

The Erring Conscience: Aquinas on Freedom of Conscience in Pluralistic Society

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Although the current verbiage of the First Amendment of the United States Constitution 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 Religious liberty and freedom of conscience are not identical but are closely connected. The present question is whether and how it should be limited if it prompts intolerable behavior. An objective rubric is needed, but in a culture influenced by moral subjectivism, conscience is seen as self-affirmation in light of one’s subjectively chosen morals. This view undermines shared values necessary to allow society to judge conscience to be in error. I contend that conscience is a judgment of practical reason measurable by an objective moral standard. Conscience may be wrong, and public discourse can judge this when appealing to common reason. This limits freedom of conscience by general moral principles but encourages freedom of conscience insofar as general principles are applied differently in different circumstances. I will defend this claim by appealing to Thomas Aquinas and his advocates as they define conscience according to natural law tradition. The objectivist view curbs moral anarchy by subjecting conscience to reason and supporting both freedom and its limits.

Two Views of Conscience: Subjectivism and Objectivism

As, Katarzyna Stępień observes, “In contemporary culture and philosophy, completely different concepts of conscience are in use, where conscience is not connected with the acts of reason and hence is not regulated by the truth of things.”² But with a rational view of conscience, “we are also capable of ordering laws and rights to the real good of man.” Without this view, law will have difficulty appealing to

conscience or defending its freedom. In contrast to seeing conscience as connected to reason, contemporary culture attaches it to sentiment. An early advocate of this, David Hume said,

But though reason . . . be sufficient to instruct us . . . it is not alone sufficient to produce any moral blame or approbation. . . . It is requisite a sentiment should here display itself, in order to give a preference to the useful above the pernicious tendencies. . . . This partition between the faculties of understanding and sentiment, in all moral decisions, seems clear . . .³

Thus the distinct boundaries and offices of reason and of taste are easily ascertained. The former conveys the knowledge of truth and falsehood: The latter gives the sentiment of beauty and deformity, vice and virtue. . . . Reason, being cool and disengaged, is no motive to action.⁴

This divide between reason and morals has continued since the 1700's, evident in sentimentalism, emotivism, non-cognitivism, many forms of prescriptivism, and so on. Though each of these have important nuances, attaching morality more to sentiment than reason has often been assumed. If moral obligation arises from sentiment, debate about morality drawn from shared premises and argued rationally becomes difficult. Who is to judge what is right and wrong for another? Bernard Williams said, "We must reject the objectivist view of ethical life as . . . a pursuit of ethical truth."⁵ Objective standards have been replaced by subjective ones, and this has no small effect on conscience. Hume himself said, "Reason is wholly inactive, and can never be the source of so active a principle as conscience, or a sense of morals."⁶ Conscience, for Hume, becomes a tool for "defending his thesis of the superiority of sentiments with respect to reason in moving human beings to action."⁷ Likewise, Bishop Butler called conscience "a sentiment of the understanding" and "a perception of the heart."⁸ J. S. Mill said

The internal sanction of duty, whatever our standard of duty may be, is one and the same — a feeling in our own mind . . . This

feeling . . . is the essence of conscience . . . from self-esteem, desire of the esteem of others, and occasionally even self-abasement. . . . Its binding force, however, consists in the existence of a mass of feeling . . .⁹

Insofar as moral obligation and conscience are attached to sentiment and not reason, it is difficult to judge morality if conscience is, as Mill claims, a feeling of self-esteem. While the United States Constitution rightly protects freedom of conscience, subjectivism inhibits the ability to judge that conscience may be ill informed. Anything is permissible if conscience is self-assurance measured against one's equally subjective morals. It must instead be measured by an external standard.¹⁰

Bernard Williams says, "Our conception of the world as the object of our beliefs can do no better than repeat the beliefs we take to represent it."¹¹ Science "has some chance of being . . . [an] account of how the world really is, while ethical thought has no [such] chance." Williams claims that since morals cannot be founded as a description of the world, we cannot reasonably hope for ethical convergence. He acknowledges a level of irreducible pluralism, and his view is representative of ethical discourse today. As MacIntyre observes, modern moral theories have incommensurable premises that amount to some form of emotivism even if they purport to be objective and impersonal theories.¹² As confidence in objective knowledge of "how the world really is" wanes, so does conscience as subject to objective reason.

Liberal society claims to defend freedom of conscience, but, in today's social contract theory, the purpose of law is to secure individual freedoms by limiting freedom. This contradiction is only functional because society arbitrarily chooses which freedoms to limit. Without a precise view of conscience subject to reason, courts dance around conscience, unable to give clear grounding or boundaries for its freedom. Verdicts rarely, if ever, declare that someone's conscience erred. On June 6, 2017, the Supreme Court reopened a case on religious liberty in which a Colorado baker lost lower court battles over his refusal to create a wedding cake for a gay couple. The baker appealed to freedom of conscience. This comes in the wake of the 2015 *Obergefell* decision

to permit gay marriage nationally.¹³ If freedom of conscience is to be a principle defended in court, a subjectivist account will not suffice. For public discourse to be possible, a shared concept of conscience as subject to reason is needed so an erring conscience can be judged against shared values.

Pope John Paul II explains the importance of maintaining freedom of conscience as well as providing guidelines for its restrictions: “The dignity of the human person is a concern of which people of our time are becoming increasingly more aware.”¹⁴ It is upon this 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.”¹⁵ He affirms the increased value of human dignity in the freedom of conscience as progress in the modern mind. However, it has seen widespread misapplication:

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. To the affirmation that one has a duty to follow one’s conscience is unduly added the affirmation that one’s moral judgment is true merely by the fact that it has its origin in the conscience. 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.¹⁶

Subjective conscience has gained the supreme status as arbiter of morality. If authenticity is valued over rationally discoverable truth, we find ourselves in an irreducible pluralism and, as John Paul labels it, “a radically subjectivist conception of moral judgment.” Conscience has become 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.”¹⁷ Leaving any notion of objective truth behind has construed the conscience in entirely subjectivist terms. Without anchoring this feeling of “being at peace with oneself” to an objective standard, all manner of sociopathy will be permitted. Subjectivism handicaps the authority to judge or teach what is right and wrong.¹⁸ John Paul continues,

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.¹⁹

Where subjectivism leads to each individual having their own criteria of truth and conscience based in the will, objectivism in the natural law tradition attaches them to reason.

Conscience and Practical Reason

John Paul appeals to the natural law as the objective standard for measuring conscience. He quotes the Second Vatican Council “In the depths of his conscience man detects a law which he does not impose on himself, but which holds him to obedience.”²⁰ This echoes Romans 2:14–15 that people “show that the work of the law is written on their hearts” because they “by nature do what the law requires, they are a law to themselves” (ESV). Conscience is not merely sentiment but often works against it, pointing to an objective standard known by reason.

Though moral principles are objective and universal, their application by conscience can depend on circumstance. John Paul defines conscience as “*a moral judgment about man and his actions*, a judgment either of acquittal or of condemnation, according as human acts are in conformity or not with *the law of God written on the heart*.”²¹ As Romans 2:15 says, “Their conscience also bears witness, and their conflicting thoughts accuse or even excuse them.” Conscience is a judgment of practical reason “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.”²² The conscience is analogous to the Supreme Court applying general constitutional principles to particular situations. Conscience functions to form practical judgments about situations and is an application of knowledge rather than an act of will. In subjectivist accounts, distinction between objective rational standards and subjective will becomes thin.²³ We could not ask if one’s conscience “measures up” to a standard but can only say that a person’s decision is moral if it is authentic.

Thomas Aquinas on Conscience

Pope John Paul II receives his view of conscience from Aquinas. In Question 17 of *De Veritate*, Aquinas asks about the nature of the conscience, starting with whether it is a power, a habit, an act, or an object.²⁴ The term *conscience* is often applied to all of these in equivocally, just as *sight* may refer to the *power* or *sense*, the *act* of having a *sight* of something, or the *object*, “What a beautiful sight!” Aquinas describes conscience as *an act of practical reason that applies general moral principles of the natural law to particular situations*.²⁵ As a judgment of practical reason, and not speculative reason, its terminus is the judgement of what should be *done*, which is the object of a choice. This does not preclude interference or weakness in the face of temptation. Conscience applies knowledge of general precepts to situations in two important ways: it *prospectively* judges that something should or should not be done in the future, and it *retrospectively* judges that something was done well or not as it excuses or accuses.

Conscience draws general principles from speculative reason and uses practical reason, or prudence, to apply them to circumstances. Steven Jensen nuances this as a range from speculative to practical reason: purely speculative, materially practical, virtually practical, fully practical.²⁶ The first three are concerned with various degrees of knowing *about* operation, and the end of the last is *doing*. I know speculatively *that* life is valuable, materially *that* I should preserve life, and virtually *that* I should help in an emergency. When an emergency actually arrives, virtual becomes practical, and I judge that I should *act*. The will then chooses to act, habituated by courage, or prevented by cowardice. Since conscience is counsel, the will must still choose. A sin may come not for lack of reason but for lack of virtue.

Erring Conscience

Does an Erring Conscience Bind?

Aquinas gives two ways conscience may err: in content and application, which are the major and minor premises of the syllogism of practical reason.²⁷ “The practical reason makes use of a syllogism in respect of the work to be done . . . hence we find in the practical reason something that holds the same position in regard to operations, as, in the speculative intellect, the proposition holds in regard to conclusions. Such universal propositions of the practical intellect that are directed to actions have the nature of law. And these propositions are sometimes under our actual consideration, while sometimes they are retained in the reason by means of a habit.”²⁸ The major premise asserts a general moral principle, the minor premise identifies an instance or application, and the conclusion judges to do or avoid an action.²⁹ For example:

P1: Adultery is bad.

P1: Sex with one’s secretary is adultery.

∴ One should refrain from sex with one’s secretary.

Aquinas says that mistakes of content in speculative reason of the major premise come when a person thinks that a general principle is good when it is, in fact, bad or the reverse. Error in application occurs in the minor premise when the general principle is known but practical reason

applies it wrongly. I would commit an error in the major premise if I say adultery is permissible. I would err in the minor premise if I affirm that adultery is wrong, but I convince myself that my case is an exception.

If the conscience is fallible, then does it bind us with moral obligation? Aquinas answers affirmatively in his third question.

Moreover, it does not seem possible for a man to avoid sin if his conscience, no matter how mistaken, declares that something which is indifferent or intrinsically evil is a command of God, and with such a conscience he decides to do the opposite. For, as far as he can, he has by this very fact decided not to observe the law of God. Consequently, he sins mortally. Accordingly, although *such a false conscience can be changed*, nevertheless, *as long as it remains, it is binding, since one who acts against it necessarily commits a sin. . . .*

. . . a false conscience binds only in a qualified way, since it binds conditionally. For one whose conscience tells him he must fornicate is not obliged in such a way that he cannot omit the fornication without sin *except on condition that such a conscience remains*. But this situation can be changed, and without sin. Hence, such a conscience does not oblige in *every* event. For something can happen, namely, *a change of conscience*, and, *when this takes place, one is no longer bound*. That which is only conditional is said to be qualified.³⁰

Since conscience is the judgement of what is good, it may make a mistake. If I am supposed to turn right, but I mistakenly think I should turn left, I intend good but am mistaken. I am not malicious. If I rebelliously intend what I think is wrong, to turn right, then I do it both intending evil and under a mistaken judgment of right and wrong. In the first case, I am blameworthy because I do the wrong thing, even though it was not malicious. In the second case, I am blameworthy because, even though I coincidentally did the wrong thing, I intended evil. To intentionally violate conscience is to intend the immoral. Aquinas would say I do the right thing in a spirit of

rebellion, thinking it to be the wrong thing. A false conscience binds because it is what the person thinks to be moral. Aquinas says that if one's motive is noble, if he desires to follow conscience and do the right thing, he will still be blameworthy because he follows an erring conscience into an evil action. However, he is blameworthy in a different way. If someone has an erring conscience, he can either do evil intentionally or accidentally, but he cannot do *good* until he corrects his judgment of what is *good*. A good action is good because it is known to be good and is done on purpose.

Since conscience is counsel, not command, one can act against it or follow different counsel. The only way a false conscience does not bind is when it is replaced by a new judgement of conscience. If your judgement of conscience changes, you are bound by the new judgement, not the old. The old judgement is no longer your conscience, so it is no longer binding. This distinction between past and present judgements is missing in much of the literature analyzing Aquinas on conscience. For example, although Tobias Hoffman's categorization of binding and non-binding conscience is helpful, he could be clearer on the past-present distinction. He says, ". . . erring conscience binds only in the case of indifferent acts, as when I think it is forbidden to pull up some grass. But it does not bind when I think that believing in Christ is prohibited, or when I think that fornication is commanded."³¹ While it is true that Aquinas says in *Summa Theologiæ* I-II.19.5 that a conscience is not binding if it mistakes generically evil actions for good actions, taken with *De Veritate*, Aquinas is clear that "not binding" refers to former judgements. "For one whose conscience tells him he must fornicate is not obliged in such a way that he cannot omit the fornication without sin *except* on condition that such a conscience remains."³² If my conscience compels fornication, I can abstain without sin only if I have a change of conscience. "When this takes place, one is no longer bound," that is, no longer bound by former, erring judgement.³³ One who sins by intentionally violating conscience sins essentially by intending an evil action *as evil*. One who sins by following an erring conscience sins accidentally, intending an evil action *as good* because he is misguided. Aquinas says:

A false conscience which is mistaken in things which are intrinsically evil commands something which is contrary to the law of God. Nevertheless, *it says that what it commands is the law of God*. Accordingly, one who acts against such a conscience becomes a kind of transgressor of the law of God, although one who follows such a conscience and acts according to it acts against the law of God and sins mortally. For there was sin in the error itself, since it happened because of ignorance of that which one should have known.³⁴

Aquinas answers the difficult case of a conscience that errs in commanding not merely something indifferent, but something that is essentially evil. Since the conscience “says that what it commands is the law of God,” then the agent is unaware that their conscience is telling them to do evil. They think their conscience is telling them to do good and are ignorant of their error. Intentionally violating this counsel is intending evil and thus is a mortal sin because, although evil is accidental to their intent, it is not outside the essence of their action. This is not to say they did not intend an evil. It is to say they did not intend it *as* evil.

Let us say a Nazi’s ill-formed conscience counsels him to obey his orders to execute a Jew, but he dislikes his superior and intentionally disobeys by setting the Jew free. This is a happy coincidence for the Jew, but the Jew would not praise the virtue of this Nazi. Nobody likes a traitor. However, if the Nazi followed his erring conscience, he would be guilty of murder. With an erring conscience, the Nazi is, to borrow the colloquialism, screwed. By contrast, if the Nazi judges the execution of the Jew to be unjust and rebels not from spite but for benevolence, his erring conscience has been corrected, and he is to be praised for his virtue. Such is the case of Schindler, honored by the *Schindlerjuden* and buried in Jerusalem.

Aquinas says conscience does not impose a coercive necessity but a conditional necessity, as when a means is necessary for a certain end. If I want to achieve A, then I must do B, but if I do not want A, then I have no need of B. If I want to go to New York, I must fly, but if I want to avoid COVID-19, Godzilla, or rickshaws, then I need not fly.

Since conscience is an act of reason using the knowledge one has, it cannot bind those who are ignorant or incapable of relevant knowledge. The precept itself may still bind despite ignorance, depending on what the precept is. The ignorance of children or the mentally handicapped are excused because of inability to know. A healthy adult's ignorance of circumstance may excuse or partially excuse, but not so with ignorance of a universal precept, such as to avoid murder. Conscience binds because it applies the knowledge it has of a general precept of the natural law to circumstances, but as a counsel, the will may still choose to violate it.

“A correct conscience and a false conscience bind in different ways,” Aquinas says, “The correct conscience binds absolutely and for an intrinsic reason; the false binds in a qualified way and for an extrinsic reason.”³⁵ Correct conscience binds without caveat and in every circumstance because it is about an intrinsically good moral precept. It cannot be set aside without evil. An agent is bound without qualification to a correct conscience but only accidentally bound to a false conscience. One who acts contrary to conscience (whether correct or not) errs essentially by intending evil, while one who follows an erring conscience errs accidentally by intending good but misjudging what is actually good. If the person corrects an erroneous judgement, then the new judgement is the new conscience binding the person to a new action. Conscience is always binding, and people must always follow their conscience because it is the judgement of what they think is good.³⁶

In sum, following one's conscience is necessary but not sufficient for establishing a good action. True knowledge of objective moral principles is also necessary, since they form the major premise of the syllogism to be applied in the minor premise. We have a responsibility to not only follow conscience but also to have a mature, well-formed conscience that knows the moral law. Growth in wisdom corrects former errors. While the sentimentalist view says differing consciences are equally valid, Aquinas says we are not always correct in judging right and wrong. To be fair, there is a margin of error that cannot be judged by another person. Although all people are subject to general principles, application depends on circumstance, and the judgment of others must be limited.

Debating abortion is different than debating whether to see a risqué movie. The difference between debating a major premise and a minor premise is that the latter has, if you will, a bit of wiggle room, depending on the issue, the individual, and their circumstance. This margin, as we will see, both encourages freedom of conscience and limits it.

As John Paul said, with the loss of universal truth comes a change of how conscience is viewed. Subjectivism sees each individual determining their own criteria of good and evil. Nevertheless, people should be “permitted to ‘enjoy the use of their own responsible judgment and freedom, and decide on their actions on the grounds of duty and conscience, without external pressure or coercion.’”³⁷ In courts that defend freedom of conscience, the possibility of disagreeing consciences creates tension, but this tension cannot be resolved with a subjectivist view of conscience. Since the sentimentalist conscience does not sufficiently distinguish between will and the intellectual judgment of conscience, judging a conscience to be in error is difficult or impossible. This can be resolved by subjecting conscience to the measure of practical reason. Conscience defined as self-assurance prevents judging it as false or as limiting conscientious actions. It encourages moral anarchy more than freedom of conscience. Freedom does not imply no limits, for it cannot be supported without them.

Why Good Actions Can Feel Wrong

“I think this is right, but it feels wrong.” Why do good actions sometimes feel wrong? When an erring conscience is corrected with a new judgement, it may take time for emotional habits and associations to catch up, particularly if the agent is not perfectly virtuous. Virtues are habits in the passions that induce them to follow reason, and they will enjoy doing it. Insofar as we lack perfection, our emotions will lag. Imperfect intellectual virtues will also hinder our practical reason. With unclear emotions and unclear thoughts, we have a recipe for a confused conscience. Yielding to unclear judgment can easily *feel* wrong even if it is not. Clear judgments coupled with passions habituated to follow reason will yield eager action. The conflicted soul is less perfect than the virtuous.

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 report his friend to the authorities or help him escape down the Mississippi River. In the midst of unclear thoughts and emotions, his practical reason deliberates to find a clear solution of what should be done. His conscience is unclear, and he has little habituated virtue. His deliberation will end in a judgement of conscience, even if it is of dubious justification. Immature Huck misconstrues his struggle as being between his conscience and friendship. In a crucial moment, he forgoes “conscience” and says, “All right, then, I’ll go to hell,” resolving to help Jim escape.³⁸ Huck claims he violates his conscience, which would mean he intended evil. However, Huck’s deliberation is not between conscience and friendship but between competing propositions of what is good. His battle is between slavery and benevolence as practical reason weighs competing arguments. The result is that Huck’s practical reason makes a correct judgement of conscience and he does what he thinks is right, not as the rebellious Nazi but as Schindler. He does not violate his conscience but changes it, correcting his former erring judgement in a coming-of-age moment. With a newly informed conscience he does a good act *as good* and may even be said to have courageously rebelled against slavery and at risk to himself. Since he knows not his Thomistic categories, he mislabels his decision as a violation of conscience. Huck displays continence and growth in virtue. This, at least, is an optimistic reading of *Huckleberry Finn*.

Reason is distinct from will, but both form intellectual power and work together to govern the passions.³⁹ What reason judges to be good forms the object the will desires and chooses. Aquinas says moral virtues habituate passions to follow reason. Insofar as passion lacks virtue, it will be slow to follow reason, and right actions may temporarily *feel* wrong. Correcting past errors will start new habits of mind and passion. Virtue takes time. At first, the person may *feel* what they do is wrong, so they rehearse their reasons. It takes practical reason to change their minds. It takes virtue to follow through.

Characterizing conscience as not a *feeling* but a *judgment of practical reason* is missing from the sentimentalist view. As John Paul says, the prevalent view of conscience today is simply the feeling of “being at peace with oneself.” When conscience and emotion collide, and both are subjective, conscience would produce a stalemate when an agent faces an escaped slave. Such a guide to moral action is chaotic, whimsical, and unable to be judged by an equally subjective ethics. Growth is hindered, for growth is uncomfortable and requires reason to overcome “peace with oneself” and self-esteem.

Natural Law

Grounding Aquinas’ view of conscience is his view of natural law. The general moral principles conscience that are applied to circumstances are the precepts of the natural law and the major premises of the syllogism of practical reason. Natural law is the universal objective standard of right and wrong discoverable by reason.⁴⁰ It can be known by all through reason as self-evident general moral principles.⁴¹ Aquinas defines the first principle of the natural law 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.⁴²

As stated above, the judgments of conscience are of conditional necessity, binding insofar as they judge the means to an end. The ultimate end is human flourishing. More fundamental than a judgement of practical reason is synderesis, which Aquinas describes as 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.”⁴³ It is the inescapable inclination to the good, “programmed into us,” as it were, by nature. It cannot be resisted, which means that all actions are for what the agent considers to be good in that moment,

all things considered. The first precept of the natural law is to “do good and avoid evil.” From this comes other precepts. As precepts get more specific and multiply, so do the opportunities for error in both general principle and application. Knowledge of the precepts of natural law is supplemented with *synderesis*, the natural inclination to seek good. People not only know basic moral precepts but seek them as good *for themselves*. It is this natural inclination combined with the human power of reason that allows and inclines all humans to know, desire, and apply the natural law. This can form the basis for public dialogue that can judge the valid or invalid use of conscience using reason to assess whether an individual rightly holds or applies a general principle.

Freedom of Conscience and Common Ground in Pluralism

Widespread rejection of natural law and *synderesis* lies at the heart of affirming subjective accounts of conscience and corresponding problems in law. As Stepień says, “forgetfulness of natural law and justice, which is the main manifestation of modern nihilism in the domain of law, is ultimately rooted in the negation of the occurrence of *synderesis*.”⁴⁴ V. Possenti says this is connected to “forgetting the natural law, and with the limitless raising of the will, which desires only itself. The law as a whole has a positive character, that is, it is established by the will, and the result is that neither legitimate rule of law nor injustice exist.”⁴⁵ Without grounding in objective rational standards, civil law cannot judge right and wrong applications of the freedom of conscience in a pluralistic society. As David Oderberg says, foundationalism is caricatured as saying “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.”⁴⁶ This caricature 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.”⁴⁷ 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.”⁴⁸ The facts of the universe

are not value-free but are values themselves that already contain *ought* implications. The fact-value distinction has led to controversies surrounding the naturalistic fallacy proposed by G. E. Moore who said *is* does not imply *ought*. By contrast, in Thomistic natural law, *is* already contains *ought* because the metaphysics of human nature says that it is a thing with an end that it necessarily seeks. Synderesis is hardwired into us. We are by nature inclined to the good. Illustrating this point, MacIntyre says the very description of a *mailman* contains normativity built in.⁴⁹ A mailman is not first a mailman then additionally obliged to deliver mail successfully. Rather, the definition already contains the end of successfully delivering mail. The measure of his being a good mailman is whether he satisfies this end. As rational animals, ethics *just is* the measure of our living out what we are.

Natural law and synderesis provide common ground for discussion in a pluralistic society. We could debate judgements of conscience as to whether they are more or less rational. Without this grounding, discourse is difficult. John Paul says recovering an objective view of conscience need not be characterized as a religious attempt to conform the non-religious to a particular religious understanding of ethics. Rather, it is an appeal to “interpreting and defending the values rooted in the very nature of the human person.”⁵⁰ Ratzinger has said 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.”⁵¹

Without a view of conscience as a judgement of practical reason subject to objective moral precepts, there is no way to judge between differing consciences. In a Thomistic understanding, a rational view of conscience encourages freedom by differentiating between universal precepts and application. While freedom is limited insofar as general precepts are non-negotiable, freedom is encouraged, as practical reason seeks to apply precepts contextually. As Aquinas says, error in content is different than error in application. Subjectivist conscience, by contrast, is not subject to reason or common discourse. When it purports to be

rational, moral precepts are still considered binding only subjectively. Conscience maintains its subjectivity so long as it is measured by subjectively chosen morals and not objective reason.

Objectivist conscience affirms the dignity of individuals as moral agents each with their own ability to judge applications based on, and measured by, objective standards. Such freedom of conscience affirms the necessity of following one's conscience. 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."⁵² It is a perfection of human existence to use one's freedom to act in accordance with one's conscience. Without freedom, there is no virtue. Objectivist conscience also constrains freedom by subjecting it to reason. Since reason is common ground, it encourages public debate. As Ratzinger says, we must reject the idea "that conscience is the highest norm which man is to follow," that conscience is an infallible standard of right and wrong.⁵³ It is instead subject to the measure of reason because it is a judgement of practical reason.

Notes

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).
2. Katarzyna Stepień, "Synderesis and the Natural Law," *Studia Gilsoniana* 3 (2014): 377–398.
3. David Hume, *An Enquiry Concerning the Principles of Morals*, ed. J. B. Schneewind (Cambridge: Hackett Publishing Company, 1983), 83.
4. Hume, *Principles of Morals*, 88. Emphasis original.
5. Bernard Williams, *Ethics and the Limits of Philosophy* (London: Collins/Fontana, 1985), 135–155.
6. David Hume, *Treatise on Human Nature*, ed. L. A. Selby-Bigge (Oxford: Clarendon Press, 1888), T 3.1.1.10.
7. Lorenzo Greco, "A Powerless Conscience: Hume on Reflection and Acting Conscientiously," *British Journal for the History of Philosophy* 25, no. 3 (2017): 547–564.
8. Joseph Butler, "A Dissertation upon the Nature of Virtue," in *Five Sermons* (New York: Liberal Arts Press, 1950), 82. Quoted in Peter Fuss, "Conscience," *Ethics* 74, no. 2 (Jan 1964), 111.

9. John Stuart Mill, *Utilitarianism* (New York: Liberal Arts Press, 1975), 36. Quoted in Peter Fuss, "Conscience," 113.
10. This thesis takes inspiration from but is not identical with James Keenan, "Can a Wrong Action Be Good? The Development of Theological Opinion on Erroneous Conscience," *Eglise et Theologie* 24 (1993): 205-219.
11. Bernard Williams, 135-155.
12. Alasdair MacIntyre, *After Virtue*, 3rd. ed. (Notre Dame: University of Notre Dame, 1981, 1984, 2007), 9.
13. *Obergefell v. Hodges*, 576 U.S. 23 (2015)
14. Pope John Paul II, *Veritatis Splendor: Encyclical Letter*, (Boston, MA: St. Paul Books & Media, 1993), chapter 2, § 31.
15. *Ibid.*
16. John Paul II, chapter 2, §§ 31-32.
17. David Hume, 506.
18. 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.
19. John Paul II, chapter 2, §§ 31-32.
20. John Paul II, chapter 2, § 54.
21. John Paul II, chapter 2, § 59.
22. John Paul II, chapter 2, § 59.
23. John Paul II, chapter 2, § 55.
24. Thomas Aquinas, Question 17, Article 1 of *De Veritate* (DV), trans. Robert W. Mulligan, S.J., ed. Joseph Kenny, O.P. (Chicago: Henry Regnery Company, 1952), 17.1.
25. Thomas Aquinas, *Summa Theologica* (ST), trans. Fathers of the English Dominican Province, Benziger Bros. ed., (Westminster, MD: Christian Classics, 1947), I.79.13.
26. Steven Jensen, *Knowing the Natural Law* (Washington, DC: Catholic University of America Press, 2015), 11.
27. DV 17.2
28. ST I-II.90.1.
29. Steven J. Jensen, "The Error of the Passions," *The Thomist* 73 (2009): 349-79.
30. DV 17.4, emphasis added.
31. Tobias Hoffman, "Conscience and *Synderesis*," in *The Oxford Handbook of Aquinas*, ed. Brian Davies (Oxford: Oxford University Press, 2012), 259.
32. DV 17.4, emphasis added.
33. DV 17.4.
34. DV 17.4, ad 3, emphasis added.
35. DV 17.4.
36. James Keenan says, "In sum, the distinction between goodness and rightness provides two descriptives for two different concerns regarding the moral life" (207). He says that modern moral theologians distinguish between good and right, saying that for a motive to be good, their action does not have to be right. A motive may be called good while an action may be called right, but these cannot be divorced, for goodness aims at rightness, and a person is only good if they have both.

37. John Paul II, chapter 2, §31.
38. Mark Twain, *The Adventures of Huckleberry Finn* (Orinda, CA: SeaWolf Press, 2019).
39. ST I.79; I-II.59.5.
40. ST I-II.94.1.
41. ST I.79.12.
42. ST I.79.12.
43. ST I.79.12.
44. Stępień, 397.
45. V. Possenti, “Nihilizm,” *Powszechna encyklopedia filozofii (Universal Encyclopedia of Philosophy)*, ed. A. Maryniarczyk, vol. 7 (Lublin 2006), 654–655; quoted in Stępień, 397.
46. 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.
47. Oderberg., 45.
48. Oderberg, 45, emphasis added.
49. Alasdair MacIntyre, *After Virtue*, 3rd. ed. (Notre Dame: University of Notre Dame, 1981, 1984, 2007), 28.
50. 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.
51. 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.
52. Marek Piechowiak, “Thomas Aquinas: Human Dignity and Conscience as a Basis for Restricting Legal Obligations,” *Diametros* 47 (2016): 64–83.
53. Joseph Cardinal Ratzinger, “Conscience and Truth,” Presented at the 10th Workshop for Bishops, February 1991, Dallas, Texas.

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