

CONSCIENCE, RELIGION AND THE STATE

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I. Conscience and Reason

Liberty of conscience and religious liberty are often identified as more or less the same; and justifications for one liberty are often offered as justification for the other. While I will start by identifying some false views, the falsity of which applies equally to liberty of conscience as to religious freedom, I will then move, without much signaling, to a discussion of conscience. It is from that discussion, in which I identify the nature and value of conscience, that an understanding of the value of religious liberty will arise, and from thence the discussion of a number of other difficulties.

A standard view today, wrong in many, but not all, ways, goes something like this: all persons have a fundamental right to determine for themselves their values, goals, and moral code, and to pursue the ends and goods so identified bound only by respect for the similar self-determination of others. The core value undergirding this right is autonomy, and a right of conscience is simply a right to autonomy so understood. But some agents make these choices primarily on the basis of religious considerations; and of course, they arrive at those considerations, if they are mature, autonomously. So both as regards the source of religious conviction, and the exercise of those convictions, conscience, and autonomy of conscience, is the core value implicated.

A related view, again not entirely wrong, but not entirely right either, sees liberty of conscience and religious freedom as essentially about equality. All persons must be treated equally, without discrimination, if their value as persons is to be respected. But to enshrine the dictates of conscience or religion of one individual or group, over another, is to fail to treat other individuals and groups equally, and is thereby to fail to respect them adequately. Martha Nussbaum's view is in many respects of this sort.¹

Variations on these themes were at the heart of Cardinal Ratzinger's concerns in his 1991 essay on the subject of "Conscience and Truth." And Cardinal Ratzinger similarly identified the conflict between freedom and authority as inevitable given these views. But, after acknowledging that even an erroneous conscience must be followed, Cardinal Ratzinger identified the key problem with the claim that autonomy of conscience suffices for rectitude of conscience: "[J]udgments of conscience can contradict each other. Thus, there could be, at best, the subject's own truth, which would be reduced to the subject's sincerity."² Cardinal Ratzinger's well-known worries about relativism are, clearly, not far from these reflections.

The equality view is flawed in a somewhat different way. Why should persons be afforded equality of treatment where conscience and religion are concerned? What value is there such that equality of respect is appropriate? For such respect would not be given by, for example, equally abusive treatment of all persons. There must be something important about conscience and religion that warrants equality of treatment, but the equality view does not specify an answer.

¹ Martha Nussbaum, *Liberty of Conscience: In Defense of America's Tradition of Religious Equality* (New York: Basic Books, 2008).

² Joseph Cardinal Ratzinger, *Conscience and Bioethics* Ignatius Press, p. 12.

We can get a bit clearer by identifying what a judgment of conscience is: it is, in the paradigm case, a subject's final determination of what is permitted, not permitted, or obligatory in some circumstance or other. So it is equally a judgment of conscience that I *may* use this method of child spacing; that I *may not* use this method of child spacing; or that I *must* use this method of child spacing. These modal differences are important, as we'll see, in determining what constitutes a violation of conscience.

Identifying the paradigm case of a judgment of conscience then points us in two directions. First, it points us back: by what faculty are these judgments made? What are the principles of such judgments? By what faculty are these principles possessed? And it points us forwards: what are the judgments of conscience in this or that case? More broadly, to what are we directed by conscience?

As Alan Donagan notes, there are intermittent attempts in the history of thought to identify the faculty by which judgments of conscience are made as something other than the faculty of reason.³ This faculty may be erring or infallible. But if the latter, why do judgments of conscience across agents manifestly conflict? And if the former, will it not be the case that all conflicts of conscience will be adjudicated by the only faculty we have for the weighing and sifting of evidence for the sake of judgment, namely, reason? And, finally, if reason is, in fact, the arbiter of judgments of conscience, why suppose the existence of some further faculty, conscience, which is distinct in its identity from reason?

Thus, we arrive at the traditional view, articulated by St. Thomas: it is practical reason which knows the first principles of the moral law; and practical reason which

³ See Alan Donagan, *The Theory of Morality* (Chicago: University of Chicago Press, 1977) Chapter Six.

applies those principles to situations and circumstances known by theoretical reason so as to lead to various types of moral judgment. Thus, the faculty that is responsible for particular judgments of conscience, as well as the more general normative judgments presupposed by conscience, is reason.

As St. Thomas writes, practical reason is our very participation in the eternal law: God chooses to guide us towards our perfection not by instilling in us principles of direction that determine our actions, but by allowing us, through our own knowledge of those principles, to direct ourselves towards our fulfillment, and to decide for ourselves whether or not to act as we so prescribe. In this “participated theonomy” we are enabled to be active cooperators with God in shaping our life in accordance with his plan.

In light of this, we can see the beginning of an understanding of four key points. The first concerns why coercion of conscience is considered so potentially grievous an affront to the dignity of the person; the second concerns the conditions under which conscience can be considered successful; the third concerns freedom of religion, and its relation to conscience; the fourth concerns the relationship between political authority and freedom of conscience and religion. After discussing each of these points in turn, I shall turn, in the final section, to various ways in which freedom of conscience (and religious liberty) can be infringed upon.

II: Our Self-Constitution

Why is “conscience” so important, and its coercion so threatening? Judgments of conscience are our final verdict on how we are to constitute our selves. Such judgments

are thus an exercise of one of the two capacities jointly necessary for our being active self-constituters; the other is our capacity for freedom, a capacity exercised in our choices to act as conscience dictates. This two-fold capacity for self-constitution is surely the respect in which we differ most profoundly from the other animals, and the feature of us in virtue of which we are to be considered persons, not things, creatures with dignity, and subjects of rights, beings made in the image of God.

That capacity, and its exercise, must be therefore be protected as much as possible in order that human persons may genuinely act as persons. And indeed, that we *should* genuinely act as persons, shaping our lives and constituting our free selves, is itself a demand of conscience, this judgment being among the first made by a mature and self-aware agent. In other words, the mature agent judges that he or she has a duty in conscience to shape her life, a duty that will be met only by further acts of conscience, and by choices in accordance with those acts.

It is clear that that capacity – the capacity for realized personhood – can be threatened in two ways. It is threatened insofar as the capacity to make the judgments themselves is stymied or thwarted; and it is threatened insofar as the capacity to act in accordance with conscience is stymied or thwarted. Persons are wronged as persons when they are, for example, by education and training, brought to adulthood in a state of moral thralldom, without the ability to think morally beyond what their social world permits or requires. Such enslavement has been an aspiration of totalitarian governments, but seems equally successfully pursued in a culture in which the flame of reason is given no oxygen and the capacity for self-constitution is starved on a diet of mindless pursuit of pleasure.

The second way that persons can be further wronged as persons is when, having come to a determination of conscience, they are blocked from acting in accordance with that determination. Whether they are *always* wronged when this is so will be addressed later.

III: Conscience and Truth

It might seem, to this point, that the account given simply restates certain contemporary views concerning the importance of a more or less unguided and unbounded autonomy. But it does not. Conscience is a judgment of reason, and an upright will acts in accordance with reason. But reason is oriented towards the truth. So, while any attempt at self-constitution is successful just insofar as it constitutes a person in this or that way, the perfection of self-constitution is self-actualization in accordance with the truth about human well-being.

That judgments of practical reason are necessary conditions for our self-constitution, and that such judgments must be oriented to practical truth for our adequate self-constitution are claims whose relationship can be more adequately grasped by recognizing that a self in need of constitution is one whose full reality is not entirely given to it. Such a self understands his or her future as a horizon of possibility, the actualization of which is up to him or her. Yet possibility only becomes opportunity insofar as the practical agent recognizes his or her possibilities as offering potential benefits, opportunities for well-being and flourishing, the reality of which can only be brought about through her choice and action.

The work of practical reason, from its foundations down to its particular judgments of conscience, is thus oriented towards human goods, goods perfective of us as human beings, and goods whose protection is enshrined, as John Paul II noted, in the ten commandments and the rest of the moral law – the law which is present in those commandments on one side as premises from which the commandments are derived, and on the other as conclusions following from those commandments. Judgments of conscience that are successful as such judgments thus perfect their agents both by pointing them towards perfective opportunities, and by being themselves perfections of our self-constituting capacity.

But such possibilities bring with them also the possibility of failure. Erroneous judgments of conscience corrupt: by falsely limiting us or turning us from pursuing genuine goods; or by falsely urging on us the destruction of genuine goods, whether from malice and hatred, or even from enthusiasm for what else is genuinely good. Recall, again, that the human agent's self is not fully given, but must be realized in action; basic human goods provide the framework of opportunity for such action; so failing to pursue such goods, or damaging or destroying instances of those goods, amounts to a mutilation of the self's possibilities for human well-being.

IV. Conscience and Religion

I will say something shortly about how this picture, and the picture to follow, relates to political authority. First, it is necessary to see how the discussion of conscience bears on the related issue of freedom of religion.⁴

The answer is complex. In the first case, that religion is a basic good to be pursued is, I believe, a foundational judgment of practical reason. That is to say, any human being, thinking clearly about the range of possibilities that could make them well off will recognize that being right with – i.e., conforming one’s will to -- whatever greater than human source of meaning there might be is an intelligibly attractive possibility.

Not every agent who makes this judgment and acts upon it believes that there is such a more than human source of meaning. Some, recognizing the good at stake, seek to discover whether there is; others, believing that there is not such being, seek to realize the good in question by making their peace with the absence of this source of meaning. But for the many who consider it more reasonable to believe that such a being exists, it is further necessary to ask who and what such a being might be, and to ask how one is to be “made right” with that being in one’s life and action.

We find the result of such deliberation characterized in *Dignitatis Humanae* as an exercise of conscience. This seems correct: the creator, whose existence can be known through natural reason, is not entirely and unmistakably present to us as the God of Jewish and Christian tradition. Yet God has offered us signs and opportunities by which we may come to know and love him; He has, in other words, extended to us the possibility of a personal relationship. Such a relationship is itself a human good, and its desirability, and the desirability and even necessity of accepting that offer, is recognized

⁴ This section is much indebted to Joseph Boyle’s “The Place of Religion in the Practical Reasoning of Individuals and Groups,” *American Journal of Jurisprudence* 1998.

by practical reason in a concrete judgment: that I should, for example, accept Jesus Christ as my Lord and Savior and henceforth strive to act as he would have me act. As a practical judgment, this is an exercise of conscience, with parallels, surely, even in the judgments of others who have accepted other possible revelations as veridical, and have acted accordingly.⁵

Conscience and its acts are thus at the root of our pursuit of the good of religion, and of our acceptance – our faith – in some particular religious tradition or other (and again, that faith’s perfection will be found where the revelation accepted is true, and human flourishing will be compromised to some extent, insofar as the revelation accepted is false). And so far forth, the case for liberty of conscience where religion is concerned seems very strong: there is an obligation to seek religious truth and choose in accordance with what one acknowledges as religious truth. But the seeking, the judging, and, especially, the conforming, all require freedom, both existential – the freedom of being a person – and social/legal – the freedom of political liberty in a non-threatening, non-coercive context.

The case can be made even stronger, however, for at just this point, the good of religion turns back upon the exercise of conscience and makes available a new self-understanding on the part of the self-constituting agent.

Consider the illusion that, in being self-constituting, we are self-sufficient, reliant only upon ourselves for successfully actualizing our possibilities. Such a thought is truly illusory: our possibilities are, in a strong sense, given to us with our nature; our nature is

⁵ C.f. Aquinas: “In like manner, to believe in Christ is good in itself, and necessary for salvation: but the will does not tend thereto, except inasmuch as it is proposed by the reason.” I-II Q. 19, a. 5c.

given to us with our existence; and we are self-sufficient for neither for that existence nor for that nature. That and who we are is given to us; and thus also are given to us, and are not of our own making, the goods by which we may be fulfilled. Nor again is our success in pursuing those goods, through judgment, choice, and action, of our own making. By my own power, I have not the capacity to ensure the continued existence of the world through to the completion of my act, much less the particular set of conditions necessary for success, rather than failure, in my actions. And indeed, I can no more ensure even the existence of my acts of judgment and will even in exercising those powers. Literally everything that I am, everything that I do, and every measure of my success must be seen as accomplished in overwhelming reliance upon something, or someone, else.

It is natural, from the standpoint of one who has answered questions about the existence of a transcendent source of meaning affirmatively, to identify this source as the cooperating agent, and to see, thereby, *every* endeavor as part of a potentially cooperative relationship with this being. It is likewise natural to see that being's revelation as an invitation to us to accept His guidance in that cooperative relationship. One's every action, from this standpoint, will be suffused with both gratitude, for the gift that has been given, attentiveness, to what God is asking of us as regards our participation in the relationship, and profound significance, insofar as everything that we do will either contribute positively or negatively to the building up of that relationship. Following John Paul II, and the Second Vatican Council, we can call that relationship to which we are called our vocation.

In this series of reflections, the good of religion takes on a radically architectonic status in an agent's life; unlike every other human good, whose pursuit is limited to

appropriate times, places, and circumstances, the good of religion will now potentially be implicated in every possible circumstance calling for choice; for the pursuit of every good on every occasion will be such that the supervening relationship with the divine will be available to be fostered or hindered in that pursuit. It seems plausible to say that *only* the good of religion possesses this radically architectonic status.

This brings us back full circle to the nature of conscience. For now, each act of conscience is an act in service of the good of religion, as the agent strives to judge and choose rightly so as to play her role in the relationship to which God has called her, to live out her vocation adequately. But at the same time, of course, an agent who believes that God has made known, through revelation or other means, positive guidance for practical reason, will form her judgments with that guidance squarely in mind, allowing herself to be directed to her good by God and so to act in the way that will please Him.

Both the exercise of judgments of conscience, and the exercise of religion, thus emerge as potentially thoroughly intertwined within an agent's life, and throughout that agent's life; and indeed, the intertwining extends across the entirety of an agent's social life, as she sees her marriage, and family, her forms of voluntary association, and her political life as all governed by a religiously formed conscience, and as all integral aspects of her vocation, the life she is called to lead by God as her side of the divine human relationship.⁶ The exercise of conscience – the making of the moral judgments that is necessary to these enterprises – and the pursuit of religion, thus have a claim to be the most central aspects of an agent's attempts at upright self-constitution, aspects which,

⁶ Recognition of this intertwining is central to Nicholas Wolterstorff's arguments against the "naked public square" – requiring that one leave one's religion at the door is unjust to those who see their religion as a constitutive part of who they are, and as a source of guidance in everything they do.

if intruded upon in unreasonable ways, would cut to the heart of an agent's ability to act, and constitute herself as, a person.

V. Religious Authority and Conscience

Why is religious authority necessary? The account of the previous two sections allows us to see the major reason; a minor reason follows from what is necessary in order to succeed in relation to the primary reason.

The primary reason for religious authority must be that some set of persons are believed to be in a special epistemic position as regards what God wishes of human beings in order that the human-divine relationship be protected and promoted. Call this *magisterial authority*. The secondary reason is that some form of quasi-political authority – call it *ecclesial authority* – is necessary in order to coordinate the actions of those persons who together take themselves to be oriented towards God and his purposes by way of some magisterial authority or other.

Absent magisterial authority, there might be the authority common to other voluntary associations, all of which also need some locus for authoritative decision making in order that a common way of proceeding be initiated and maintained by the members of the association. But, while a religious club might indeed need and have such an authority, there seems no particular point in calling this religious authority. Moreover, a political authority, such as I will discuss in the next section, might have religious functions without being taken to have the special epistemic position characteristic of

religious authority. Again, I see no need to think of this as religious authority in the paradigm case.

But when some set of persons are believed to possess, and believe themselves to possess, a special awareness of, or access to, the divine plan for human-divine relationships, and it is believed, including believed by those persons themselves, that part of the divine plan involves their promulgation of that plan, then those persons' assertions and other acts related to the divine plan will be taken to be authoritative in a strictly religious and magisterial sense: what those persons proscribe and prescribe, as regards actions and beliefs, will be taken to give believers good, and indeed overriding reasons for action and belief, even in cases in which the believers might otherwise have thought some other belief or action justified.

Now it appears that, under these conditions, it is not the case that a non-coercive religious authority – that is, an authority which cannot punish with the sword – is ever in a position to violate the conscience of its members or its alleged members. For those members are either believers, in which case they look to the magisterial authority for guidance and, receiving it, take it to be authoritative for the formation of their conscience. Or, they are not believers, perhaps because, having consulted their consciences and exercised their reasoning capacities, they no longer believe in the privileged epistemic position of the magisterial authorities. And these agents, whom the magisterial authority is unable to coerce, are free to leave the set of believers, or accept what non-coercive – because avoidable at will -- punishments, such as excommunication or lighter disciplinings the ecclesial authority may mete out, just as agents in any other voluntary association are free to leave, or accept that association's non-coercive punishments.

At the same time, it is also clear, based on what has been said, that a mingling of religious authority and political, or coercive authority, is inappropriate, given the nature and importance of conscience and the good of religion. Yet it is important to see *this* as the locus of abuse, *not* the exercise of magisterial authority as such.

VI. Political Authority, Conscience, and Religious Liberty

Why is political authority necessary? I suggest that the answer, briefly, turns on our lack of self-sufficiency across a variety of contexts: our inability to coordinate our lives with others absent an overriding authority; our inability to defend ourselves adequately against external attack and internal rapaciousness and free-riding without authority; and our inability, in a variety of contexts, reliably to depend upon the satisfaction of welfare obligations by others and, in some cases, reliably to meet our own welfare obligations to others. That is, for reasons of death, abandonment, disease, and economic failure and injustice, some agents will be left uncared for by those with obligations to care; and other agents with obligations to care will be unable to meet those obligations.

Lack of sufficiency, on the part of individuals, families, and voluntary associations, thus demands political authority. But it is in individual actions, and the actions of families and voluntary associations that the goods perfective of human beings are pursued, and that human agents come to flourish as human beings. Political authority is thus in the service of human self-constitution, insofar as that self-constitution is threatened by lack of coordination, violence, aggression and fraud, and welfare inadequacies. Yet what we have just seen, in the discussion of the good of religion, is

that this good, pre-eminently among all goods, has a capacity for entering into each self-constituting judgment and choice of every individual; and that these choices are not just “individualistic”, but concern potentially each individual’s cooperative endeavors within families and larger social groups, especially churches.

Not just liberty of conscience in seeking, judging, and choosing religion, then, but a full-fledged liberty in the exercise of religion seems an essential part of what the state must protect and foster. As deeply central to the task of being a person – including being a person with and among other persons – religion can be ignored, sidetracked, or repressed only at great cost to the self-constitution of the state’s citizenry. Moreover, this liberty can, clearly, be ignored, sidetracked or repressed both as regards individuals, and as regards churches, and other religious institutions. So the protected liberty must be seen as exercised both by individuals and by institutions. The ability of a Catholic hospital or university, for example, to shape its identity in accordance with the principles of its faith should not be compromised by government initiatives that seek to impose contested moral principles upon the institution, and more than should the ability of a Catholic citizen to so shape his or her life.

VII. Infringements on Conscience

A fundamental purpose of the state is to protect citizens, acting individually, and in concert with others, in their self-constituting acts and projects. Judgments of conscience, and the acts that carry these out, are essential to that self-constitution. Thus, threats to such judgments and acts must be taken seriously by the state: very often, the state must protect citizens against such threats; and the state should avoid making such threats. The

liberty that is thus protected is, clearly, the “right to liberty of thought, conscience, and religion,” which is recognized in the UN Convention on Human Rights, *Dignitatis Humanae*, and elsewhere.

Yet this right is qualified: the rights of others, public peace, and public morality are identified in, for example, *Dignitatis Humanae* as reasons for circumscribing even otherwise conscientiously decided upon courses of action. It is thus apt that John Finnis queries, in response to *Dignitatis Humanae*'s claim that violations of conscience are “intrinsically unjust”: “But should it not be admitted that this is a weak form of *intrinsece malum* (intrinsic moral wrong), since the identification of the (morally excluded) object of choice involves a reference to (further) intentions and to circumstances – namely, that the proposed coercion is not intended (or needed) for the sake of preserving the rights of others, public peace or public morality?”

Finnis is clearly right: it is impossible simply to specify an absolute right to conscience that would protect, e.g., the rights of conscientious Nazis to lead their victims to slaughter. Yet the qualified nature of the right can also be seized upon by those who have it in mind to advance what they see as the common good as if the rights and claims of dissenters were not also to be taken into account in understanding that common good. So it is worthwhile here to discuss some of the ways in which liberty of conscience and religion can be infringed upon, and the conditions under which such infringements will be, or will not be, morally acceptable. In what follows I briefly discuss six forms of infringement, which I shall categorize as: stifling, burdening, violation by prohibition, violation by command, discrimination, and appropriation.

Judgments of conscience may take three forms: that an action is permissible, that it is obligatory, and that it is forbidden. Ordinarily, it does not make much sense to speak of a *violation* of conscience where an agent is forbidden from doing what they take to be permissible, and in some cases it is necessary for the state to prohibit actions that some consider, in conscience, permissible. Thus, a state that forbids the abortion of unborn children, on grounds that those children are human beings owed protection against violence does not *violate* the conscience of those who believe – in conscience – that abortion is morally permissible. And even actions rightly considered permissible may sometimes be regulated, for the state must implement a common scheme of coordination. Yet, the need for liberty, to facilitate the self-constitution of persons, is important: neither the state, nor any other institution should **stifle** that liberty by over-regulating in the domain of what is otherwise permissible.

It is more plausible to speak of a violation of conscience as regards actions understood by agents to be obligatory but forbidden by the state. But agents can be **burdened** as regards such actions by regulations that fall short of forbidding. Sometimes, again, there are good reasons for regulations which burden: reasonable safety regulations might make it more difficult for members of a church to sacrifice animals, eat special foods, or worship in particular places.

But burdens can be unreasonable, especially when they bear on matters of great significance, as in the issue of children's education. It is a primary obligation of parents to provide for their children's education, on terms that the parents judge reasonable and right. But the current scheme of public, and increasingly secular education, which affords almost no financial support for parents who wish to opt out, seems to burden

many parents in the fulfillment of their familial and religious obligations. While that system is arguably not set up precisely to thwart parents in fulfillment of their obligations, it nevertheless constitutes an unjust burden on citizens who are attempting to do their conscientious best.

I distinguish burdening from **violation by prohibition**. Here, an agent or institution is expressly forbidden from doing what he, she, or it, considers to be obligatory. This would appear to warrant the description “a violation of conscience.” Yet we should distinguish between a direct violation, and an indirect violation in the following way.

Suppose some person believes himself under a positive obligation to perform an action, such as an act of worship, in some particular way. If some authority – an agent of the state, for example -- attempts to forbid that action, and does so with the intention that the agent act contrary to his or her conscience, then that authority directly violates the agent’s conscience. The authority is attempting to get the agent to act wrongly – the authority acts, in fact, scandalously. But it can never be right to will that another do wrong, and so direct violations by prohibition are always wrong. (Nor are they inconceivable: tyrannical governments have always tried to ensnare citizens in wrongdoing so as to make them, as Socrates says in the *Apology*, complicit in their crimes.)

Sometimes, however, those in authority prohibit something deemed obligatory by some *not* so as to ensnare them, but because the action in question is deemed contrary to some significant aspect of the common good. That is, the intention of the public authority is not to suppress conscience, but to suppress acts that are contrary to the public good.

Suppression of such acts will often, of course, have as a side effect that agents do not fulfill those obligations they take themselves to have in conscience, and the risk of this side effect is of considerable significance, and requiring proportionate reasons such as those just mentioned. Still, it is only a risk: the fact that a legitimate authority has proscribed the act gives agents a new reason for action, and agents *could* act on *that* reason if they so chose.

What is crucial, however, and is noted explicitly in documents like the UN Declaration and *Dignitatis Humanae* is that for the state to command that some act deemed obligatory by a citizen, such as the wearing of a full veil by Islamic women, not be done, requires that a high standard be met: that the forbidden acts be significantly contrary to the public good, and that they be forbidden for this reason, and not out of antipathy to the religion or its adherents.

I want now, however, to consider the question of what is *forbidden* in conscience. Let me first distinguish two ways in which actions may be “forbidden,” or “impermissible.” First, if an agent believes, as in the discussion above, that some action is obligatory, then not so acting is consequently forbidden. But the obligatoriness of acting thus is usually, and perhaps always, partly a function of the nature of the circumstances. So, for example, while it is obligatory to feed my children, the impermissibility of not feeding them is mitigated when there is no food to be found. And one circumstance that can play a role in an agent’s deliberations is: that the state (or even, that my employer) has forbidden such and such a course of action.

By contrast, I am concerned here with an agent’s judgment that some kind of act may *never be done*: that the act is intrinsically impermissible. Examples of actions which

are always and everywhere impermissible are articulated by, for example, the Catholic Church: killing of the innocent, including deliberate abortion; rape; enslavement; non-marital sex acts, lies, and denial of one's faith. The impermissibility of such acts is not a function of whether some other, positive, obligation may be met. Rather, the demand is simply that, whatever one does, one not do these.

Here, the form that a violation of conscience will take is that of **violation by command**. And the question, as in the previous cases, is whether such violations must be direct, or whether they could possibly be indirect. Could the intention of the authority be, not that the agent violate her conscience, but merely to protect the public good?

I believe that these sorts of cases – in which an agent is commanded to do what he or she considers intrinsically immoral – must always be direct violations of conscience, and must always be intrinsically unjust. For there is an essential difference between these cases, and cases in which an agent is forbidden from doing what she takes to be obligatory. In these latter cases, the authority issues a command, for the sake of some important good, forbidding what the agent thinks is obligatory under the circumstances. Here, the issuing of the command itself might be taken by the authority to be the creation of circumstances under which the agent might, without violation of conscience, choose not to perform the otherwise obligatory action.

But this would be quite different from a command to do what an agent believes to be intrinsically impermissible. Suppose that an agent is commanded to participate in an abortion, or a sterilization procedure, despite her belief that abortion or sterilization are intrinsically impermissible. In this case an end is envisaged, and a means adopted requiring that an agent perform a particular action, where that action is *precisely* what she

takes to be morally impermissible, in all circumstances. The issuing of the command (and of threats, inducements, etc.) can have no bearing on whether the agent considers the act to be impermissible or not. Any *voluntary* compliance by the agent can only be obtained by agent's acting contrary to her conscience. The willingness of the agent to violate her conscience thus seems to be an intended means to the goal of getting the agent to perform the desired action, since there is no other way to get the agent voluntarily to perform. This cannot possibly be morally permissible, as it involves willing that another morally do wrong.

To reiterate, this need not be the case where a positive obligation is at stake, for the issuing of a command there creates a new reason for the agent – to comply with an authoritative command -- and the authority can intend that agents follow the command for that reason. But no such new reasons are available where a perceived exceptionless and negative moral absolute is at stake. So, to take an example not involving the shared moral views of Catholics, even though there is nothing morally wrong in the eating of some kind of meat, if some agents believe such consumption to be forbidden by a moral absolute, then, by my claim above, it would be wrong for the state to command eating, even for some great good.

Such cases seem somewhat unlikely, however, in a liberal democracy. Far more common than authoritative commands to act contrary to conscience is a targeted policy, adopted by professional institutions, the state, or both, to weed out conscientious objectors from, e.g., the medical profession, by offering a choice: violate your conscience, by performing these acts, or you will not (or no longer) be allowed in the profession. Such offers do not, strictly speaking, directly violate the conscience of

would-be health care providers – the intention might be simply to get those with certain religious or moral convictions out of the profession. Yet they identify the moral identity of those opposed to, for example, abortion, as so contrary to the common good, at least in the medical context, that such objectors must be eliminated from the profession. Let us call this, then, a **discriminatory infringement of conscience**. Perhaps situations exist in which states and professions are justified in taking such steps; but such policies would generally seem to be, and in the case of abortion and the medical profession certainly are, unjustly discriminatory against persons of considered religious and moral convictions in service of ends that are deeply morally disputed.

Finally, and raising perhaps the most difficult cases for moral judgment, are instances of what I will call, for want of a better phrase, the **appropriation of conscience**. It is a traditional doctrine in Catholic moral teaching, and supportable by natural law reasoning, that formal cooperation in another's wrongdoing is always impermissible. Such cooperation presupposes that another is planning on doing wrong, but the cooperating agent does something that will be of assistance to the wrongdoer while sharing in the wrongful intention. So pharmacists who, of their own accord, stock contraceptives and provide them to those who intend to contracept, share in those contraceptors' intentions, and formally cooperate with them.

Yet, as in cases where an agent takes herself to have a positive obligation to act in a certain way, an authoritative command creates new circumstances and thus new reasons to be taken into consideration. And so, what would have been formal cooperation, had the agent initiated it herself, might be material cooperation if the agent chooses to perform some physical act, not in itself intrinsically impermissible, for the sake of

complying with the authoritative command. Thus, Germain Grisez argues, in *Difficult Moral Questions*, that “the material cooperation of employee pharmacists [i.e., non-owners] who reluctantly dispense contraceptive drugs probably can be morally acceptable.”⁷

Now, my purpose here is not to suggest that this means that the state (or even an employer) acts legitimately in commanding cooperation. The state or employer is, rather, illegitimately *appropriating* that which is the business of the agent: the making of judgments of conscience, and the carrying out of those judgments. As in previous cases, it seems that this should only be done by those in authority, whether political or professional, if significant aspects of the common good are at stake, *and* if the matter is not one of general moral controversy. For in the latter case, the common good should be taken to include tolerance and respect for religious dissent, and the ability of religious citizens to form and act on their conscience – all of which would be jeopardized by laws and regulations appropriating those tasks.

No: what is of tremendous difficulty, and increasingly important, is for religiously and morally motivated citizens and institutions to judge *which* laws and regulations they should comply with, becoming material cooperators in the process, and which they should resist. For religious individuals and institutions in particular, considerations such as the importance of Christian identity, Christian witness, and the need to re-appropriate what the state has illegitimately taken away, might require, in the future, increasingly strong dissent, resistance, and, ultimately, personal and institutional sacrifice.

⁷ Germain Grisez, *The Way of the Lord Jesus Christ* vol. 3 *Difficult Moral Questions* (Quincy IL: Franciscan Press, 1997) p. 377.