

THE ERRING CONSCIENCE:
AQUINAS ON FREEDOM OF CONSCIENCE IN PLURALISTIC SOCIETY

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ABSTRACT

Today's political landscape encourages freedom of conscience while maintaining the tolerance of pluralism. But can conscience be wrong? Pervasive emotivism in Western culture defines morality as an expression of opinion elevates conscience to the supreme status of being the only judge of morality. In this view, authenticity is the only criterion for morality and conscience is reduced to peace of mind or reassurance about one's choices. This view of conscience ultimately undermines the possibility of maintaining basic shared values that are necessary for pluralism.

Contrary to the emotivist view, the objectivist view provides a clear and precise definition of conscience that encourages freedom of conscience as well as providing guidelines for its limits based upon a distinction between internal motivation and external objective morality. This position will be presented with recourse to Thomas Aquinas and his advocates as they allow for the possibility of an erring conscience that leaves room to grow and leaves room for society to judge right and wrong behavior. I will cover such questions such as the following: Can conscience be mistaken? Does an erring conscience impose moral obligation? Can doing the right action feel wrong? How can freedom of conscience be encouraged while providing safeguards against moral anarchy?

KEYWORDS

Pluralism
Existentialism
Conscience
Freedom of Conscience
Thomas Aquinas
Natural Law
Ethic
Moral
Objectivism
Subjectivism

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Although the current verbiage of the First Amendment does not explicitly mention conscience, an earlier draft proposed by Samuel Livermore states, “Congress shall make no laws touching religion, or infringing the rights of conscience,” and the Supreme Court has often interpreted the first amendment to claim that “Freedom of conscience . . . cannot be restricted by law” or that “the individual freedom of conscience [is] protected by the First Amendment.”¹ In affirming freedom of conscience, we may ask whether people’s consciences can lead them into intolerable behavior. If they do, social commentators are quick to cry “hate speech” in a modern witch hunt, McCarthyism, or communist blacklisting. If society is to survive pluralism, we must consider whether a conscience can be in error. In other words, it is not enough to say someone’s action is motivated by conscience. It must also be asked whether their action was right. This distinction cannot be established with the emotivist explanation of morality prevalent in American culture today. I will utilize the philosophy of Thomas Aquinas, Joseph Ratzinger, Pope John Paul II to argue for an objectivist definition of conscience. This explanation will provide a view of the erring conscience that both encourages the freedom of conscience as well as providing guidelines for its limits in a pluralistic society.

¹ Samuel Livermore, *Annals of Congress*, House of Representatives, 1st Congress, 1st Session, August 15, 1789; Owen Roberts, *Cantwell v. Connecticut*, 310 U.S. 296 (1940); Justice John Paul Stevens, *Wallace v. Jaffree*, 472 U.S. 38 (1985).

Two Approaches to Conscience: Subjectivism and Objectivism

David Hume famously said that morals are expressions of opinion and emotion.² A.J. Ayer and Bertrand Russell were more recent proponents of this view. If morals are a matter of opinion, then one opinion cannot be more correct than another. This has created the present landscape of irreconcilable pluralism. Bernard Williams says, “We must reject the objectivist view of ethical life as . . . a pursuit of ethical truth. . . . Our conception of the world as the object of our beliefs can do no better than repeat the beliefs we take to represent it. . . . [Science] has some chance of being . . . [an] account of how the world really is, while ethical thought has no [such] chance.”³ Williams says, morals cannot be founded on a description of the world, so we cannot reasonably hope for a convergence of ethical opinion. There is no objective standard by which to judge one opinion as more correct than another.

Pluralism impacts civil policies regarding freedom of conscience where law cannot prefer one ideology to another. Yet, civil laws necessarily favor some opinions over others as an extension of the shared values of the culture. In the most controversial cases presented in the Supreme Court, favor is not clearly adjudicated. On June 6, 2017, the Supreme Court reopened a case on religious liberty where a Colorado baker lost lower court battles over his refusal to create a wedding cake for a gay couple. The baker cited his religious beliefs and freedom of conscience. Of course, this comes in the wake of the 2015 Obergefell decision to permit gay marriage nationally.⁴

² David Hume, *Enquiry Concerning the Principles of Morals*, in John Cottingham *Western Philosophy: An Anthology*, 2nd ed. (Oxford: Blackwell Publishing, 2008), 500-506.

³ Bernard Williams, *Ethics and the Limits of Philosophy* (London: Collins/Fontana, 1985), 135-155.

⁴ *Obergefell v. Hodges*, 576 U.S. 23 (2015)

Further examples of controversy abound. In recent memory Kim Davis, a Kentucky clerk, refused in 2015 to sign marriage certificates for gay couples on the basis of conscience. Similar controversies continue as the United States legal system attempts impartiality in cases where a clear judgment must be made, and that clear judgment will necessarily offend someone's conscience. If Western culture is to survive pluralism, some consensus must be established regarding the limits of conscience.

Pope John Paul II says, "The dignity of the human person is a concern of which people of our time are becoming increasingly more aware." It is upon this proper value that there is a "demand that people be permitted to 'enjoy the use of their own responsible judgment and freedom, and decide on their actions on grounds of duty and conscience, without external pressure or coercion.' In particular, the right to religious freedom and to respect for conscience on its journey towards the truth is increasingly perceived as the foundation of the cumulative rights of the person."⁵ John Paul affirms modern progress in encouraging the freedom of conscience, but, it has seen widespread misapplication. He states:

Certain currents of modern thought have gone so far as to *exalt freedom to such an extent that it becomes an absolute, which would then be the source of values*. . . . The individual conscience is accorded the status of a supreme tribunal of moral judgment which hands down categorical and infallible decisions about good and evil. . . . But in this way the inescapable claims of truth disappear, yielding their place to a criterion of sincerity, authenticity and 'being at peace with oneself,' so much so that some have come to adopt a radically subjectivist conception of moral judgment.⁶

John Paul observes that conscience has gained a supreme status such that authenticity is valued at the exclusion of truth. If authenticity is the only test for moral validity, we will find

⁵ Pope John Paul II, *Veritatis Splendor: Encyclical Letter*, (Boston, MA: St. Paul Books & Media, 1993), chapter 2, section 31.

⁶ John Paul II, chapter 2, §§ 31-32.

ourselves in an irreducible pluralism and “a radically subjectivist conception of moral judgment.” Conscience, in an emotivist culture, is simply “being at peace with oneself.” Hume said, “Inward peace of mind, consciousness of integrity, and satisfactory review of our own conduct; these are circumstances very requisite to happiness.”⁷ Without anchoring conscience to an external standard, all manner of sociopathy will be permitted.⁸ John Paul says further,

Once the idea of a universal truth about the good, knowable by human reason, is lost, inevitably the notion of conscience also changes. Conscience is no longer considered in its primordial reality as an act of a person's intelligence, the function of which is to apply the universal knowledge of the good in a specific situation and thus to express a judgment about the right conduct to be chosen here and now. Instead, there is a tendency to grant to the individual conscience the prerogative of independently determining the criteria of good and evil and then acting accordingly. Such an outlook is quite congenial to an individualist ethic, wherein each individual is faced with his own truth, different from the truth of others. Taken to its extreme consequences, this individualism leads to a denial of the very idea of human nature.⁹

John Paul here defines the implications of emotivism for two distinct views of conscience. *Emotivism* considers the conscience to be a subjective emotion of reassurance that equates to a supreme judge of morality while *objectivism* considers the conscience to be an application of the knowledge of general external truths to particular situations. There are many varieties of these two approaches to conscience, but a broad characterization will suffice for the present discussion.

⁷ David Hume, 506.

⁸ For more on the relationship between conscience and authority, see Reinhard Hutter, “Conscience 'Truly So Called' and Its Counterfeit: Newman and Aquinas on What Conscience is and Why it Matters,” *Nova et Vetera* 13:3 (2014): 701-767; and Joseph Cardinal Ratzinger, “Conscience and Truth,” presented at the 10th Workshop for Bishops, February 1991, Dallas, Texas.

⁹ John Paul II, chapter 2, §§ 31-32.

Conscience and Rational Nature

John Paul attaches the objectivist view to human nature, affirming essentialism and denying existentialism. The moral law, or natural law, is the external moral standard discoverable by all humans in virtue of their rational nature. Citing the Second Vatican Council, John Paul quotes, “In the depths of his conscience man detects a law which he does not impose on himself, but which holds him to obedience.”¹⁰ In common human experience, conscience is not merely one’s emotional preference but often works against one’s emotional preference, leading the person to sacrifice their desires for the greater good. The conscience as defined by John Paul is a practical judgment “which applies to a concrete situation the rational conviction that one must love and do good and avoid evil. This first principle of practical reason is part of the natural law.”¹¹ The conscience is analogous to the Supreme Court applying the general, constant moral principles of the Constitution to new particular situations.

In the objectivist view conscience forms practical judgments as an expression of reason where the will may choose to affirm or deny it the counsel of conscience. In the existential view, the distinction between knowledge and choice becomes thin as one cannot distinguish between one’s opinion about morality and the external standard of morality.¹² In existentialism, we cannot ask if someone’s conscience “measures up” to the moral standard but can only say that a person’s decision is moral if it is authentic. In the objectivist view, since conscience is an application of knowledge, ignorance of moral principles can lead to an error of conscience.

¹⁰ John Paul II, chapter 2, § 54.

¹¹ John Paul II, chapter 2, § 59.

¹² John Paul II, chapter 2, § 55.

Thomas Aquinas on Conscience

Pope John Paul II receives his view of conscience from Thomas Aquinas, to which I will now turn for a detailed explanation of conscience. In *Summa Theologiae* and *De Veritate*, Aquinas asks several questions about the nature of the conscience. He defines conscience as *an act of practical reason that applies general knowledge of general moral principles to particular situations*.¹³ It applies knowledge to situations in two important ways: (1) we *prospectively* judge that something should or should not be done in the future, (3) we *retrospectively* judge that something was done well or not well as our conscience excuses or accuses us. It is important to distinguish between an intellectual act and an act of the will, which are two distinct powers or abilities that a person has. A person may be smart and use their free-will to do harm, like an evil genius. An agent may know perfectly well what is right and choose otherwise. This brings us to Aquinas's next question.

Can Conscience be Mistaken?

Can conscience be mistaken? Aquinas says that there are two ways the conscience may err: (1) an error in content and (2) an error in application.¹⁴ The act of conscience may be seen as a syllogism of practical reason with two premises: (1) an assertion of a general moral principle, and (2) application of this generality to a particular situation.¹⁵ The syllogism will look like this:

¹³ Thomas Aquinas, *Summa Theologica*, trans. Fathers of the English Dominican Province, Benziger Bros. ed., (Westminster, MD: Christian Classics, 1947), Prima Pars, Question 79, Article 13, henceforth abbreviated in the form ST I.79.13; see also Thomas Aquinas, Question 17, Article 1 of *De Veritate*, trans. Robert W. Mulligan, S.J., ed. Joseph Kenny, O.P. (Chicago: Henry Regnery Company, 1952), accessed from <http://www.dhspriority.org/thomas/QDdeVer17.htm> on April 19, 2017. Henceforth abbreviated in the form DV 17.1.

¹⁴ DV 17.2

¹⁵ Steven J. Jensen, "The Error of the Passions," *The Thomist* 73 (2009): 349-79.

P1: "I must not commit murder."

P2: "Killing this person is murder."

Therefore: "I must not kill this person."

Mistakes of the major premise come when a person thinks a general principle is good when it is in fact bad. The second form of error occurs when the general principle is known, but conscience applies it wrongly in poor judgment. For example, I would commit an error in the first premise if I say that murder is permissible. I have the general moral principle wrong. I would err in the second premise if I apply the general moral principle in the wrong way. I might claim some exception in this one particular circumstance, saying, "What happens in Vegas stays in Vegas." I rationalize and excuse my behavior or simply think the principle applies differently. People generally agree that murder is wrong, but people disagree on whether abortion, capital punishment, or euthanasia count as murder. The conscience can err in both general principles and application.

Does a False Conscience Bind?

If the conscience is fallible, then we may ask whether an erring conscience binds us with moral obligation. This is Aquinas's third question regarding conscience. He answers that an erring conscience still imposes moral obligation on the agent.¹⁶ The conscience presents a conditional necessity, "If I want to achieve A, then I must do B, but if I do not want to do A, then I have no reason to do B." Because conscience is not coercive, it cannot force the will to choose, which is why people can choose to act against their conscience.

¹⁶ DV 17.3.

“A correct conscience and a false conscience bind in different ways,” Aquinas says.¹⁷

“The correct conscience binds absolutely and for an intrinsic reason; the false binds in a qualified way and for an extrinsic reason.” A correct conscience binds without caveat and in every circumstance. It cannot be set aside without evil because it is correct in both the primary and secondary premise. When a person has an erring conscience, insofar as the person thinks his conscience is correct, he is morally obligated to follow it. While a person has an erring conscience, he will not be aware of the error and he is still bound to follow what he thinks is right.¹⁸ Violating an erring conscience is equivalent to intentionally doing evil, acting contrary to the moral law he thinks he knows. If he accidentally does the right thing, then he is still at fault, for he acted in a “spirit of rebellion.” If his motive was to follow conscience and do the right thing, he will still be blameworthy because he follows a false conscience. He can either intentionally do evil or accidentally do evil, but he cannot do *good* until he becomes aware of the error in his conscience.

For example, if a false conscience tells someone “murder is good,” he is morally obligated to do what he thinks is right. If he accomplishes the murder, he is still blameworthy because although he had good motive, he had false propositions about the moral law. If the agent realizes the error of his conscience, this realization is a new act of practical judgment. The person is no longer bound to their old conscience but is now bound to their new conscience.

Aquinas says that the conscience is always binding and people must always follow their conscience in order to do what is right, thus affirming the necessity of freedom of conscience in

¹⁷ DV 17.4.

¹⁸ DV 17.4.

society. James Keenan comments that modern ethicists distinguish between good and right, two aspects of an action, by saying that motivation makes a person good while an action is right or wrong.¹⁹ Most ethicists say that a good motive is good enough to call someone a good person, and a person's action does not have to be right. Keenan points out that you can have a good motivation with a bad behavior. As the saying goes, "The road to hell is paved with good intentions." A motive may be called good while an action may be called right, but these cannot be divorced, for goodness aims at rightness. We not only have a duty to follow our conscience, but we have a duty to have a well-informed conscience that knows true propositions about the moral law. Thus, an ignorant conscience is less good. Just because someone does not know how to hit a homerun does not mean they are as good as someone who can. Following one's conscience is necessary but not sufficient for establishing a good action. While the existentialist view of conscience will say that all consciences are equally valid, Aquinas says that though we are all bound to follow our consciences, our consciences are not always correct in judging what is right and wrong. We may change and grow in wisdom.

Freedom of Conscience and Common Ground in Pluralism

Undergirding Aquinas's view of conscience is the natural law, the objective external moral law that may be discovered by any rational being. Today, there is widespread rejection of the natural law as metaphysical foundations for ethics are rejected for existential ones. Without going into great detail, this lies at the heart of differing opinions on freedom of conscience in a pluralistic society. As David Oderberg says, foundationalism is wrongly characterized as saying

¹⁹ James Keenan, 207.

“It is impossible to know how the world ought to go, more specifically how one ought to act . . . without prior knowledge of how the world is.”²⁰ He says further, “[This view is] radically mistaken. For it is to take on the notorious 'fact-value distinction' that has poisoned contemporary moral theory and against which the natural law theorist so firmly sets his face.”²¹ He says that the metaphysics of the natural law does not merely “provide the descriptive premises from which normative conclusions are supposed to flow. On the contrary, natural law theory sees *normativity as built into the very fabric of reality* in the first place.”²² In this view, the facts of the universe are not value-free but are values themselves. The fact-value distinction has led to controversies surrounding the naturalistic fallacy proposed by G.E. Moore who says that “is” does not imply “ought.” In the Thomistic view “is” already contains “ought.” Metaphysics does not *imply* normativity but already contains it in the description of the universe. As Alasdair MacIntyre illustrates, the very description of what a *mailman* is contains normativity built in.²³ A mailman is not first a mailman then by implication secondarily obligated to deliver mail successfully. Rather, the very definition of mailman is one who delivers mail successfully.

Foundationalists seek to use the natural law to find common moral and rational ground in a pluralistic society to confine the freedom of conscience to the dictates of reason. John Paul II says that this is an appeal to “interpreting and defending the values rooted in the very nature of

²⁰ David S. Oderberg, "The Metaphysical Foundations of Natural Law," in *Natural Moral Law in Contemporary Society*, ed. Holger Zaborowski, 44-79 (Washington, D.C.: Catholic University of America Press, 2010), 45.

²¹ Oderberg, 45.

²² Oderberg, 45, emphasis added.

²³ Alasdair MacIntyre, *After Virtue*, 3rd. ed. (Notre Dame: University of Notre Dame, 1981, 1984, 2007), 28.

the human person.”²⁴ Joseph Ratzinger says that he “has become increasingly concerned by the contemporary difficulty in finding a common denominator among the moral principles held by all people, which are based on the constitution of the human person and which function as the fundamental criteria for laws affecting the rights and duties of all.”²⁵

Without a metaphysical foundation for objective moral precepts found in the moral law and known by human reason, there can be no common ground or external standard to judge between whether a person’s conscience is in error. As Marek Piechowiak says, the philosophy of Thomas Aquinas “provides a foundation for imposing limitations on the scope of legal obligations in general. Human freedom plays a crucial role in understanding dignity as perfection based on the special individuality of a personal being, which in turn is based on the free choice to pursue a unique way of life.”²⁶ Piechowiak says that perfection of human existence requires freedom of conscience as well as proper guidelines that limit it. As Ratzinger says, we must reject the idea “that conscience is the highest norm which man is to follow,” leading to a view that conscience is an infallible standard of right and wrong.²⁷ In adjudicating the proper role of conscience, we are to affirm the dignity of freedom of conscience while acknowledging that truth is a second criterion for morality and a necessary limit on moral anarchy.

²⁴ John Paul II quoted in Robert Sokolowski, “Discovery and Obligation in Natural Law,” in *Natural Moral Law in Contemporary Society*, ed. Holger Zaborowski, 24-43 (Washington, D.C.: Catholic University of America Press, 2010), 24.

²⁵ Joseph Cardinal Ratzinger quoted in J. Budziszewski, “Natural Law as Fact, Theory, and Sign of Contradiction,” in *Natural Moral Law in Contemporary Society*, ed. Holger Zaborowski, 76-98 (Washington, D.C.: Catholic University of America Press, 2010), 76.

²⁶ Marek Piechowiak, “Thomas Aquinas: Human Dignity and Conscience as a Basis for Restricting Legal Obligations,” *Diametros* 47 (2016): 64-83.

²⁷ Joseph Cardinal Ratzinger, “Conscience and Truth,” Presented at the 10th Workshop for Bishops, February 1991, Dallas, Texas.

APPENDIX I:
WHY GOOD ACTIONS CAN FEEL WRONG

It merits a quick response to ask why doing the right thing sometimes feels wrong. A person may grow to understand that their conscience is in error. In a famous example from Mark Twain, his character Huckleberry Finn befriends a runaway slave named Jim in 1830s Missouri and engages in an internal battle with his conscience on whether he should turn his friend in to the authorities or help him escape down the Mississippi River. He thinks his conscience is telling him to report Jim while he feels compelled to help him escape. In a crucial moment, he foregoes his “conscience” and says, “All right, then, I’ll go to hell,” resolving to help Jim escape. Commentators often assess this moment as a choice to violate conscience. In fact, Finn’s internal debate is one of deliberation and the result is not a violation of conscience but a refining of conscience to conform more readily to reason. He judges that his former understanding caused his conscience to compel him in a wrong direction. As soon as he realizes it is wrong, his new decision redirects his conscience and grows his conscience.

In a situation where a person grows to understand that their conscience is in error, that person will make a new judgment of what is right and wrong and will embark on a new course of action and develop a new habit. In the initial stages of this new habit, the person may *feel* that what they are doing is wrong even while they rehearse the reasons why this new action is actually moral. Why does a change of judgment feel wrong in common experience? This is a point at which it is crucial to categorize internal activity properly. Conscience is an act of reason, a practical judgment of what is right and wrong. Moral dilemmas frequently cause internal conflict in moral agents as they try to decide to follow what they *think* is right and what they

want to do. Sometimes, I just feel like sitting at home and watching TV, but I choose to fulfill family and job responsibilities instead. As an act of reason, conscience may conflict with emotion. When an action *feels* wrong even though the agent *knows* by virtue of *reason* that the action is morally good, then the person is bound by conscience to follow their reason. In this situation, conscience is not the feeling, it is the judgement of reason.

How should the emotion of feeling that something is right or wrong be categorized? The will is a power distinct from the intellect. Both are part of the rational human nature and both work together to govern the emotions.²⁸ What reason judges to be good, the will desires and chooses. As one exercises the will repeatedly to govern emotion in accordance with reason, one develops moral habits or virtues, dispositions to act well in different circumstances. Because a virtue is a habit of will ordered by reason, a vice is a habit of emotion that leads contrary to reason. Thus, a person will have habits of emotion, or Aquinas would say, virtues order emotions habitually to the good while vices order emotions habitually to evil.²⁹ While it is not right to act out of emotion alone, one may act out of an emotional habit if the habit was intentionally cultivated by reason. For example, I can give to the poor out of an emotion of sympathy because I have used my reason to intentionally cultivate a habit of sympathy for the poor based on a practical judgment of reason (or conscience). However, if I act on emotional habit that has not been formed by reason, I may act on my impatience in anger and harm someone. I may even have a habit of anger. If I fight this with reason, my initial acts of patience and love will face a very difficult time overcoming bad emotional habits. Eventually, new habits will form. The same

²⁸ ST I.79.

²⁹ ST I-II.59.5.

is true for conscience. When a person learns that they have been thinking wrongly, their new actions will initially *feel* wrong. It is essential to understand that this *feeling* is not conscience. Rather, it is conscience that is opposing this feeling.

This characterization of conscience as not a *feeling* but a *judgment of practical reason* is a crucial element of the definition of conscience that is missing from the modern existentialist definition. As John Paul II said, the prevalent view of conscience today is simply the feeling of “being at peace with oneself.” If such a feeling is considered a guide to moral action, growth becomes scarce, for growth is often uncomfortable and often entails doing what feels wrong. When I first learned to drive a standard transmission, pushing on the clutch, brake, and gas at the same time while stopped on a hill *felt* wrong because of habits I had formed in driving an automatic transmission, but reason prevailed, new habits were formed, and I learned to drive a stick shift up a hill.

APPENDIX II:
NATURAL LAW

Underneath Aquinas's view of conscience is his view of the natural law. Conscience is the act of practical judgment applying the general moral precepts of the natural law to particular situations. Aquinas defines two senses of the natural law. First, the natural law is the external universal objective standard of right and wrong discoverable by reason. In this way, the natural law refers to objective precepts.³⁰ Secondly, the natural law is in people because knowledge of it is innate in the sense that knowledge is a habit to answer questions in a certain way. Small children have the habit of the natural law, but through lack of ability cannot use this habit until they mature and encounter situations which call for an answer from the natural law. Certain principles of practical reason are present in all humans from birth.³¹ The precepts of the natural law are necessarily general and self-evident truths. Aquinas defines the first principle of the natural law by saying,

The first principle of practical reason is one founded on the notion of good, viz. that "good is that which all things seek after." Hence this is the first precept of law, that "good is to be done and pursued, and evil is to be avoided." All other precepts of the natural law are based upon this: so that whatever the practical reason naturally apprehends as man's good (or evil) belongs to the precepts of the natural law as something to be done or avoided.³²

Associated with the innate knowledge of the natural law is synderesis, which Aquinas says is not a power but a *natural habit of practical reason that inclines one to the good*. It is not a power because it "does not regard opposites but inclines to good only."³³ Knowledge of right

³⁰ ST I-II.94.1.

³¹ ST I.79.12.

³² ST I.79.12.

³³ ST I.79.12.

and wrong in the natural law is supplemented with a natural inclination to seek the good. People not only know the basic moral precepts and know that they are good, but people want them as good *for themselves*. It is this natural inclination to the good combined with the human power of reason that allows and inclines all humans to know, desire, and apply the basic precepts of the natural law. With this foundation, the conscience has the role of judging in particular situations how the general precepts should be applied.

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