen
(to JS/07/M/378
This Marble Monument
Is erected by the State)
He was found by the Bureau of Statistics to be
One against whom there was no official complaint,
And all the reports on his conduct agree

That, in the modern sense of an old-fashioned word, he was a saint,
For in everything he did he served the Greater Community.
Except for the war til the day he retired
He worked in a factory and never got fired,
But satisfied his employers, Fudge Motors Inc.
Yet he wasn't a scab or odd in his views,
For his union reports that he paid his dues,
(Our report o his union shows it was sound)
And our social psychology workers found
That he was popular with his mates and liked to drink.
The press are convinced that he bought a paper everyday
And that his reactions to the advertisements were normal in every way.
Policies taken in his name prove that he was fully insured,
And his Health-card shows that he was once in the hospital but left it cured.
Both Producers Research and High-Grade Living declare
That he was fully sensible to the advantages of the installment plan
And had everything necessary to the Modern Man,
A phonograph, a radio, a car and a frigidaire.
Our researchers into Public Opinion are content
That he held the proper opinions for the time of year.
When there was peace, he was for peace; when there was war, he went.
He was married and added five children to the population,
Which our eugenist says was the right number for a parent of his generation,
And our teachers report that he never interfered with their education.
Was he free? Was he happy? The question is absurd:
Had anything been wrong, we should certainly have heard.

W.H. Auden

Bibliography