

The Inalienable Right of Conscience: A Madisonian Argument

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Article:

In *Civil Disobedience*, Henry David Thoreau writes about the importance of conscience.

Can there not be a government in which majorities do not virtually decide right and wrong, but conscience?—in which majorities decide only those questions to which the rule of expediency is applicable? Must the citizen ever for a moment, or in the least degree, resign his conscience to the legislator? Why has every man a conscience, then? I think that we should be men first, and subjects afterward. It is not desirable to cultivate a respect for the law, so much as for the right. The only obligation which I have a right to assume is to do at any time what I think right.[1]

Some might construe this as endorsing the subjective claim that a person's only real obligation is to do what he believes is right. Such a position is paradoxical and implies that wrongdoing occurs only when an agent acts against his considered moral judgments. Perhaps this is Thoreau's view; but another thesis may be at work here—that the right of conscience is inalienable. Indeed, some of Thoreau's predecessors, in particular, writers of the late eighteenth century, held that the right of conscience is inalienable. Here I shall explore this thesis, ignoring whether or not Thoreau endorsed it.

Part 1.

Characterizing conscience is difficult. The way that this term is often used makes it sound as if it is a special power possessed by people. Unlike Bishop Butler, however, and more like recent authors, I deny that conscience is a special faculty that is a source of moral knowledge.[2] Instead, when we speak of conscience, we speak of the act of applying one's moral beliefs to one's own conduct.[3] Conscience is not itself a standard; rather, appeals to conscience involve an agent reflecting on his own past or (projected) future behavior and assessing that behavior in light of his own standards. A person who, in conversation with another, invokes conscience as an apparent justification of a proposed course of action has already made a judgment about that action. Such an appeal borrows its effectiveness from the conviction that one ought (in some sense) to think for oneself about moral matters and then act on one's considered judgments.

So conceived, conscience does not support any particular moral theory. The purpose of praising those who act on conscience is to encourage agents to act on their own moral judgments. One who is said to have a well-developed conscience has a disposition to act in accordance with his moral beliefs. Such a person is sometimes said to have integrity, and this means that the person has properly integrated his actions and beliefs. There is a proper harmony between his moral beliefs and actions. If conscience were some mysterious power or faculty, perhaps we could be confident that its pronouncements were unerring. But, according to a more contemporary understanding, praising conscience can do no more than encourage agents to do what they believe they ought to do. Even when there is proper harmony between agents' actions and their moral beliefs, those actions may still be objectively wrong. And

when actions and beliefs are not in proper harmony, agents may not know whether to change their beliefs or their actions.[4]

Appeals to conscience occur typically in cases of conflict. Agents who are tempted to act contrary to their own moral beliefs may invoke conscience in the hope of bolstering their strength of will. Here the conflict is within oneself.[5] But there may be conflicts with others too. In such a conflict, an agent might, for example, refuse to do something that another wants him to do, on grounds of conscience. Such appeals are typically a last resort, made only when the other person will not accept other reasons given by the agent for refusing.[6]

But what, then, does it mean to speak of a right of conscience? It is a right not to be interfered with in certain ways. In part, it is the right of agents to act on their own moral beliefs. If there is such a right, this aspect of it places duties on others not to prevent persons from so acting. Of course, these duties are presumably *prima facie*; they may on occasion be overridden by more pressing duties. So if there is a right of conscience, there is a moral presumption, albeit overridable, that agents should be free to act on their own moral beliefs.[7]

In order to explain inalienable rights, we must discuss ways in which agents may divest themselves of rights. To *waive* a right is to give up that right knowingly and voluntarily. When valid waiver occurs, the duties correlative with the right are suspended because of the possessor's consent. If the police properly inform a person, he may give up the right to have legal counsel present while he is being questioned by authorities. Waiver is unilateral; it authorizes others to act in specified ways. To *alienate* something is to transfer it to another. An alienable right is one that may be transferred by its possessor. Property rights are typically thought to be alienable. If I own a copy of Plato's *Republic*, I may give it to you. My merely giving (not lending) you the book transfers rights I had to you. The correlative obligations that all others have regarding this book are now owed to you. My consent alone transfers to you rights that I previously possessed. Prior to the transaction, you (and all others) had, for example, a moral requirement not to tear the pages from this book; I had no such requirement. After the transaction, you no longer have this obligation; but now I am under such a requirement. Alienation is bilateral; it permits another to do what was previously a violation of a right and it puts the consentor under a new obligation. What is common to waiver and alienation is that the possessor's consent is permission-generating. As John Simmons puts it, "In giving consent to another's actions, however, our primary purpose is to authorize those actions and in so doing create for or accord to another a special right to act..."[8]

An *inalienable* right is one that may not be waived or transferred by its possessor.[9] The possessor does not have the moral authority to give up the right deliberately. Such a *transaction* between the possessor of the right and another is impermissible. With inalienable rights, my consent lacks normative efficacy; it is not sufficient to transfer to you what I possess or have a right to. If the right to life is inalienable, my consent alone does not give you justification to kill me, nor do I incur an obligation to resist your attempts. It should be noted that there are different ways to explicate the notion of an inalienable right. One way says that inalienable rights are ones that it is *morally wrong* for the possessor to alienate. Another way says that inalienable rights are ones that literally cannot be alienated. Here I am following the former account, though later I shall have something to say about the connection between the two.

So, if the right of conscience is inalienable, then it is morally wrong for an agent to alienate it.[10] But we need to say more about this; for there are different ways to understand what particular moral commitments this places on agents. Understood one way, the inalienability of the right of conscience implies that each agent always ought to follow his own conscience. This account is unattractive, however, because it implies *either* that agents' beliefs about what they ought to do are infallible *or* that there are genuine moral dilemmas. Assume that agents' beliefs about what they ought to do are fallible and that they sometimes have erroneous consciences. If it is still true that an agent ought always to follow his own conscience, then we get the following result. Suppose that an agent's sincere belief that he ought to do X is erroneous; in the situation in question, he ought to do Y, which is incompatible with doing X. But since he always ought to follow his own conscience, he also ought to do X. Such an agent has incompatible obligations; he is in a moral dilemma. If, however, there are good arguments against moral dilemmas, as some maintain,[11] then something has gone wrong. Either agents' consciences are infallible

after all or it is *not true* that one always ought to follow one's own conscience. Since I deny infallibility, I conclude that it is not true that agents always ought to follow their consciences.

If the right of conscience is plausibly regarded as inalienable, then there must be a different understanding of the moral requirements associated with it. The alternative that I suggest is this: to say that the right of conscience is inalienable is to say that one should not bind oneself irrevocably to follow the commands of another. This is a negative moral requirement, one not to undertake a certain commitment. An agent's agreement always to obey another neither permits the other to determine how the agent should act, nor is it sufficient to create an obligation on the consentor. This also places on others a duty not to act as if an agent were so obligated. Alienating the right of conscience is giving up completely the right to act on one's own moral decisions. If this right is alienable, such a transaction is permissible. As a result of the transaction, the agent who alienates the right is strictly obligated to act in the way that the person to whom he alienates the right instructs him (either for a fixed period of time or permanently). The agent's consent shifts the power of decisionmaking from that agent to another. The task here is to show that alienating the right of conscience is not a morally acceptable option. This is a transaction that is prohibited on moral grounds.

Part 2.

Eighteenth century writers were concerned about a particular instance of the right of conscience, namely, the right of religious freedom. They were concerned about it being surrendered not to another individual, but to civil society. The Reverend John Leland, for example, in a 1794 sermon, argued that although civil government is based on a compact, nevertheless people entering into that compact do not surrender their rights of conscience to society.[12]

An illustration of an argument for the inalienability of the right of conscience can be found in the writings of James Madison in his "Memorial and Remonstrance Against Religious Assessments." [13] Madison asserted that "the duty which we owe to our Creator and the manner of discharging it, can be directed only by reason and conviction, not by force or violence." Madison goes on to say that the "[r]eligion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate." According to Madison, this right is inalienable (he says "unalienable") for two reasons: (1) "because the opinions of men, depending only on the evidence contemplated by their own minds cannot follow the dictates of other men"; and (2) "because what is here a right towards men, is a duty towards the Creator" Madison elaborates on (2): "It is the duty of every man to render to the Creator such homage and such only as he believes to be acceptable to him."

According to Madison, then, the duty that people owe to God is the basis for the inalienability of the right of conscience. The duty cannot be discharged if the right of conscience is alienated. This duty has an objective component, paying homage to God, and a subjective component, rendering the homage that one believes is acceptable to God. Even with the built-in belief component, this need not be radically subjective; for acting on one's own belief about what is proper may be necessary but not sufficient for fulfilling this duty. Madison's view seems to be that one is not genuinely paying homage to God unless one believes that the act one is performing is the *proper way* to pay homage. Sincerity is necessary for genuine homage, though perhaps not sufficient. This is not all that unusual. One does not forgive another merely through words and deeds; the one doing the forgiving must also have certain beliefs and attitudes. And we can say similar things about gratitude and humility. One might chide Madison for asserting (1) on grounds that he is unaware of things like brainwashing, psychosurgery, and the like,[14] but that would be off the mark, I think. Madison may well have been naive about the factors that influence people's opinions, but in the end his point is that the duty to pay homage requires that one act on one's own beliefs, however those beliefs were acquired.[15]

Madison's argument for the inalienability of the right of conscience, then, is based on a duty that he claims people owe to God. If an agent were to transfer his right of conscience to another, he would be unable to discharge his duty to pay homage to God, and doing that which makes the fulfillment of a duty impossible is itself prohibited. Indeed, as John Locke suggests in *A Letter Concerning Toleration*, such alienation may compound one's wrongs.

Whatever Profession we make, to whatever outward worship we conform, if we are not fully satisfied in our own mind that the one is true, and the other well pleasing unto God, such Profession and such Practice, far from being any furtherance, are indeed great Obstacles to our Salvation. For in this manner... we add unto the number of our sins, those of Hypocrisie, and Contempt of his Divine Majesty.[16]

Words and deeds offered as homage but not endorsed by the agent are contemptuous of God. Madison, Leland, and others were concerned to argue that citizens did not transfer to the *state* rights to worship as they please. It was their contention that religious opinions are not the proper objects of civil government. More to the point, government cannot answer for individuals on the day of judgment.[17] In a sense, then, they are saying that alienating the right of conscience is not only wrong, but *impossible*. But what, then, is the point of prohibiting the impossible?

This brings to the fore the *doubly normative* aspect of the inalienable right of conscience. On the one hand, agents can (in one sense) alienate this right. They can give consent (by saying certain words) and can always act according to the wishes of another because they have agreed to do so, and this they ought not to do. On the other hand, agents cannot alienate this right because such an agreement with others does not enable agents successfully to shift responsibility for their actions. So even if an agent were to cede to another the right to make decisions about how to worship, that agent would still be responsible for his actions in that area. That is why others should not act as if an agent has transferred this right.

Even if one is impressed with this Madisonian argument, it seems to be very limited. It may fit religious freedom well, but can it be extended? Unless one believes that all moral decisions are based on religious beliefs, this is a matter of concern. It is to this that I now turn.

Part 3.

The essence of Madison's argument is that duties that people have to God prohibit them from alienating rights necessary to discharge those duties. Can this be extended to all moral requirements, not just duties to God? The following argument suggests an affirmative answer to this question.

- (i) Each agent is (trivially) required not to do what is, all things considered, wrong.
- (ii) Suppose that S1 has agreed always to obey S2. S1 has alienated his right of conscience and will obey S2 no matter what.
- (iii) So, for any action A, if S2 orders S1 to do A, then S2 is not free not to do A.
- (iv) But since A can have any content whatsoever, doing A might be wrong, all things considered.
- (v) Therefore, S1 should not agree always to obey S2.

The idea underlying this argument is that an agent who abdicates his right of conscience to another may be instructed to do any act whatsoever, including an act that is, all things considered, wrong. But the mere fact that an agent has agreed to obey another cannot make an otherwise wrong act right.[18] So, such an agreement creates no obligation to obey.

A variant of this argument can be developed based on the rights of innocent third parties.[19] Putting it briefly, S2 might order S1 to do something that violates the rights of S3. Even though the rights of an innocent person may be overridden in extreme situations, they are not overridden simply because of an agreement between two *other* people. Therefore, S1's agreement to obey S2 does not create an obligation to do so.

One might object to the move from (ii) to (iii) in this argument. Agreements, such as promises and consent, create only *prima facie* obligations, the critic says. So while S1 may have a *prima facie* obligation to do what S2 orders, it is an obligation that can be defeated. And it will be defeated in those cases where what S2 orders S1 to do is morally heinous. So, we can affirm the alienability of the right of conscience without trouble. The problem with this objection, however, is that it misunderstands what it is to alienate the right of conscience. To give up one's right of conscience is to give up *irrevocably* the right to act on one's own moral judgments. If S1 retains the right to act on his own judgments, he simply has not alienated his right of conscience. So unless (iii) follows from (ii), such

alienation has not occurred. It is worth pointing out here that although a genuine act of alienation is irrevocable, it need not be for all time. One *can* agree to obey another for all time. But one can also agree to do so for a week, or a day, or an hour. Whether the alienation is permanent or for a limited period, the agent has *for that time* surrendered the right to act on his own moral judgments and agreed to obey the orders of another. For that time, the agent is not free not to do whatever the person to whom he alienated the right orders him to do; the agreement cannot be revoked by the agent during that time. With respect to this particular right, anything short of this is not genuine alienation.

The generalization of Madison's argument to cover all (all things considered) moral requirements suggests a broader underlying principle: if an agent has a moral requirement to do something, then he not only has a right to do it, but an inalienable right.[20] For if an agent ought (or ought not) to do something and he transfers irrevocably to another power over that matter, then he puts himself in a position of not being able to control whether that requirement is discharged. The burden of the above argument is to show that agents should not put themselves in such positions (and even if they do, they do not successfully avoid responsibility). One might suspect that a similar argument could be used to prohibit self-enslavement contracts. And, indeed, some legal scholars appeal to the preservation of personal integrity to ground such a prohibition.[21] Still, something seems amiss here. Two different objections readily come to mind.

For the first objection, consider a particular example. Parents (let us suppose) have a duty to see to it that their children are properly educated. But it is not wrong for parents to let others take over the task of educating their children. So haven't they properly alienated a right correlative with one of their duties? The answer is that they have not. They retain responsibility for the education of their children, and if those to whom the task is delegated are not discharging it adequately, the parents have a duty to make changes (to the extent that it is within their power to do so). They have not alienated the right because they can (and should) continue to monitor the arrangement and retain the right to make changes. Suppose, though, that a set of parents have given up their only child for adoption. They certainly do not retain the right to monitor that child's education. The reason for this, however, is that they have also transferred (to the adopting parents) the duty in question. The above-stated principle must be qualified, then. If it holds, it holds only so long as the agent retains the moral requirement in question. Which moral requirements can be transferred to another is a separate matter that I shall not pursue here.

The second objection concerns the nature of rights; we often think that rights are such that their possessors may either exercise them or not exercise them as they choose.[22] Since individuals must make moral decisions in light of their own beliefs, it seems conceptually confused to talk about a right of conscience. But this need not be so. Some rights may be mandatory, these are rights that must be exercised by their possessors. An example of an allegedly mandatory right cited by Joel Feinberg is the right to an education.[23] These rights involve "half-liberties" with respect to their objects, since the possessors have a duty (not merely a liberty) regarding the object. Not all inalienable rights are mandatory. The right to vote is a clear example.[24] A citizen may not transfer her right to vote to another; nor may she incur an obligation to another not to exercise that right. Nevertheless a citizen is not (legally) required to exercise the right to vote. Perhaps only a few inalienable rights are mandatory. But one can readily see why the right of conscience must be mandatory. When a person confronts a moral situation, any decision that that person makes has moral import. Since the person is responsible for making at least a permissible decision, the person must make some choice and so must exercise the right to do so; no agreement that the person has made absolves him of this responsibility.

There still seems to be something wrong, however. Let us suppose that S1 agrees (always or for a fixed time) to obey S2. And suppose that all of S2's orders during this time are morally exemplary. S1's conduct is in accord with S2's orders, and so S1's conduct is (apparently) morally exemplary. Moreover, S1 behaves as he does because he believes that he is obligated to obey S2. If the right of conscience is inalienable, something is wrong here. But what? The generalized version of the Madisonian argument hinges on the claim that one cannot be obligated to do what is, all things considered, wrong. But this obviously requires further exploration. In the imagined scenario, not only did S2 not issue any morally heinous orders, her orders were morally exemplary. If the wrongness of alienating one's right of conscience depends on how things actually turn out, then it is not always wrong to alienate this right. What, then, is the basis of the wrongness? It seems initially preposterous to say that the act of alienation

is wrong because things *might* turn out badly. That is a very high standard by which to judge people. It also seems incorrect to say that the wrongness hinges on the probabilities associated with the transfer. If that were so, then alienating one's right of conscience to a person of high moral character would not be prohibited. But if the right of conscience is inalienable, it may not be transferred to anyone. So the puzzle remains to explain the wrongness of the transfer in the case where S2's orders are morally exemplary.

Part 4.

If the inalienability of the right of conscience is not based on the wrongness of the orders and the subsequent actions performed, we must look elsewhere. Regardless of how things actually turn out and regardless of the moral character of the person to whom the transfer is made, it remains true that the agent might be ordered to perform wrong actions. In thereby undertaking this unusual moral obligation, then, the alienator incurs a certain kind of moral risk. Even if no actual harm ensues, morally risky behavior can be and often is wrong.

Consider Annie, who plays a significantly modified version of Russian roulette. Like the real game, a bullet is inserted in one chamber of Annie's gun, the cylinder is spun, and the trigger is pulled. There are, however, two major differences between Annie's game and the usual version. First, Annie does not aim the gun at herself; she aims it at her neighbor. Bill, without his knowledge, each evening as he returns home from work. Second, Annie's gun has many chambers—say, 100 (or 1000). Because Annie spins the cylinder anew each day, it is improbable that her perverse game will end in Bill's death, even though she is an excellent marksman. Whether Annie has been doing this for a month, or a week, or only a day, her behavior is wrong. Even though the probability of harming Bill is small, subjecting him to this risk is unacceptable. It is not necessarily true that imposing risk on another is always wrong. But in this case there is no attendant moral gain. Whatever pleasure Annie gets from this game does not count as a *moral* gain.

Just as the wrongness of Annie's risky behavior does not depend on the probability of Bill's actually being harmed, so too the wrongness of S1's alienating his right of conscience to S2 is not based on the probability of harm. S1 subjects others—who, we cannot always determine—to risk without any attendant moral gain. But we should pause here. The last leap may be too quick. Perhaps S1's ceding his right of conscience to S2 *does* carry with it a moral gain. For suppose that S1 correctly recognizes that his own moral judgments are highly fallible; the past demonstrates to him clearly that he makes many moral mistakes. Suppose too that S1 knows that S2 is a better moral judge than he himself is. In such a situation, it is true that there is a risk if S1 agrees irrevocably to follow the orders of S2; but there is an accompanying moral gain, a gain that may outweigh the risk. So what is wrong with cession of the right in this case?

The suppositions of this criticism are important. Critics attribute to S1 a certain kind of knowledge of his own moral ignorance. We need to examine this. S1 is cognizant of the fallibility of his own moral judgments and of the superiority of S2's judgments. But in what does this knowledge consist?

To begin with the most far-ranging possibility, it seems that an agent can never sensibly alienate his right of conscience to another because he knows that his entire moral outlook is mistaken. For if he knew that his entire moral outlook were mistaken, he would cease to hold those views. And if he had no moral outlook (or set of moral beliefs), he would have no basis for selecting someone to whom to cede his right of conscience. The purpose of ceding such a right is, after all, presumably to bring one's own conduct more in line with one's own moral convictions.[25] But to achieve this, one must be able to identify a reliable person whom one should obey, and to do that one must have general moral beliefs to guide the process of selection.

Perhaps the agent does not question his general moral outlook, but doubts his judgments in particular cases. But again one can never believe in a particular case that one's current (specific) moral conviction is mistaken; for if one did hold this, one would presumably abandon the belief in question.[26] There is another possibility, however. In a particular case or type of case, an agent may know that his judgments are apt to be clouded or biased, so, in such a case there will be a moral gain if the agent follows the orders of someone else whose judgments are more reliable. The agent is aware of his own weaknesses, and is taking steps to guard against them. Even here we must presuppose that the agent has moral knowledge. First, his retrospective judgments about his own past decisions

must be correct in order to identify the weakness. And second, he needs moral knowledge in order to select a reliable person to obey. Granting this knowledge, however, doesn't the agent then have a good reason to alienate his right of conscience?

Recall that alienating this right puts the agent under an irrevocable obligation to obey the other. In the case hypothesized, the agent's clouded judgments concern a selected area, so the agent has no good reason to alienate the right to make all moral decisions. (If we assume that the agent's judgments are clouded in all areas, we essentially return to the assumption that his entire moral outlook is mistaken.) Nevertheless, this seems to leave room for the agent to cede his right for a selected type of case, and that is still genuine (though selective) alienation. Can anything be said against this? Selective alienation carries with it unlimited moral risks, risks unnecessary to achieve the moral gain that the agent seeks. The risks are without limit because the alienator may be ordered to do anything whatsoever, and the same gain can be achieved without the risk of alienation. If the right of conscience is inalienable, it does not preclude an agent from seeking moral counsel and acting on that advice, or from acting on that advice *because* it is endorsed by a reliable authority. What it rules out is the agent *obligating* himself irrevocably to follow the orders of another. One can still obtain the moral advice of another without giving up the right to review that advice.[27] And if, as we are supposing, the agent is aware of his own fallibility in a certain area, he may attach additional weight to the advice that he receives regarding that area. Since the gain can be obtained without incurring the risk, the argument above against alienation stands.

I suggested earlier that an agent's consent to obey another does not create an obligation to do so and does not free the agent of his responsibilities. If this is correct, then in a sense one cannot alienate the right of conscience. So why also insist that saying the words (*seeming* to consent) is wrong? One reason for such a prohibition is that these words might deceive another, leading him to believe that the alienator is required to obey him. One wishes for firmer grounds here, however, because if the right of conscience is inalienable, we should expect mature agents to know this (and thus not be deceived by the words). Appearing to alienate the right of conscience is to be unduly flippant about the claims of morality. Consider a different kind of case. Suppose that Annie is preparing to shoot Bill for no apparent reason. You say to her, "Go ahead and kill him." But Annie recognizes that you have no right to authorize such action and she receives no additional motivation to act as a result of your words. Even if your words are neither morally nor causally efficacious, in uttering them you demonstrate a kind of contempt for morality.[28] This same contempt is present if you appear to alienate your right of conscience to another. And others who act as if you have alienated this right display contempt too.

One additional objection against this "moral risk" argument should be considered. It may seem that the argument is too far-reaching, and if successful will grossly overstock the realm of inalienable rights. The reason for the suspicion is that there seem to be moral risks associated with most transactions. Rights to property have been regarded as paradigmatically alienable; yet there may be moral risks associated with property transfers. Suppose that I sell my house to Celia. For all I know, Celia may be a member of a militia intent on destroying the government, and my property may provide her with a perfect opportunity to carry out her activities. Given this, if the moral risk argument works where I have employed it, it will also show that property rights are inalienable; but this is a conclusion that most will reject. This application of the argument can be resisted, however. Though both transactions may lead to bad outcomes, there is a difference between revoking the right to make moral decisions and revoking the right to a piece of property. When a person alienates his right of conscience he is still the agent of any wrong that follows from this transfer.[29] But when a buyer uses property purchased for morally bad purposes (that the seller could not have foreseen), the seller is neither the agent of nor a witting accomplice to the wrong that ensues.

Part 5.

When contemporary philosophers write about the right of conscience being alienated, they envision this right being transferred to another particular individual. It is hard to imagine realistic cases of this sort, cases in which one has morally enslaved oneself to another. As noted above, Madison and Leland (and Thoreau) argued against an individual alienating his right of conscience to the *state*. Richard Price, in a 1777 treatise, defended this same position. He argued that

[No] people can lawfully surrender or cede their liberty. This must appear to anyone who will consider that when a people make such a cession and the extensive powers of government are trusted to the discretion of any man or body of men, they part with the powers of life and death and give themselves a prey to oppression, that they make themselves the instruments of any injustice in which their rulers may chuse to employ them... [30]

Here Price in effect invokes the moral risk argument as it applies to the relationship between an individual and the state. But if an individual may not alienate his right of conscience to the state, does that not wreak havoc with the notion of political obligations? If an individual retains his right of conscience, it seems to leave him free to act on his own moral judgments, regardless of the state's pronouncements. Indeed, no less an authority than Madison says that a person's duty to pay the homage to the Creator that he believes is acceptable "is precedent, both in order of time and in degree of obligation, to the claims of Civil Society," and that every person who becomes a member of a particular "Civil Society" must still preserve "his allegiance to the Universal Sovereign." [31] But far from wreaking havoc with the notion of political obligation, the inalienability of the right of conscience merely shows something about consent theory. Nor is this conclusion at odds with the tradition.

Note that a consent theorist as traditional as Locke attributed to people a similar sort of right. Locke held that people give their consent even to bad governments by residing within their territories, but people are not obligated to bad governments. This does not show that for Locke consent is not relevant to political obligations; rather, it shows that consent alone is *not sufficient* to generate such requirements. [32] This means that all people, even those who have given consent, must (in some sense) retain the right to make and act on their own moral decisions. It is no accident that contractarians such as Hobbes, Locke, and Rousseau were especially interested in inalienable rights. For while they held that consent is necessary for political obligations, it was natural for them to wonder when, if ever, it was also sufficient to obligate.

Even if people retain the right to make their own moral decisions, this, by itself, does not necessarily invite chaos, as the following points show.

First, the inalienability of the right of conscience does not preclude one from obeying the commands of others. The "voice" of conscience tells agents to stay true to their own principles. But the orders of others may be perfectly compatible with those principles. Indeed, the content of many laws reflects widely accepted moral requirements—such as not to kill, not to steal, not to defraud, and so on. It is only when the orders or laws are contrary to a person's moral principles that we can tell whether that person has alienated his right of conscience. [33] And we may not even be able to tell in this case, since an agent may fail to act on his own moral principles and act instead on the orders of another due to (for example) weakness of will (rather than the fact that he so obligated himself).

Second, even if the right of conscience is inalienable, it is possible that grounds other than consent provide support for political obligations. For example, principles such as fair play or gratitude may do so. [34] If that is the case, agents may have to give due weight to the state's pronouncements in deciding what, in the final analysis, they ought to do, though for reasons other than the fact that they have consented.

And third, the very existence of laws creates expectations in others, and so agents must take into account that disobedience will sometimes adversely affect others. And in some cases, laws serve to coordinate the behavior of people in ways necessary for orderly living. Traffic regulations provide an obvious instance of this. [35]

This may appear to bring us back to a radically subjective view. For, as C.D. Broad remarks, it seems that in some sense of "ought" a person ought always to do that act that he believes at the time to be right. [36] I think, however, that this is best understood not as endorsing a radically subjective view about moral requirements, but rather as affirming a second-order precept about blame: an agent who acts against his conscience is always culpable. [37] How others should respond to the person acting from conscience is a different issue, however. The value of tolerance suggests that society should allow individuals the freedom to act (or refuse to act) on grounds of conscience when possible. But there will be times when society must prevent individuals from acting on their consciences. [38] The most conspicuous case here is to protect the rights of innocent persons. Even if members of

certain religious sects regard themselves as morally required to abduct teenagers for the purposes of indoctrination, society is right to outlaw such behavior and to punish those who engage in it. It is more controversial to say that society may coerce members to perform services for the common good when those actions are in conflict with the consciences of some. Compulsory military service is the obvious example here. Perhaps a tolerant society will allow conscientious objection in this case as long as the common good is not compromised. Even this is controversial, though; for it may be unfair to those who are willing to serve.

So, though the inalienability of the right of conscience does imply that agents cannot obligate themselves irrevocably to obey the commands of the state (or a particular individual), such a result need not be lamented. What is morally important for the maintenance of an orderly society need not depend on such a strong obligation.[39]

Notes

1. *Civil Disobedience*, in Lily Owens (ed.), *Works of Henry David Thoreau* (New York: Averel Books, 1981), p. 418.
2. See Martin C. McGuire, "On Conscience," *Journal of Philosophy* 60 (1963): 253-63, p. 259, and Peter Fuss, "Conscience," *Ethics* 74 (1964): 111-20, p. 111.
3. See Alan Donagan, *The Theory of Morality* (Chicago: University of Chicago Press, 1977), pp. 132 ff.; Gilbert Ryle, "Conscience and Moral Convictions," *Analysis* 1 (1940): 31-40, p. 31; A. Campbell Garnett, "Conscience and Conscientiousness," in Joel Feinberg (ed.), *Moral Concepts* (New York: Oxford University Press, 1969), p. 86; and James F. Childress, "Appeals to Conscience," *Ethics* 89 (1979): 315-35, pp. 319 and 328-29.
4. McGuire, op. cit., p. 261; Fuss, op. cit., pp. 320-21; Larry May, "On Conscience," *American Philosophical Quarterly* 20 (1983): 57-68, pp. 58-59; and Harry Gensler, "Ethical Consistency Principles," *The Philosophical Quarterly* 35 (1985): 156-70, pp. 161 and 163.
5. Ryle, op. cit., p. 35.
6. Childress, op. cit., p. 329.
7. Ronald Dworkin, *Taking Rights Seriously* (Cambridge, Mass.: Harvard University Press, 1977). pp. 189-90, says that this shows that the right to follow one's own conscience is not a right in the strong sense (i.e., a right that the government would do wrong to interfere with).
8. A. John Simmons, *Moral Principles and Political Obligations* (Princeton: Princeton University Press, 1979), p. 76.
9. For a fuller analysis, see Terrance McConnell, "The Nature and Basis of Inalienable Rights," *Law and Philosophy* 3 (1984): 25-59.
10. For a contemporary who seems to endorse the inalienability of the right of conscience, see John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), p. 217.
11. See Terrance McConnell, "Moral Dilemmas and Consistency in Ethics," in Christopher Gowans (ed.), *Moral Dilemmas* (New York: Oxford University Press, 1987), pp. 154-73, and Earl Conee, "Against Moral Dilemmas," in *ibid.*, pp. 239-49. It should be noted that even proponents of dilemmas do not typically regard the situation described in this paragraph as an irresolvable moral conflict.
12. John Leland, "The Right of Conscience Inalienable," in Ellis Sandoz (ed.), *Political Sermons of the American Founding Era* (Indianapolis: Liberty Press, 1991), pp. 1083-86.
13. See *The Papers of James Madison* (Chicago: University of Chicago Press, 1973), vol. 8, pp. 298-300. All quotations are taken from here. For a discussion of Madison's arguments, see Morton White, *Philosophy, The Federalist, and the Constitution* (New York: Oxford University Press, 1987), pp. 31-34.
14. Arthur Kuflik, "The Inalienability of Autonomy," *Philosophy and Public Affairs* 13 (1984): 271-98, p. 281, criticizes Spinoza's claims about the inalienability of autonomy for these reasons.
15. It is plausible to suggest that activities such as brainwashing and psychosurgery are relevant to one's right to moral autonomy but not to the right of conscience. What the relationship is between autonomy and conscience is a difficult topic that I do not pursue here.
16. John Locke, *A Letter Concerning Toleration* (Indianapolis: Hackett Publishing, 1983), pp. 26-27. White, op. cit., p. 33, suggests that Madison was influenced by Locke.
17. Leland, op. cit., p. 1085.

18. Kuflik, *op. cit.*, pp. 286 ff., argues that abdicating moral autonomy is wrong because one might be ordered to perform extremely evil deeds.
19. Such an argument is given by Randy E. Barnett, "Contract Remedies and Inalienable Rights," *Social Philosophy & Policy* 4 (1986): 179-202. pp. 186-87.
20. See White, *op. cit.*, p. 33, and Barnett, *ibid.*
21. See, for example, Anthony T. Kronman, "Paternalism and the Law of Contracts," *The Yale Law Journal* 92 (1983): 763-98, esp. pp. 778-80 and 783-84.
22. See, for example, Allen Buchanan, "What's So Special About Rights?" *Social Philosophy & Policy* 2 (1984): 61 -83, p. 79.
23. Joel Feinberg, *Rights, Justice, and the Bounds of Liberty* (Princeton: Princeton University Press, 1980), p. 157.
24. See Susan Rose-Ackerman, "Inalienability and the Theory of Property Rights," *Columbia Law Review* 85 (1985): 931-69, p. 936.
25. Kuflik, *op. cit.*, pp. 293-94, mentions this as a reason for abdicating moral autonomy.
26. As Larry May has pointed out to me, this claim is oversimplified: the process of ridding oneself of beliefs ingrained by socialization may be arduous.
27. See Kuflik, *op. cit.*, p. 294.
28. For a related point, see Thomas E. Hill, Jr., *Autonomy and Self-Respect* (New York: Cambridge University Press, 1991), p. 15.
29. A similar view about agency and responsibility is articulated by eighteenth-century philosopher Bishop Joseph Butler, who says: "...[W]e are agents. Our constitution is put in our own power. We are charged with it; and therefore are accountable for any disorder or violation of it." See Joseph Butler, *Five Sermons*, ed. Stephen L. Darwall (Indianapolis: Hackett Publishing, 1983), p. 15.
30. D.D. Thomas (ed.), *Richard Price: Political Writings* (New York: Cambridge University Press, 1991), p. 89.
31. Madison, *op. cit.*, p. 299.
32. John Locke, *The Second Treatise of Government*, in *Two Treatises of Government* (New York: Cambridge University Press, 1960), sections 119, 121, 135, 137, and 149. For a clear discussion of Locke on these issues, see Simmons, *op. cit.*, pp. 86-88.
33. See May, *op. cit.*, p. 58, and Kuflik, *op. cit.*, p. 288.
34. See, for example, Terrance McConnell, *Gratitude* (Philadelphia: Temple University Press, 1993), chap. 6.
35. See Simmons, *op. cit.*, pp. 193-94.
36. CD. Broad, "Conscience and Conscientious Action," in Feinberg, p. 77.
37. See Donagan, *op. cit.*, pp. 137-38.
38. *Ibid.*, p. 138, and Rawls, *op. cit.*, pp. 211-12 and 370.
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