

# Rethinking Acts of Conscience: Personal Integrity, Civility, and the Common Good\*

ERNESTO V. GARCIA

## Abstract

What should we think about ‘acts of conscience’, viz., cases where our personal judgments and public authority come into conflict such that principled resistance to the latter seems necessary? Philosophers mainly debate two issues: the *Accommodation Question*, i.e., ‘When, if ever, should public authority accommodate claims of conscience?’ and the *Justification Question*, i.e., ‘When, if ever, are we justified in engaging in acts of conscience – and why?’. By contrast, a third important topic – the *Conduct Question*, i.e., ‘How should we act, morally speaking, when engaging in acts of conscience?’ – has been mostly neglected. This paper aims to offer concrete guidance for persons wishing to engage in acts of conscience in morally virtuous ways. I argue that such agents are subject to two basic *prima facie* duties: (i) duties to oneself related to demands of integrity and (ii) duties to others related to demands of civility. I explain both duties in detail, arguing with regard to (i), that in light of what I call ‘the paradox of conscience’, we need to rethink our views about both ‘conscience’ and ‘integrity’; and with regard to (ii), that, building upon Rawls’ ‘duty of civility’, we should embrace at least seven general principles for undertaking acts of conscience in a morally conscientious manner.

## 1. Introduction

Even in a just society, there often exists a gap between our own private judgments and public authority. Some disputes are minor. We can dislike our town’s beautification project or be frustrated with the lack of public transit in our area. Other disagreements are more serious. We might morally disapprove of how public funds are being used, take a stand against government corruption, or protest what we take to be wrongful violations of basic rights.

We generally classify cases of principled resistance to public authority, on moral and/or religious grounds, as ‘acts of conscience’.

\* This essay was the runner-up in the 2021 *Philosophy essay* prize competition.

doi:10.1017/S0031819122000328 © The Author(s), 2022. Published by Cambridge University Press on behalf of The Royal Institute of Philosophy. This is an Open Access article, distributed under the terms of the Creative Commons Attribution licence (<https://creativecommons.org/licenses/by/4.0/>), which permits unrestricted re-use, distribution, and reproduction in any medium, provided the original work is properly cited.

This can take many forms, including conscientious objection, such as non-compliance with military conscription or health care professionals refusing to perform certain services; civil disobedience, where we nonviolently break the law in an attempt to bring about social reform, such as Gandhi's campaign against British rule or Martin Luther King Jr.'s struggles against racial segregation; and militant resistance or revolt, including struggles for independence against oppressive political regimes.

What should we think in general about acts of conscience? Philosophers typically focus on three main debates. First, there's the:

**Accommodation Question:** When, if ever, should public authority accommodate claims of conscience?

This is a serious issue since those who engage in acts of conscience seek to exempt themselves from – or even openly defy – legal duties that apply to everyone else, solely on the basis that it violates the dictates of their conscience. We can distinguish between three main positions. Borrowing Mark Wicclair's (2011) terminology, the 'Incompatibility Thesis' claims that acts of conscience should never be accommodated, while 'Conscience Absolutism' claims that they should always be accommodated. Lastly, the 'Compromise View' maintains that acts of conscience should sometimes be accommodated, though with various moral restrictions or demands.<sup>1</sup> Second, there's the:

**Justification Question:** Under what circumstances are we morally justified in engaging in acts of conscience?

The Accommodation Question asks how *public authority* should respond to acts of conscience. By contrast, the Justification Question focuses on *the actors themselves*. When, if ever, are individuals permitted to resist the demands of public authority when they conflict with our private conscience – and why? Philosophers have offered many different justifications. Traditional liberal justifications include toleration for moral diversity, respect for individual autonomy, respect for moral integrity, the need to maintain liberal neutrality, and the opportunity to provide an alternative means for

<sup>1</sup> For some discussions of the Compromise View, see Wicclair (2000), Asch (2006), Brock (2008), and Zolf (2019); for the Incompatibility Thesis, see Savulescu (2006), Leiter (2013), Schuklenk (2005), Giulbini (2017). and Savulescu and Schuklenk (2017); and for Conscience Absolutism, see Wicclair (2011, Ch. 2).

political participation and democratic protest.<sup>2</sup> More libertarian rationales include claims about a fundamental ‘right of disassociation’, that is, a right to not associate with or withdraw one’s association from individuals or groups, as well as claims about the benefits of a ‘moral marketplace’ of ideas where different convictions are allowed to flourish without government interference.<sup>3</sup> Generally speaking, this topic falls under the domain of what John Rawls calls ‘non-ideal theory’, where we seek to identify conditions under which non-ideal measures such as acts of conscience are justified. Third and lastly, there’s the:

**Conduct Question:** How should we behave, morally speaking, when engaging in acts of conscience? Put differently, what are morally virtuous – as opposed to morally vicious – ways of acting on our conscience when it conflicts with public authority?

While the Justification Question focuses on *the actor’s circumstances of engagement* – that is, when we’re justified in engaging in acts of conscience – the Conduct Question instead emphasizes *the actor’s manner of engagement* – that is, how we morally ought to conduct ourselves when behaving in this way. That is, from a 1<sup>st</sup>-person agential perspective, what duties must I fulfill – either towards myself or towards other people – if I’m to undertake acts of conscience in a morally conscientious manner?

Surprisingly, in comparison to the first two questions, this last question has been mostly neglected in the literature. Why? I think there are two likely reasons here. First, there is what I’ll call the *Merely Applied Ethics Worry*. It might seem that the most fundamental theoretical debates in moral, political, and legal philosophy regarding acts of conscience revolve around the first two questions: that is, deciding whether, if ever, public authority should accommodate acts of conscience [the Accommodation Question], and when, if ever, we’re morally permitted to engage in them [the Justification Question]. By contrast, the further issue of how we personally should behave while carrying out such acts of conscience [the Conduct Question] might seem to be merely a matter of applied ethics. In addition, we might think that the answer to this question is relatively obvious and uninteresting or else involves no specific moral obligations besides the run-of-the-mill ones that we owe to other people in general.

<sup>2</sup> Cf. Wicclair (2000), Wicclair (2011), Smith (2013), and Wester (2015).

<sup>3</sup> Cf. Oderberg (2018) and Vischer (2011).

Second, there is what I'll call the *Merely Strategic Worry*. One prominent case where the Conduct Question is addressed in great detail is civil disobedience. In order to achieve the aim of bringing about genuine social reform, it seems that those who engage in civil disobedience must act in certain ways. Some guidelines include being non-violent; making one's conduct public; being willing to accept legal punishment for one's actions; making communicative efforts to express one's principled opposition; etc.<sup>4</sup> One standard worry is whether these proposals amount to merely pragmatic or strategic suggestions for how to make one's case more acceptable and convincing to public sentiment rather than full-fledged moral duties.

I think that neglect of the Conduct Question is a deep mistake. It's not only an important philosophical issue in its own right. Indeed, it's a highly timely one, given current levels of civil unrest and resistance to government mandates, especially pandemic-related restrictions. This paper attempts to offer concrete guidance to those wishing to engage in acts of conscience in a morally virtuous way. The main thesis I defend is that all acts of conscience are subject to two basic *prima facie* duties: (1) duties to oneself based upon demands of integrity and (2) duties to others based upon demands of civility. The overall aim of this paper is to explore these two *prima facie* duties and how they're related. As we'll see, these duties are connected to deep moral and political questions about how we should treat both ourselves and our fellow citizens – thus addressing the *Merely Applied Ethics Worry*. (Further, I think we should object to the misguided prejudice against applied ethics implicit within this worry.) And these two duties are not simply pragmatic suggestions but full-fledged moral obligations – thus addressing the *Merely Strategic Worry*.

My plan is as follows. In Section 2, I discuss the conflict between individual conscience and public authority. I use Hobbes' distinction between 'private' and 'public' conscience as my point of departure. This gives rise to what I'll call the 'Hobbesian Dilemma', which sets the agenda for the rest of the paper. In Section 3, I examine how engaging in acts of conscience requires us to fulfill certain duties to oneself vis-à-vis concerns about integrity. In Section 4, I examine how engaging in acts of conscience requires us to fulfill certain duties to others vis-à-vis concerns about civility. Building on John Rawls' idea of a 'duty of civility', I identify seven basic principles that morally conscientious objectors should follow. Lastly, in Section 5, I offer concluding remarks.

<sup>4</sup> See Walzer (1970), Rawls (1971), Singer (1973), Brownlee (2012), Smith (2013), and Delmas (2016).

### 2. The Hobbesian Dilemma

The philosophical debate about how we should think about conflicts between private conscience and public authority is an old one. It goes back to at least Plato's *Crito* and Sophocles' *Antigone*. The seminal modern account of this issue, however, is found in the writings of Thomas Hobbes.

Hobbes lived during what Keith Thomas called 'The Age of Conscience' (Thomas, 1993, p. 29). In the historical context of the religious wars that dominated Europe from the 16<sup>th</sup>-18<sup>th</sup> centuries, Hobbes addresses the vexed issue of how to negotiate between the rival demands of private conscience and civil laws. As is well-known, Hobbes' main concern was to preserve social order. In light of this, he attacks the 'repugnant' doctrine that we ought to obey the dictates of our private conscience when it conflicts with the state. As he writes in *Leviathan*:

Another doctrine repugnant to Civil Society, is that whatsoever a man does against his Conscience, is Sin, and it dependeth on the presumption of making himself judge of Good and Evil. For a man's Conscience, and his Judgement is the same thing; and as the Judgement, so also the Conscience may be erroneous [...] it is not so with him that lives in a Commonwealth; because the Law is the public Conscience, by which he hath already undertaken to be guided. Otherwise in such diversity, as there is of private Consciences, which are but private Consciences, which are but private opinions, the Common must needs be distracted, and no man dare to obey the Sovereign Power, farther than it shall seem good in his own eyes. (Hobbes, 1996, XXIX, pp. 168-69)

Hobbes distinguishes here between 'private' and 'public' conscience. Private conscience is merely fallible opinion. If we permit acts of private conscience to have free rein – that is, if we allow everybody to simply do what 'seem[s] good in his own eyes' – this threatens to undermine civil society itself. Thus, Hobbes argues that we should instead always be guided by what he calls 'public conscience', by which he means simply the law as such.

Hobbes' attack on private conscience must be understood within the broader framework of the *Leviathan*. In the state of nature, Hobbes argues that everyone 'has a right to everything, and to do whatever he thought necessary to his own preservation' (Hobbes, 1996, XXVII, p. 161). Hobbes thinks that this condition inevitably results in 'a war of all against all' in which nobody's interests can be secured. To avoid this, Hobbes argues that we must give up our

unlimited freedom and enter into civil society. He identifies three specific freedoms that we must renounce. First, in contrast to *the unlimited freedom of action* we enjoyed in the state of nature, our freedom to act now depends on ‘the silence of the law’. That is, each person can now act ‘according to his discretion’ only when the law does not proscribe such conduct (Hobbes, 1996, XXI, p. 130). Second, in contrast to *the unlimited freedom to enforce one’s own claims about what seems right and wrong* against other parties in the state of nature, all disputants must now submit to the judgments of an impartial legal system. Third and most importantly for us, in contrast to *the unlimited freedom of conscience in all matters*, our conscience is now severely circumscribed within civil society. Hobbes allows discretionary freedom *to think* whatever we please. However, this same freedom does not extend to *acting on our private conscience as we like*, especially when doing so conflicts with public authority.<sup>5</sup>

In the end, Hobbes’ approach poses a basic dilemma. On the first horn, we can allow people to always act on their private conscience even when it conflicts with civil laws. Taken to an extreme, this results in anarchy and the general undermining of civil society. On the second horn, we can instead adopt Hobbes’ own solution. That is, we can maintain that private conscience should always be subordinated to what Hobbes calls ‘public conscience’, i.e., to the law itself. But this way leads to absolutism and potential unthinking submission to evil or unjust regimes. Call this the ‘Hobbesian Dilemma’.<sup>6</sup>

This same dilemma can be formulated in Rawlsian terms. In *A Theory of Justice*, Rawls distinguishes between ‘procedural’ and ‘substantive’ justice. Procedural justice involves satisfying the merely formal requirement to treat similar cases similarly. By contrast, substantive justice demands that we take up the ideally just course of action. On the one hand, one of the main pitfalls for procedural justice is that, as Rawls puts it, ‘[t]reating similar cases similarly is not a guarantee of substantive justice’. Indeed, procedural justice is compatible with the existence of ‘grossly unjust institutions’ (Rawls, 1971, p. 59). On the other hand, if we always act upon our own private judgments concerning what we take substantive justice to be – regardless of what the present legal system dictates – this ultimately leads to the breakdown of the social order itself. As

<sup>5</sup> For helpful discussions of Hobbes’ theory of conscience, see Thomas (1993), Hanin (2012), and May (2016). For an influential critique, see Tralau (2011).

<sup>6</sup> For a parallel – though more pessimistic – discussion of this type of dilemma, see Rosenfeld (2018).

Christine Korsgaard (2008) puts it, taken to an extreme, this would amount to simply ‘taking the law into our own hands’.

What’s the best solution to the Hobbesian Dilemma? At first glance, the answer might seem obvious. Between the extremes of (1) *always* acting in accordance with the dictates of our private conscience and (2) *always* submitting to public authority, we should take the moderate middle path of (3) *sometimes* submitting to public authority and *sometimes* following our private conscience. Unfortunately, such a response offers us very little practical guidance. By contrast, I propose that the answer lies in properly recognizing two basic *prima facie* duties that apply to all acts of conscience, viz.:

**Principle of Societal Maintenance:** We have a *prima facie* duty not to undermine the social order

**Principle of Conscience:** We have a *prima facie duty* to obey the dictates of conscience

*Contra* extreme (1) – that is, an unlimited freedom of conscience – the Principle of Societal Maintenance maintains that we have a *prima facie* duty not to act in ways that would undermine the social order. And *contra* extreme (2) – that is, unlimited obedience to authority – we have a *prima facie* duty to obey our personal conscience, where this can lead to potential conflict with public authority. Since both principles are merely *prima facie* duties, we need to balance these moral reasons not only against each other but also all other relevant *prima facie* duties in order to determine what our all-things-considered moral duty – that is, our duty *sans phrase* – is.<sup>7</sup>

In the rest of this paper, I explore the Principles of Conscience and of Societal Maintenance in more detail. I show how they answer the Conduct Question by concretely dictating how we ought to act, morally speaking, when undertaking acts of conscience.

### 3. The Conduct Question and the Principle of Conscience

#### *3A: The Paradox of Conscience*

What do we mean by ‘conscience’? Conscience has been variously construed as a ‘moral sense’, an ‘inner voice’, a divinely implanted faculty for distinguishing right and wrong, an ‘inner court’,

<sup>7</sup> This follows Ross’ influential views in Ross (2003). I thank Pete Graham for pressing me on clarifying this point.

a ‘principle of reflection’, and so on.<sup>8</sup> Going beyond a merely moral interpretation, Martha Nussbaum describes conscience as ‘the faculty with which each person searches for the ultimate meaning of life’ (Nussbaum, 2008, p. 168). For present purposes, I’ll just assume three commonly-accepted features of conscience. First, it involves a set of moral and/or religious beliefs, values, and principles. Second, it’s a guide for action and for moral accountability. Third, it’s related to certain core values that are somehow basic or central to who we are.

This gives rise to two main questions. First, *why* should we follow the dictates of our conscience? And second, *how* exactly should we follow them? With regard to the first question, the most widely accepted rationale is that acting in this way helps us to maintain or preserve our personal integrity. This doesn’t mean that when obeying our conscience, we’ll always act in a morally correct manner. Our conscience can sometimes err. Rather, as Cheshire Calhoun explains, ‘acting with integrity involves acting on *one’s own* principles’ (Calhoun, 1995, p. 248, emphasis in original). And ‘acting on one’s own principles’ requires following our conscience – that is, conforming to those core values that are basic or central to who we are as persons.

With regard to the second question, there are two basic options. One tempting view that has wide popular appeal is:

**Conscience Absolutism:** We should never violate the dictates of our conscience – that is, it’s always morally wrong to act against our conscience<sup>9</sup>

This view can be traced back at least to Thomas Aquinas. Aquinas argues that conscience is always authoritative for us. As he famously claims, even an erring conscience binds.<sup>10</sup> Against this approach, we might instead embrace:

**Restricted Conscience:** While we should generally follow our conscience, it is sometimes morally permissible to act against it

Notice that Restricted Conscience nicely lines up with the previously discussed Principle of Conscience. This is because if the latter is a

<sup>8</sup> For helpful overviews, see Childress (1979), Hill (2000; 2002), Brownlee (2012), and Sorjabi (2014).

<sup>9</sup> More precisely, we might call this Conscience Absolutism in a ‘personal’ sense, as opposed to the more ‘public’ sense of Conscience Absolutism discussed in §1.

<sup>10</sup> For an influential account of Aquinas’ view, see D’Arcy (1961).

merely *prima facie* duty, this implies that, when arriving at our all-considered moral judgment, we might sometimes decide that this *prima facie* duty is outweighed by others such that we're obligated to act contrary to what our personal conscience dictates.

Which view – Conscience Absolutism or Restricted Conscience – should we accept? On the one hand, Conscience Absolutism might seem like a truism. Isn't it always morally wrong to act against what our conscience – i.e., our core values – tells us to do? The problem, of course, is that our conscience can sometimes lead us morally astray. In light of this, it might seem more appropriate to adopt a more modest view like Restricted Conscience. Thomas Hill explains the intuitive appeal of such a view as follows:

What if conscience conflicts with the direct commands of those who have authority over us? [...] Regarding the conflict between conscience and authority, my theme has been a modest one: *both should be respected, but neither is an infallible moral guide; and if we cannot satisfy both, there is a need, time permitting, to look for a resolution in a process of moral reasoning.* In this process we survey the facts of the case, crucially examine relevant arguments, and listen to diverse opinions, considering all of this from a moral point of view. (Hill, 2000, pp. 260, 272-73, emphasis added)

Since neither private conscience nor public authority are infallible moral guides, we should adopt a more tempered approach that sometimes sides with our conscience, but at other times, when necessary, with public authority.

On the other hand, the second option – viz., Restricted Conscience – has a deeply paradoxical air to it. We can formulate the worry as follows:

**Paradox of Conscience:** We're sometimes morally required to act against what we think is morally right

Notice that this is strikingly parallel to a more well-known and widely discussed paradox in the literature, viz.:

**Paradox of Toleration:** We're sometimes morally required to tolerate what we think is morally wrong<sup>11</sup>

Indeed, I argue that these paradoxes are just two sides of the same coin. The Paradox of Toleration involves restraining acting upon

<sup>11</sup> For one classic discussion of the paradox of toleration, see Williams (1996).

our conscience vis-à-vis *another person's behavior*. By contrast, the Paradox of Conscience involves restraining acting upon our conscience vis-à-vis *our own behavior*. What both paradoxes share in common is a recognition that acting upon our conscience has its limits.

### *3B: Rethinking Conscience and Integrity*

In the rest of this third section, I explore one important attempt to dissolve the so-called Paradox of Conscience. In a response to Thomas Hill's view, Gerald Gaus distinguishes between two very different conceptions of conscience. On what he calls the 'Personal Conscience Interpretation', we should rely on our personal internalized moral convictions alone. This view allows for a potential conflict between our private conscience and the demands of public authority. By contrast, on what Gaus calls the 'Inclusive Conscience Interpretation', conscience instead involves considering the matter from an inclusive moral viewpoint. This requires assessing *all* relevant moral factors, including the claims of public authority itself, before deciding how we should act.

Understood the latter way, Gaus argues that 'the conflict between the claims of conscience and public authority is ultimately illusory' (Gaus, 2015, p. 143). That is, there's no possible residual conflict between our private convictions and public authority since both have already been taken into account when arriving at our overall moral judgment – that is, what our 'inclusive conscience' tells us to do. In this way, Gaus dissolves the Paradox of Conscience by showing that while we might sometimes be required to act against our private convictions, we're never forced to act against our conscience understood in an inclusive sense.

Despite its appeal, there are two problems with Gaus' attempt to avoid all potential conflicts of conscience. First, as Hill points out, what Gaus appears to be doing is simply identifying conscience with our all-things-considered moral judgment (Hill, 2015, p. 287). Seen this way, it threatens to make it trivially true that no conflict is possible. Inclusive conscience has presumably weighed all relevant moral factors when arriving at a singular all-things-considered moral judgment, such that no conflicting claims seem possible.

Second and more fundamentally, I don't think that Gaus' attempted dissolution ultimately succeeds. Instead, he just seems to push the issue a step back. For now we face a potential conflict within our inclusive conscience itself. The basic problem is that an all-things-considered moral judgment is fully compatible with

accepting that we might find ourselves ultimately confronted by what Thomas Nagel calls a ‘moral blind alley’ (Nagel, 1979, p. 74). That is, we sometimes face irreconcilable moral dilemmas where – even if we’re able to arrive at an all-things-considered moral judgment – all possible courses of action regrettably entail sacrificing one of our deeply cherished ideals for the sake of another.

Where does all this leave us? I agree with Gaus that ‘inclusive conscience’ is the more appealing way to understand the nature of conscience. However, I disagree with his claim that this somehow makes all potential conflicts ‘ultimately illusory’. In light of this, here’s my own proposal for a more nuanced and fully developed Principle of Conscience:

**Revised Principle of Conscience:** We have a *prima facie* duty to obey the dictates of our inclusive conscience – i.e., our all-things-considered moral judgment – in order to preserve our moral integrity. At the same time, we should acknowledge that conflicts might arise within our inclusive conscience itself such that we can’t avoid acting contrary to some of our deeply-held values while upholding others.

Interestingly, this Revised Principle of Conscience combines elements of *both* Conscience Absolutism and Restricted Conscience as discussed above. In line with the former view, the Revised Principle maintains that it’s always right – at least in the so-called ‘subjective’ sense of ought – to obey the dictates of ‘inclusive conscience’ understood as our all-things-considered moral judgment. But in line with the latter view, it acknowledges that what Gaus sees as our merely personal convictions – *à la* the Personal Conscience Interpretation – can sometimes err, such that it’s morally permissible to act contrary to them.

This leads us to two final lessons. First, I argue that we should rethink the nature of conscience. In particular, following Gaus, we should recognize two very different senses of conscience: (1) the loose and popular sense associated with our merely private convictions as such (‘Personal Conscience Interpretation’); and (2) a stricter sense of conscience identified with our reflective all-things-considered moral judgment (‘Inclusive Conscience Interpretation’). This helps to address one standard worry about appeals to conscience in the literature. Critics sometimes argue that conscience isn’t deserving of the esteem we typically accord it since it amounts to a merely formal ‘empty box’ into which any beliefs – even highly morally pernicious ones – can be indiscriminately placed (cf. Giulbini, 2016). While the loose sense of conscience is open to this objection, it seems that the

stricter sense of conscience – i.e., our reflective all-things-considered moral judgment – deserves much more respect. Nonetheless, we must still regard the Revised Principle of Conscience as only a *prima facie* duty since even our best all-things-considered moral judgments can sometimes be mistaken. We need to guard against not only faulty reasoning but also the possibility that our all-things-considered moral judgments might suffer from implicit bias, internalized oppression, and other cognitive distortions.

Second, we need to rethink the nature of personal integrity. On one prominent view, defended by Plato and contemporary philosophers like Harry Frankfurt and Christine Korsgaard, personal integrity requires that we are in some sense unified in terms of our overall values. As Simon Blackburn puts it: ‘Integrity especially implies a kind of unity or wholeness, a lack of fault lines or divisions [...] It implies that with a fracture, there can be no recovery, no moving on’ (Blackburn, 2014, pp. 163-64). He criticizes this ideal of integrity as being too ‘rigid’ and ‘simple-minded’ and concludes that personal integrity is not an ‘unalloyed good’ (Blackburn, 2014, pp. 167-68). If the present account is correct, however, then Blackburn is mistaken about what personal integrity demands. I argue that personal integrity only requires that we’re true to our inclusive conscience, i.e., our all-things-considered moral judgments. But as discussed above, this still allows for the possibility that ‘fault lines’ exist within our inclusive conscience itself. That is, our overall core values might be highly pluralistic and conflicted in nature, such that we might not be able to do justice to them all when acting on our conscience.

In general, this discussion shows that what I’m calling the *prima facie* duty of the Revised Principle of Conscience – which involves following our all-things-considered moral judgment while recognizing both its fallibility and the potential for irresolvable conflicts – is much more complex than it might initially appear and requires sound practical wisdom to be properly enacted.

#### **4. The Conduct Question and the Principle of Societal Maintenance**

##### *4A: Conscientious Objection and the Duty of Civility*

On to our second main topic: How should we relate to others – especially to our fellow citizens – when engaging in acts of conscience? This is addressed by the second main *prima facie* duty, viz.:

**Principle of Societal Maintenance:** We have a *prima facie* duty not to undermine the social order

There are many ways to obey this principle. These include, negatively speaking, refraining from criminal activity or inciting civil unrest, and, positively speaking, performing basic civic duties like paying our taxes or voting. The main question here is: What does the Principle of Societal Maintenance instruct us to do in particular with respect to acts of conscience?

In answering this question, I'll focus mainly on conscientious objection [CO]. This is because other cases – such as civil disobedience which involves publicly breaking the law, or revolt which typically involves armed resistance – introduce more substantive moral concerns. By contrast, CO simply centers on the issue of acting upon conscience as such. Further, since CO is less extreme, the more minimal moral requirements associated with it should also apply to more extreme measures like civil disobedience and revolt. To focus our discussion, I'll use Mark Wicclair's insightful definition of CO as the point of departure. He writes:

A person engages in an act of conscientious objection when she refuses to perform an action, provide a service, and so forth, on the grounds that doing so is against her conscience [where this involves] (1) refus[ing] to provide legal and professionally accepted goods or services that fall within their professional competence; and (2) justify[ing] their refusal by claiming that it is an act of conscience or is conscience-based. (Wicclair, 2011, p. 2)

Traditionally, discussions of CO have focused on pacifist refusal to perform military service. In recent years, however, the attention has shifted to conscience-based refusals in the health care profession and religious-based exemptions to anti-discrimination laws. Some common examples of CO in medicine involve abortion, sterilization, emergency contraception, assisted reproduction, euthanasia, and withdrawal of life-support, and, in relation to religious-based exemptions, refusals to provide commercial services such as bakery or photography for same-sex weddings or to provide insurance coverage to employees for emergency contraception.<sup>12</sup>

Instead of taking up a piecemeal approach, I want to identify more general ethical principles for CO here. To start with, observe that CO

<sup>12</sup> See *Elane Photography vs. Willock* (2013), *Masterpiece Cakeshop vs Colorado Civil Rights Commission 584 US* (2018), and *Lee v Ashers Baking Company Ltd and others* (2018).

imposes certain burdens – often substantial ones – upon those who are denied services due to conscience-based refusals, even if the parties require such services and have a legal right to them. This draws attention to the fact that for conscientious objectors who wish to behave in morally virtuous ways, they need to do more than just fulfill the *prima facie* duty to obey their conscience. They must also acknowledge *prima facie* duties that they owe to other people. What are these latter duties?

I think the most plausible candidate revolves around what Rawls calls the ‘duty of civility’.<sup>13</sup> In *A Theory of Justice*, he describes this as a two-fold duty. On the one hand, we have a duty to comply with democratically enacted laws even when the outcomes of such democratic procedures are ones we disagree with – except in cases when violations of justice are so serious that they call for non-ideal measures such as civil disobedience. On the other hand, we have a duty not to exploit loopholes in the system to unfairly advance our own self-interest (Rawls, 1971, pp. 354-55). And in *Political Liberalism*, Rawls claims that when we seek to exercise the coercive power of the state with respect to matters of basic justice and constitutional essentials, we have a duty of civility – where this is amounts to a moral rather than legal duty – to offer ‘public reasons’ that draw upon a common point of view, rather than private ones based only on our merely individual comprehensive doctrines (Rawls, 2005, p. 217).

What both Rawlsian accounts have in common is the idea that fulfilling the duty of civility demands, as Cheshire Calhoun puts it, ‘a *display* of respect, tolerance, or considerateness’ (Calhoun, 2000, p. 259). In obeying our duty of civility, we show a willingness to interact with our fellow citizens on fair terms of cooperation that express mutual respect, tolerance, and considerateness. Thus, if we want to engage in CO in a morally virtuous way, it seems that we need to balance between two basic moral concerns: (i) a *prima facie* duty to ourselves to obey our conscience and (ii) a *prima facie* duty to others to display civility towards them while engaging in such behavior. We’ll explore what this balance looks like in the rest of this section.

#### *4B: Ethical Guidelines for Conscientious Objection*

What concrete ethical principles should guide us when engaging in CO? Rather than trying to offer an exhaustive treatment, I’ll restrict

<sup>13</sup> For helpful discussions of ‘civility’ in addition to Rawls, see Zwiebach (1975), Calhoun (2000), Sistare (2004), Bejan (2017), and Bonotto and Zech (2021).

## Rethinking Acts of Conscience

my focus in light of two basic desiderata. First, I want to identify general principles that can apply to most cases of CO. Second, I want to offer guidelines that can potentially achieve broad – even if not unanimous – acceptance among those who genuinely desire to engage in CO in morally virtuous ways.

I'll start with three fundamental requirements that nearly all philosophers accept, viz.:

**Principle #1:** CO must be sincere

**Principle #2:** CO must be a matter of moral integrity (i.e., related to one's core principles)

**Principle #3:** CO must be minimally rational (i.e., involving no obvious factual errors and/or illogical reasoning)

First, CO must be genuine or sincere. For example, if I claim to oppose mandatory military service on conscience-based grounds, but I'm moved by purely self-interested reasons, then I violate this first principle.

Second, CO must be related to core moral or religious beliefs and values. For example, one recent rationale for conscientiously refusing to wear masks offered by a American lawmaker – viz., because 'wearing a mask dishonors God' – might violate this principle if this turns out to be a merely *ad hoc* or newly-invented belief that has no actual basis in their faith tradition.<sup>14</sup>

Third, if CO is based on obvious factual errors or illogical reasoning, then one engages in CO badly. Notice that this third principle does not demand that we must be *reasonable*.<sup>15</sup> What counts as being 'morally reasonable' is an often highly contested matter, thus violating our second desideratum. Instead, this principle merely claims that one has not only an epistemic duty, but also a related moral duty, to be minimally *rational* in terms of trying to avoid obvious factual mistakes or illogical reasoning when engaging in CO.

A fourth principle bears upon recent controversies involving anti-maskers and anti-vaxxers, i.e., persons who engage in conscience-based refusals to comply with mask or vaccine mandates. One standard rallying cry is 'Freedom!', where this seems to involve the idea that it's fundamentally illegitimate for government to try to restrict

<sup>14</sup> <https://www.nbcnews.com/news/us-news/ohio-lawmaker-refuses-wear-mask-because-he-says-it-dishonors-n1201106>. Notice that this example also might likely violate Principle #1.

<sup>15</sup> For defense of the stronger demand of 'reasonableness' rather than 'minimal rationality', see, for example, Rawls (2005), Brownlee (2012), Smith (2013), Zolf (2019), and Card (2020).

their freedom in such ways. Without making any substantive judgments for or against this position, I just want to highlight one basic worry about this rationale. Demands for freedom as such ignore the basic Hobbesian – and indeed, the general social contract tradition – lesson discussed above in §2. There are no unlimited freedoms in civil society. Not only do there exist certain absolute side-constraints that restrict our freedom of conscience: for example, regardless of our religious beliefs, we're not permitted to engage in ritual human sacrifice. In addition, we must recognize that our individual freedom must always be balanced against the basic government interest in establishing laws and policies that promote the 'general welfare', 'common good', and 'public safety'. This leads to:

**Principle #4:** CO cannot be a sheer expression of will or a demand for freedom *as such*, since this ignores the fundamental social agreement underlying society itself

The fifth principle relates mainly to cases of religious-based exemptions to anti-discrimination laws. Well-known examples include bakers and photographers refusing to provide their services for same-sex weddings or public officials refusing to grant marriage licenses to same-sex couples on the basis that doing so violates their religious beliefs. It's important to reiterate that my main concern here is *not* with the Accommodation or Justification Questions. In particular, I'm not addressing the political issue of whether we should have a right to engage in such acts of conscience. As Jeremy Waldron (1993) points out, we often have a legal right to act in highly morally objectionable and/or offensive ways. My concern is only with the Conduct Question. Morally speaking, what should we think about such cases?

This is a complex matter. On the one hand, in light of the Principle of Conscience, conscientious objectors should generally refrain from violating their core moral and religious beliefs. On the other hand, in keeping with the Principle of Societal Maintenance, they still have a moral duty to treat their fellow citizens with basic civility and respect. Rather than making judgments about any specific case, I want to propose a general framework for how to approach such matters. I argue that we should think about these cases along a continuum. At one extreme, imagine that the service in question is highly impersonal in nature, e.g., baking a mass-produced cake or merely selling stationary supplies for wedding invitations. At the other extreme, suppose that the service involved is a highly personal matter, e.g., a painter or musical composer offering highly individualized artworks for each of her clients. In the middle lie borderline cases, very likely including some of the examples discussed above.

What this highlights is the fundamental need to exercise good practical wisdom to distinguish between actions that are genuine matters of integrity and those which are not. Following in the tradition of Catholic moral theology, David Oderberg offers a detailed ‘ethics of cooperation’ for when performing certain services do – and do not – render us complicit in what we regard as morally objectionable actions. Some general rules include whether ‘the cooperation was relatively proximate or remote, dispensable or indispensable, whether the primary act is seriously wrong or only a minor wrong’, etc. (Oderberg, 2018, p. 60). In addition to these suggestions, I think we should recognize – in keeping with our overall emphasis on personal integrity – a general rule that asks whether the nature of the services involved are genuinely expressive of certain core features of the conscientious objector’s conscience – that is, her overall identity – or not. This suggests:

**Principle #5:** We should refrain from making merely impersonal things personal, i.e., turning everything into a matter of conscience

There are three basic problems associated with the general tendency to violate this principle. First, this tendency can easily become the moral vice of what Jesse Summers and Walter Sinnott-Armstrong (2019) call ‘scrupolism’. Rather than being a virtue, this can amount to what they call a ‘moral OCD’ where we have an overly fastidious concern to maintain ‘clean hands’, sometimes accompanied by a mistaken belief in our own moral superiority. Second, we often act upon this tendency inconsistently. We emphasize disassociating from certain people or practices that we find morally objectionable, usually related to socially stigmatized sexual practices. In the meantime, we remain unbothered by associating with other people or practices that are equally or more morally objectionable, even when judged by the standards of our own moral and/or religious traditions.

Third and most important, it seems that all citizens have a reasonable expectation to be able to access basic services or goods without needing to pass a kind of ‘moral screening test’, especially when the services or goods in question are wholly impersonal in nature. Otherwise, this leads to potential widespread ‘conscience wars’ that most likely violate our basic duty of civility. Even if we may have a legal right to behave this way, it seems morally objectionable to make everything a matter of conscience – since people living in a pluralistic democratic society have a reasonable expectation that many interactions in the public sphere should be impersonal in nature and not subject to the whim of each person’s private conscience.

The sixth principle is more formal or methodological in nature, applying to all cases of CO. It states:

**Principle #6:** Whenever possible, we should seek the most reasonable compromise between the various competing values related to our inclusive conscience

If we want to engage in CO in a morally virtuous way, then, wherever possible, we should strive to do justice to *all* of our core values. This can sometimes be a highly difficult affair. In the present context, this requires in particular that conscientious objectors seek to uphold both the *prima facie* duty to obey one's conscience and the *prima facie* duty to display basic civility, tolerance, and respect towards our fellow citizens.

There are three main cases here. At one end of the spectrum are cases where a compromise is readily available. For example, in many countries, those who refuse on conscience-based grounds to engage in mandatory military service often have alternative means available for fulfilling their civic duties. These include non-combatant positions or performing public service not related to any war efforts at all. At the other end of the spectrum are cases that seem to permit no compromise. For example, if a health care professional truly believes that abortion and euthanasia are murder, then they should disassociate from this practice altogether. But what happens if no institutional accommodations for CO are available here? In such scenarios, the conscientious objector should either seek to reform the institution in question or else give up their commitment in order to avoid an irreconcilable conflict. In a famous speech delivered while running for the president of the United States, John F. Kennedy provided a paradigmatic example of such integrity when discussing the relationship between his Catholic faith and his official duties as a public servant. As he declared:

Whatever issue may come before me as president – on birth control, divorce, censorship, gambling or any other subject – I will make my decision in accordance with these views, in accordance with what my conscience tells me to be the national interest, and without regard to outside religious pressures or dictates. And no power or threat of punishment could cause me to decide otherwise.

But if the time should ever come – and I do not concede any conflict to be even remotely possible – when my office would require me to either violate my conscience or violate the national

## Rethinking Acts of Conscience

interest, then I would resign the office; and I hope any conscientious public servant would do the same.<sup>16</sup>

In between these two extremes are cases where a conscientious agent – who is deeply committed both to following her conscience and to treating all her fellow citizens with civility and respect – is morally obligated to search for a reasonable compromise. Take the case of a baker who is asked to make a cake for a same-sex wedding that they morally or religiously disapprove of. Simply refusing to do so can be criticized for failing to honor one's moral commitment to treat all one's fellow citizens with basic civility and respect, since the same-sex couple might likely feel stigmatized, discriminated against, or somehow inferior.

What might a reasonable compromise – one that does justice to *all* of the morally virtuous conscientious objector's core values – look like in this case? If the main worry – as has been the case for most court battles about this issue – is that baking a cake with a certain message somehow amounts to an implicit endorsement of the practice, then one reasonable compromise might be to have a clear disclaimer on one's business window or website explicitly stating that baking cakes in no way implies an endorsement of any practices the cake is related to, including same-sex weddings, etc., while at the same time simply performing this service with no fuss. Alternatively, if one finds writing a specific phrase on the cake somehow too morally objectionable, one can simply sell the cake and inform the client that they must go elsewhere to get the lettering for the cake done. The main point here is that finding a reasonable compromise between all of one's deeply-held values – where, for the morally conscientious agent, this includes both a commitment to one's conscience and to displaying basic civility and respect for one's fellow citizens – is better than simply opting for no reasonable compromise at all.<sup>17</sup>

<sup>16</sup> <https://www.npr.org/templates/story/story.php?storyId=16920600>.

<sup>17</sup> As an anonymous review insightfully points out, there seems to be an important disanalogy between the various examples discussed here. In the case of a baker refusing to make a wedding cake or a doctor who is unwilling to perform abortions, there are often many other bakers or doctors who could do the job in question. By contrast, there was no alternative president around to whom one could turn if Kennedy was impeded by his conscience. There are two responses here. First, what this highlights is that the demand to seek for a reasonable compromise is highly situation-dependent. In particular, the moral stakes are much higher if engaging in CO seriously jeopardizes or infringes upon the general availability of the services in question,

Lastly, the seventh principle related to engaging in CO is:

**Principle #7:** We should cultivate a proper appreciation of the common good

In many ways, this principle picks out a fundamental moral virtue that underlies and supports all of the previous Principles #1-6. As we've seen, CO – as well as other acts of conscience – generate burdens upon our fellow citizens and the potential for violating our basic duty of civility towards them. Therefore, in engaging in CO in a morally virtuous way, we must care about not only the dictates of our own conscience, but also what is conducive to the common good for the society in which we live.

## **5. Summary**

One of the central debates regarding the overall relationship between self and society concerns what we should do in cases where our private judgments and public authority conflict. In this paper, I've explored a neglected issue related to this debate, what I've called the Conduct Question, viz.: How we can engage in acts of conscience – that is, principled resistance to public authority – in morally virtuous, as opposed to morally vicious, ways?

This paper attempts to lay the basic groundwork for answering this question by examining two main *prima facie* duties that apply to all acts of conscience: (i) duties to oneself to obey the dictates of one's

---

but less so if there are many alternative options for having the same services fulfilled. However, for arguments that, in the case of medical exemptions, doctors are never entitled to engage in CO in cases of abortion, contraception, etc., due, in part, to general accessibility concerns, see Savlescu (2006), Schuklenk (2015), Guilbini (2017), and Savelescu and Schuklenk (2017).

Second, from the standpoint of the agent who wants to engage in CO in a morally conscientious way, it's still the case – in keeping with Principle #6 above – that they ought to act in a way that does justice to *all* their different fundamental values. If they do genuinely value both being true to their private conscience and wanting to display civility towards their fellow citizens, then, even if the service in question – e.g., baking a wedding cake with a certain message written on it – is readily available from other providers, they should still strive to accompany their refusal with some basic concern to show tolerance, civility, and considerateness towards their fellow citizens.

own conscience and (ii) duties to others to display basic civility and respect towards one's fellow citizens. Much more can be said about this topic. What I've tried to show here is that this is not only a deep and rich philosophically interesting issue in its own right. It's also a highly timely and important one that deserves much more attention than it's previously received from both moral and political philosophers.<sup>18</sup>

### Competing Interests

The author declares none

### References

- Adrienne Asch, 'Two Cheers for Conscience Exceptions', *Hastings Center Report* (2006), 11–12.
- Teresa Bejan, *Mere Civility: Disagreement and the Limits of Toleration* (Cambridge: Harvard University Press, 2017).
- Simon Blackburn, *Mirror, Mirror: The Uses and Abuses of Self-Love* (Princeton: Princeton University Press, 2014).
- Matteo Bonotti and Steven Zech, *Recovering Civility During COVID-19* (Singapore: Palgrave MacMillan, 2021).
- Dan Brock, 'Conscientious Refusal by Physicians and Pharmacists: Who Is Obligated to Do What, and Why?', *Theoretical Medicine and Bioethics* 29 (2008), 187–200.
- Kimberly Brownlee, *Conscience and Conviction: The Case for Civil Disobedience*, (Oxford: Oxford University Press, 2012).
- Cheshire Calhoun, 'Standing for Something', *Journal of Philosophy* 92 (1995), 235–60.
- Cheshire Calhoun, 'The Virtue of Civility', *Philosophy and Public Affairs* 29 (2000), 251–275.
- Robert Card, *A New Theory of Conscientious Objection in Medicine: Justification and Reasonability* (New York and London: Routledge, 2020).
- James Childress, 'Appeals to Conscience', *Ethics* 89 (1979), 315–335.
- Eric D'Arcy, *Conscience and Its Right to Freedom* (New York: Sheed and Ward, 1961).
- Candice Delmas, 'Civil Disobedience', *Philosophy Compass* 11 (2016), 681–691.

<sup>18</sup> I wish to thank Nick Vallone for many fruitful discussions of the topic of this paper, as well as for his enormously helpful comments on multiple drafts of the paper. In addition, I would like to thank my colleagues who attended and offered feedback on this paper at a UMass Brownbag faculty talk, as well as Louise Antony in particular for her very insightful feedback when discussing the paper at length afterwards.

## Ernesto V. Garcia

- Gerald Gaus, 'Private and Public Conscience (Or, Is the Sanctity of Conscience a Liberal Commitment or an Anarchical Fallacy?)', pp. 135–156 in *Reason, Value, and Respect*, ed. by Mark Timmons and Robert Johnson, (Oxford: Oxford University Press, 2015)
- Alberto Giubilini, 'Objections to Conscience: An Argument Against Conscience Exemptions in Healthcare', *Bioethics* 31 (2017), 400–408.
- Mark Hanin, 'Thomas Hobbes' Theory of Conscience', *History of Political Thought* 33 (2012), 55–85.
- Thomas Hill, *Respect, Pluralism and Justice* (Oxford: Oxford University Press, 2000).
- Thomas Hill, *Human Welfare and Moral Worth* (Oxford: Oxford University Press, 2002).
- Thomas Hill, 'Looking Back: Main Themes and Appreciation', pp. 269–296 in *Reason, Value, and Respect*, ed. by Mark Timmons and Robert Johnson, (Oxford: Oxford University Press, 2015).
- Thomas Hobbes, *Leviathan* (Cambridge: Cambridge University Press, 1996).
- Christine Korsgaard, 'Taking the Law into Our Own Hands: Kant on the Right of Revolution', in *The Constitution of Agency* (Oxford: Oxford University Press, 2008).
- Brian Leiter, *Why Tolerate Religion* (Princeton: Princeton University Press, 2013).
- Larry May, 'Hobbes, Law, and Public Conscience', *Critical Review of International Social and Political Philosophy* 19 (2016), 12–28.
- Thomas Nagel, *Mortal Questions* (Cambridge: Cambridge University Press, 1979).
- Martha Nussbaum, *Liberty of Conscience* (New York: Basic Books, 2008).
- David Oderberg, *Opting Out: Conscience and Cooperation in a Pluralistic Society* (London: The Institute of Economic Affairs, 2018).
- Richard Park, *Constructing Civility* (Notre Dame: University of Notre Dame Press, 2017).
- John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971).
- John Rawls, *Political Liberalism: Expanded Edition* (New York: Columbia University Press, 2005).
- Michel Rosenfeld, 'The Conscience Wars in Historical and Philosophical Perspective: The Clash between Religious Absolutes and Democratic Pluralism', pp. 23–58, in *The Conscience Wars: Rethinking the Balance between Religion, Identity, and Equality*, ed. by Susanna Mancini and Michel Rosenfeld (Cambridge: Cambridge University Press, 2018).
- W.D. Ross, *The Right and the Good* (Oxford: Clarendon Press, 2003).
- Julian Savulescu, 'Conscientious Objection in Medicine', *BMJ* 332 (2006): 294–297.
- Julian Savulescu and Udo Schuklenk, 'Doctors Have No Right to Refuse Medical Assistance in Dying, Abortion, or Contraception', *Bioethics* 31 (2017), 163–170.

## Rethinking Acts of Conscience

- Udo Schuklenk, 'Conscientious Objection in Medicine: Private Ideological Convictions Must Not Supersede Public Service Obligations', *Bioethics* 29 (2015), ii–iii.
- Jesse Summers and Walter Sinnott-Armstrong, *Clean Hands: Philosophical Lessons from Scrupulosity* (Oxford: Oxford University Press, 2019).
- Peter Singer, *Democracy and Disobedience* (Oxford: Clarendon Press, 1973).
- Christine Sistare, ed., *Civility and Its Discontents: Essays on Civic Virtue, Toleration, and Cultural Fragmentation* (Lawrence: University Press of Kansas, 2004).
- William Smith, *Civil Disobedience and Deliberative Democracy* (London: Routledge, 2013).
- Richard Sorjabi, *Moral Conscience Through the Ages: Fifth Century BCE to the Present* (Chicago: University of Chicago Press, 2014).
- Keith Thomas, 'Cases of Conscience in Seventeenth-Century England', pp. 29–56 in *Public Duty and Private Conscience in Seventeenth-Century England*, ed. by John Morrill, Paul Slack, and Daniel Woolf (Oxford: Clarendon Press, 1993).
- Johan Tralau, 'Hobbes contra Liberty of Conscience', *Political Theory* 39 (2011), 58–84.
- Robert Vischer, *Conscience and the Common Good: Reclaiming the Space Between Person and State* (Cambridge: Cambridge University Press, 2010).
- Jeremy Waldron, 'A Right to Do Wrong,' pp. 63–87, in *Liberal Rights* (Cambridge: Cambridge University Press, 1993).
- Michael Walzer, *Obligations: Essays on Disobedience, War, and Citizenship* (Cambridge: Harvard University Press, 1970).
- Gry Wester, 'Conscientious Objection by Health Care Professionals', *Philosophy Compass* 10 (2015), 427–437.
- Mark Wicclair, 'Conscientious Objection in Medicine', *Bioethics* 14 (2000), 205–227.
- Mark Wicclair, *Conscientious Objection in Health Care* (Cambridge: Cambridge University Press, 2011).
- Bernard Williams, 'Toleration: An Impossible Virtue?', pp. 18–27, in *Toleration: An Elusive Virtue*, ed. by David Heyd (Princeton: Princeton University Press, 1996).
- Benjamin Zolf, 'No Conscientious Objection Without Normative Justification: Against Conscientious Objection in Medicine', *Bioethics* 33 (2019), 146–153.
- Burton Zwiebach, *Civility and Disobedience* (Cambridge: Cambridge University Press, 1975).